

CHAPTER 38

Department of Public Safety

(Statutory Authority: 1976 Code §§ 23-6-10 et seq. and 23-47-20(C)(15))

ARTICLE 1

CRIMINAL JUSTICE ACADEMY

SUBARTICLE 1

LAW ENFORCEMENT TRAINING [TRANSFERRED]

38-001. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-001 was titled **Authority of Director** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-002.

38-002. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-002 was titled **Application for Re-issuance of Certification** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-007.

38-003. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-003 was titled **Requirement of Good Character** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-003.

38-004. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-004 was titled **Denial of Certification for Misconduct** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-025.

38-005. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-005 was titled **Firearms Qualification Requirement** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27,

Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-021.

38-006. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-006 was titled **Certification** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-004.

38-007. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-007 was titled **Training Requirements for Basic Law Enforcement Certification** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-005.

38-008. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-008 was titled **Equivalent Training** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-006.

38-009. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-009 was titled **Separation from Law Enforcement Employment** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-022.

38-010. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-010 was titled **Reserve Police** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-030.

38-011. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-011 was titled **Traffic Radar Operator** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-012.

38-012. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-012 was titled **Application for Re-certification** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27,

Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-009.

38-013. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-013 was titled **Continuing Law Enforcement Education Requirements for Re-certification** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-010.

38-014. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-014 was titled **Approval of Continuing Law Enforcement Education Hours for Re-certification Requirements** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-008.

38-015. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-015 was titled **Extension of Certification Renewal Date** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-011.

38-016. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-016 was titled **Withdrawal of Certification of Law Enforcement Officers** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-026.

38-017. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-017 was titled **Reporting of Events Requiring Withdrawal of Certification** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-023.

38-018. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-018 was titled **Investigation of Events Requiring Withdrawal of Certification; Notification to Officer** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-024.

38-019. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-019 was titled **Notification of Withdrawal of Certification** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register

Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-027.

38-020. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-020 was titled **Confidentiality of Notification** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-029.

38-021. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-021 was titled **Law Enforcement Emergency Vehicle Training Requirement** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-014.

38-022. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-022 was titled **Law Enforcement Emergency Vehicle Training Requirement** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-015.

38-023. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-023 was titled **Notification of Training Compliance** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-016.

38-024. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-024 was titled **Continuing Training Requirement** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-017.

38-025. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-025 was titled **Approval of Training Programs** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-018.

38-026. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-026 was titled **Equivalent Law Enforcement Emergency Vehicle Training** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by

State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-019.

38-027. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-027 was titled **Effect of Failure to Comply** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-020.

38-028. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-028 was titled **Definitions** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-001.

SUBARTICLE 3
E-911 SYSTEM [TRANSFERRED]

38-060. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-060 was titled **Definitions** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-060.

38-061. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-061 was titled **Minimum Requirements for E-911 Operator Enrollment in Training** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now SC CODE REGS. 37-064.

38-062. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-062 was titled **Training Requirements for Certification** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-066.

38-063. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-063 was titled **Break in Service after Certification** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-067.

38-064. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-064 was titled **Separation from Employment** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-070.

38-065. Transferred by State Register Volume 39, Issue No. 6, Document No. 4350, eff June 26, 2015.

Editor's Note

Former R. 38-065 was titled **Cost of Training** and had the following history: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 38, Issue No. 3, eff March 28, 2014. See, now S.C. CODE REGS. 37-069.

ARTICLE 3
DIVISION OF MOTOR VEHICLES
SUBARTICLE 1
SPECIAL LICENSE PLATES

38-100. Motor Vehicles License Plates for Members of Congress of the United States.

A. A special series of private passenger car license plates is hereby designated, as described herein, which may, upon application being made therefor, and the regular fee required by law paid, be issued to United States Representatives and Senators from South Carolina, said plates to bear the words "Member U. S. Congress" or "Member U. S. Senate," as the case may be. The said plates shall be serially numbered 1 through 6 in the case of those designated "Member U. S. Congress," and 1 and 2 in the case of those designated "Member U. S. Senate." The said specially designated license plates shall be reserved by the Department of Public Safety for issuance in the order of the seniority of the Representatives and Senators; Provided, that by mutual consent between respective Representatives and Senators the order in which serial numbers are issued may be modified.

B. The specially designated license plates issued hereunder shall not be transferable, and in the event an owner transfers or otherwise disposes of a vehicle for which one of the said plates has been issued, he shall return same to the Department of Public Safety in exchange for a regular license plate which, in turn, may be transferred as provided for by law; or the Department of Public Safety may authorize a specially designated license plate to be transferred to another vehicle of the same owner upon receipt of application therefor and payment of the regular fee required by law for registration and license of that vehicle.

C. Specially designated license plates issued hereunder shall be surrendered to the Department of Public Safety upon expiration of the term of office, resignation, or death of the holder, in exchange for a regular license plate not specially designated.

D. All specially designated license plates issued hereunder shall expire on the 31st day of January.

E. Nothing herein shall be construed as affecting the license and registration fees to be paid on the vehicles involved, nor in any way to otherwise relieve the owners from complying with all provisions of the law relating to the licensing and registration of vehicles in South Carolina.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-101. Issuance and Use of Specially Designated Motor Vehicle License Plates for Members of the South Carolina General Assembly.

A. A special series of private car license plates is hereby designated, as described herein, which may, upon application being made therefor and the regular fee required by law paid, be issued to the members of the South Carolina General Assembly, said plates to bear the words "State Senator" for members of the South Carolina Senate, and "State Legislator" for a member of the South Carolina House of Representatives, as the case may be. The said plates shall be serially numbered one through forty-six in the case of those designated "State Senator," and one through one hundred twenty-four for those designated "State Legislator." The said specially designated license plates shall be reserved by the Department of Public Safety for issuance in the order of seniority of the State Senators and members of the House of Representatives, provided that by mutual consent between respective Representatives and Senators, the order in which serial numbers are issued may be modified.

B. The specially designated license plates issued hereunder shall not be transferable, and in the event an owner transfers or otherwise disposes of a vehicle for which one of the said plates has been issued, he shall return same to the Department of Public Safety in exchange for a regular license plate which, in turn, may be transferred as provided by law, or the Department of Public Safety may

authorize a specially designated license plate to be transferred to another owner of the same vehicle upon receipt of application therefor and payment of the regular fee required by law for registration and licensing of that vehicle.

C. Specially designated license plates issued hereunder shall be surrendered to the Department of Public Safety upon expiration of the term of office, resignation or death of the holder in exchange for a regular license plate not specially designated.

D. All specially designated license plates issued hereunder shall expire on the 31st day of January of each year.

E. Nothing herein shall be construed as affecting the license and registration fees to be paid on the vehicle involved, nor in any way to otherwise release the owners from complying with all provisions of the law relating to the licensing and registration of vehicles in South Carolina.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-102. Special License Plates for Various State Officials.

A. A special series of private passenger automobile license plates are hereby designated, which may, upon proper application being made therefor, be issued to duly elected State Constitutional Officers, said plates to bear the title of the office holder or any other numerical designation approved by the State Constitutional Officer and the Department; to duly elected members of Statewide Commissions and the numerical designation of the district or circuit which such member represents; to any past Governor of South Carolina, said plates to bear the word "Governor" and the numerical designation of the years in office.

No special personalized motor vehicle license plates included in this section will be issued requiring special or separate dies unless the cost of such dies will be recovered within a two-year license period from the fifteen-dollar (\$15.00) annual fee charge for personalized license plates and none of these plates will be manufactured to include the word designation "Chairman."

B. A special series of private passenger automobile license plates are hereby designated, which may, upon proper application being made therefor, be issued to members of the South Carolina Supreme Court, Members of the South Carolina Circuit Court and qualified residents of any Federal Judiciary Office. The fee for the issue of such special plates shall be the regular motor vehicle registration fee as set forth in Article 5 of Chapter 3 of Title 56 of the 1976 Code.

C. The specially designated license plates issued hereunder shall not be transferable except to another vehicle of the same owner and only then upon receipt of proper application therefor and payment of the fee required by law for registration and license of that vehicle. Such plates shall not be transferable to another person unless so authorized by the Department.

D. Specially designated license plates issued hereunder shall be surrendered to the Department of Public Safety upon expiration of term of office, resignation, or death of the holder, in exchange for license plates not specially designated.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

SUBARTICLE 3

ADMINISTRATION AND ENFORCEMENT OF THE FINANCIAL RESPONSIBILITY ACT AND LAWS REGARDING MOTOR VEHICLE REGISTRATION AND FINANCIAL SECURITY

38-120. Insurance Certification Required for Vehicle Licensing.

No certificate of registration shall be issued or transferred to an owner by the Department of Public Safety unless the owner or prospective owner produces satisfactory evidence that such security in accordance with the South Carolina Automobile Repair Reform Act of 1974, Chapter 11 of Title 56 of the 1976 Code, is in effect.

This item shall not apply with respect to any motor vehicle owned by the U. S., this State or any political subdivision of this State or any municipality therein. Authority 1976 South Carolina Code of Laws, as amended, Section 56-9-30.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-121. Self-Insurers.

I. Pursuant to Section 15-78-140, political subdivisions are allowed to procure automobile liability insurance by becoming self-insured. Additionally, pursuant to Section 56-9-30 political subdivisions

are exempted from the self-insured requirements contained in Chapter 9 of Title 56. However, pursuant to Section 56-10-10 political subdivisions who wish to be self-insured must still provide proof that adequate security is in place to meet the minimum coverage specified in Section 56-10-20.

II. Political Subdivisions must meet the following requirements to be self-insured with the Department of Public Safety:

A. Apply annually to be self-insured. The application must be submitted thirty (30) days prior to the expiration of the current self-insured period.

B. Annually provide a recent actuary's report, not more than six months old from the date of application, of the political subdivisions's projected automobile liability losses for the upcoming self-insured period.

C. Annually provide proof that sufficient funds are available and will be maintained to cover the projected losses listed in the actuary's report.

D. Annually provide a copy of the political subdivisions's most recent financial statement, which shall be not more than six months old from the date of application.

E. If an Excess Liability Insurance Policy is in place, the political subdivision must designate the Department of Public Safety as the Certificate holder on the policy.

III. Other Self-Insured Applicants must meet the following requirements:

A. Apply annually to be self-insured. The application must be submitted thirty (30) days prior to the expiration of the current self-insured period and contain the information required by Section 56-9-60.

B. Pursuant to Section 56-9-60 to be self-insured an applicant must:

1. have more than twenty-five motor vehicles registered in the applicant's name;
2. provide the Department with a copy of the applicant's latest financial statement prepared by a certified public accountant licensed to do business in South Carolina, indicating that the applicant has a positive net worth;
3. provide the Department with a current list of all vehicles registered in the applicant's name;
4. provide the Department with the applicant's procedural guidelines for processing claims;
5. the applicant must have a net worth of twenty million dollars or the Department may require the applicant to deposit in a segregated self-insured claims account the sum of three thousand dollars for each vehicle to be covered by the self-insurer's certificate.

C. Self-Insured funds must be segregated in a federally insured savings or checking account or maintained in another federally insured account such as:

1. Money Market Accounts or
2. Certificates of Deposits

All accounts containing self-insured funds must either be payable to the South Carolina Department of Public Safety or designate the Department as a lienholder. The account, however, shall be in the name of the Self-Insurer and all interest which accrues to the account shall belong to the Self-Insurer. The Department of Public Safety must be provided copies of statements of accounts containing self-insured funds on either a monthly or quarterly basis depending upon how often the statements are issued. The Department must also be notified when the term has expired for any certificates of deposit containing self-insured funds.

D. If a portion of the required self-insured funds are to be covered by real estate, a quick sale appraisal of the property must be submitted at the time of the initial application. Thereafter, an appraisal update must be submitted annually with the renewal application. Pursuant to Section 56-9-60, no more than twenty percent of the required self-insured funds may be covered by the "quick sale" appraised value of real estate located in the State.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

SUBARTICLE 5
PROTECTIVE HELMETS, FACE SHIELDS AND WINDSCREENS

38-150. Definitions.

For purposes of interpretation and enforcement of the Act, the following definitions are established:

- A. Protective helmet. A covering device primarily intended to protect the upper part of the wearer's head against blow.
- B. Goggles. A device consisting of glass or plastic eye pieces or eye cups worn over the eyes and held in place by a headband or temple piece for protection of the eyes and eye sockets.
- C. Face Shield. A device attached to a helmet which covers the wearer's face at least to a point approximating the tip of the nose for the purpose of providing protection of the eyes against flying objects, dust, glare or a combination of these hazards.
- D. Windscreen. A device mounted on a two-wheeled motorized vehicle forward of the rider designed to deflect wind and/or small flying objects from the face and body of the rider.
- E. Harness. Collectively all those parts of a helmet such as chin strap, etc. which act to restrain and hold the helmet in proper position on the head of the wearer.
- F. Shell. The outer material that gives rigidity and provides the general form of the helmet.
- G. Department. The South Carolina Department of Public Safety

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

Editor's Note

Former Regulation 38-150, added by State Register Volume 14, Issue No. 4, eff April 27, 1990 and amended by State Register Volume 16, Issue No. 6, eff June 26, 1992, related to employment termination notification requirements and penalties, and was repealed by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

38-151. Requirements for Approval.

A. Helmet: Shall be approved only if it meets the minimum requirements of the USA Standard #Z90.1-1966 for Protective Headgear for Vehicular Users with respect to:

1. Construction
2. Materials
3. Extent of protection (coverage)
4. Labelling
5. Shock absorption (except limited to one impact at each of four sites)
6. Penetration
7. Retention (performance of harnesses)

Also, to be approved by the Department, a helmet shall have a reflectorized surface, or shall have securely affixed thereto on both the right and left side a reflectorized material providing not less than 4 square inches of reflectorized surface on each side of the helmet. If the reflectorized material is affixed to the helmet, it must be attached with a suitable permanent, weather-proof and water-resistant adhesive.

Special Labeling

Helmets approved by the Department shall be permanently labelled on the outer surface of the shell at the lower rear center edge with letters and numbers at least 1/4 inch; in height giving the manufacturer's name or trade name and model name or number, and these shall be the same under which the helmet has been approved by the Department.

B. Goggles: Shall be approved only if they meet with the minimum requirements of the "Eye Protection" section of the USA Standard #Z2.1-1959 for Head, Eye and Respiratory Protection, specifically that portion applicable to the following types of eye protection devices:

- Goggles, eye cup (except welders and cutters)
- Spectacles, metal or plastic frame

Goggles, flexible fitting
Spectacles, plastic eye shield

The following modifications of the USA Standards shall be applicable:

(a) Table 3, Selection of Eye-and Face-Protective Devices, shall not apply.

(b) Language referring to employees shall be construed as referring to persons operating or riding on a two-wheeled motorized vehicle.

Goggles approved by the Department shall bear a readily identifiable mark used by the manufacturer to indicate compliance with the USA Standards, and the device shall bear a manufacturer's tag at time of sale to the consumer indicating the brand name and model designation, and these shall be the same under which the goggles were approved by the Department.

C. Face Shield: Shall be approved only if:

(a) It meets the requirements established in the USA Standard Specifications #Z2.1-1959 for Head, Eye and Respiratory Protection, specifically that portion devoted to "Face Shields" and prescribing official test procedures for the following physical qualities (other than where exceptions or modifications are given):

1. Impact resistance, plastic-window face shield, except that the face shield shall be tested while attached to a helmet and the harness of the helmet shall take the place of the crown strap
2. Penetration resistance, plastic-window face shield
3. Visible transmittance, plastic windows
4. Flammability, plastic windows
5. Disinfection

(b) The edge of the shield is smooth, and if bevelled it must be dull finished.

(c) The shield is adequately supported, as a snap-on or flip-up attachment to the helmet.

(d) The shield covers the face both front and sides, from the leading edge of the helmet above the eyes to a point at or below the tip of the nose of the wearer.

(e) The shield is marked permanently and legibly for manufacturer identification as required by USA Standard #Z2.1-1959 and in addition bears a manufacturer's tag at time of sale to the consumer indicating brand name and model designation, and these shall be the same under which the shield was approved by the Department.

D. Windscreen: Shall be approved only if

(a) The visual material meets the provisions appearing in USA Standard Specifications #Z26.1-1966 for Safety Glazing Materials for Motor Vehicles Operated on Land Highways as pertaining to motorcycle use. For rigid plastic material Item #4 of Table 1 shall be used, and for flexible plastics Item #6 of Table 1 shall be used.

(b) The metal support for the shield shall be of material that will bend under impact rather than fragment.

(c) Cover material, other than visual material, shall be beaded at the edges or otherwise suitably trimmed off to prevent fraying, and if cloth shall be tested for flammability in accordance with procedures of #5902 of specifications of the ASTM.

(d) Each windscreen approved shall be labelled at a readily visible location showing the name of manufacturer, trade name if any and model designation, and these shall be the same name and model under which the device has been approved.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-152. Certification and Approval.

A. Tests. Tests to demonstrate compliance with requirements of the law shall be performed by independent testing agencies considered by the Department to be qualified to conduct such tests. Test reports shall be complete showing test results as against minimum or maximum values prescribed by the applicable State Standards and Specifications and shall be certified by the testing agency with respect to accuracy and compliance with the requirements for approval.

B. Procedure for Securing Approval.

(a) A manufacturer desiring approval of a helmet, goggles, face shields or windscreen shall submit to the Director of the Department or his designee, Columbia, South Carolina postage prepaid a test report (From an independent testing laboratory approved by the State) certified as required under the foregoing paragraph on "Test," together with a sample of the device for which approval is sought, fully identified as required by these regulations.

(b) If after receiving the report and the related sample the Department finds that the device meets the requirements of these regulations a notice of approval of the device will be issued. All samples will be retained by the Department for future reference and control purposes.

(c) Any protective device appearing on the approved list of the Public Health Service of the U.S. Department of Health, Education and Welfare will be approved if it also meets all other requirements of the South Carolina Act not included in current USA Standards upon which DHEW approval is based.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

SUBARTICLE 11
REQUIRED STOPS AT RAILROAD CROSSINGS

38-240. Vehicles Required to Stop at Railroad Crossings.

(Statutory Authority: 1976 Code Section 23-6-30(6), as amended)

A. The driver or operator of every vehicle listed in 49 C.F.R. Section 392.10, (a) shall stop such vehicle at all railroad crossings as required by Section 56-5-2720. The covered vehicles shall include:

- (1) Every bus transporting passengers;
- (2) Every motor vehicle transporting any quantity of chlorine;
- (3) Every motor vehicle which, in accordance with the regulations of the United States Department of Transportation, is required to be marked or placarded with one of the following classifications:
 - (i) Division 1.1
 - (ii) Division 1.2, or Division 1.3
 - (iii) Division 2.3 Poison gas
 - (iv) Division 4.3
 - (v) Class 7
 - (vi) Class 3 Flammable
 - (vii) Division 5.1
 - (viii) Division 2.2
 - (ix) Division 2.3 Chlorine
 - (x) Division 6.1 Poison
 - (xi) Division 2.2 Oxygen
 - (xii) Division 2.1
 - (xiii) Class 3 Combustible liquid
 - (xiv) Division 4.1
 - (xv) Division 5.1
 - (xvi) Division 5.2
 - (xvii) Class 8
 - (xviii) Division 1.4
- (4) Every cargo tank motor vehicle, whether loaded or empty, used for the transportation of any hazardous material as defined in the Hazardous Materials Regulations of the United States Department of Transportation;

(5) Every cargo tank motor vehicle transporting a commodity which at the time of loading has a temperature above its flash point; and

(6) Every cargo tank motor vehicle, whether loaded or empty, transporting any commodity under special permit.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998. Amended by SCSR 46-5 Doc. No. 5077, eff May 27, 2022.

SUBARTICLE 13
RELEASE OF LICENSING AND REGISTRATION INFORMATION

(Statutory Authority: South Carolina Code of Laws § 23-6-10, et seq.)

38-250. Establishing an Account.

1. Companies must request in writing, on company stationery, to establish an account. Individuals must request in writing to establish an account and must include their current mailing address.
2. Companies and Individuals must furnish the following information:
 - a. Mailing address for billing purposes.
 - b. Contact person and telephone number.
 - c. Companies must provide their Federal I. D. number and Individuals must provide their Social Security Number.
 - d. Number and type of anticipated requests per month.
3. The Company must remit with request a Security Deposit equivalent to the monthly expected billing (Minimum of \$100.00). The money remitted is a Security Deposit and not an advance payment for services rendered. The Deposit will remain on file with the Department until written notice of cancellation is received from the company or the individual and all invoices have been paid. Accounts will be reviewed periodically to determine if an increase in the deposit is needed.
4. After review and approval, a four (4) digit account number will be assigned to the Company or individual to use when requesting information.

HISTORY: Added by State Register Volume 22, Issue No. 5, eff May 22, 1998.

38-251. Department Invoicing Procedures.

1. Listed below are the types of information available with this account. Each request for information will be charged according to the following schedule:

TYPE INFORMATION	CHARGE PER REQUEST
Registration	\$2.00
Liability Insurance Information	\$2.00
Odometer Information	\$3.00
Investigative Officer Reports	\$3.00
Vehicle Title Lienholder Information	\$2.00

2. Information requests will be accumulated monthly. One invoice will be prepared for all information requested.

3. Invoices must be paid within thirty (30) days of receipt of the invoice for the account to remain active. After thirty (30) days, accounts will become delinquent and subject to closure.

HISTORY: Added by State Register Volume 22, Issue No. 5, eff May 22, 1998.

38-252. Delinquent Accounts.

1. Companies and individuals will be notified that an Account Balance is Past Due. Payment must be received within ten (10) days of receipt of the notice for account to be returned to active status.

2. If payment of all past due invoices is not received within ten (10) days after receiving the notice, account privileges will be suspended.

3. If payment is not received within thirty (30) days of receipt of the notice, the account will be closed and Security Deposit applied to all outstanding invoices. Any remaining balance will be refunded to the company or individual.

HISTORY: Added by State Register Volume 22, Issue No. 5, eff May 22, 1998.

38-253. Closing Accounts.

1. Companies and individuals may terminate an account by requesting in writing to the Deputy Director, Department of Public Safety, Division of Motor Vehicles, P. O. Box 1498, Columbia, South Carolina 29216-0022, to close the account and have the security deposit be returned.

2. Upon receipt of the request, the Department will suspend privileges under the account and will determine the amount of any outstanding balance under the account.

3. Any amounts due will be deducted from the security deposit with the remaining balance being returned to the company or individual.

HISTORY: Added by State Register Volume 22, Issue No. 5, eff May 22, 1998.

ARTICLE 5 STATE TRANSPORT POLICE REGULATIONS

(Statutory Authority: South Carolina Code of Laws, § 23-6-10, et seq.)

SUBARTICLE 1 UNMANUFACTURED FOREST PRODUCTS TRUCKING REGULATIONS

38-382. CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING.

Editor's Note

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

Table of Contents

Subpart A: General	
38-382.101.	Purpose.
38-382.103.	Applicability.
38-382.105.	Testing procedures.
38-382.107.	Definitions.
38-382.109.	Preemption of State and local laws.
38-382.111.	Other requirements imposed by employers.
38-382.113.	Requirements for notice.
38-382.115.	Starting date for testing programs.
38-382.117.	Public interest exclusion.
38-382.119.	Stand-down waiver provision.
38-382.121.	Employee admission of alcohol and controlled substances use.
Subpart B: Prohibitions	
38-382.201.	Alcohol concentration.
38-382.205.	On-duty use.
38-382.207.	Pre-duty use.
38-382.209.	Use following an accident.
38-382.211.	Refusal to submit to a required alcohol or controlled substances test.
38-382.213.	Controlled substances use.
38-382.215.	Controlled substances testing.
Subpart C: Tests Required	
38-382.301.	Pre-employment testing.
38-382.303.	Post-accident testing.
38-382.305.	Random testing.

- 38–382.307. Reasonable suspicion testing.
- 38–382.309. Return-to-duty testing.
- 38–382.311. Follow-up testing.
- Subpart D: Handling of Test Results, Record Retention, and Confidentiality
- 38–382.401. Retention of records.
- 38–382.403. Reporting of results in a management information system.
- 38–382.405. Access to facilities and records.
- 38–382.407. Medical review officer notifications to the employer.
- 38–382.409. Medical review officer record retention for controlled substances.
- 38–382.411. Employer notifications.
- 38–382.413. Inquiries for alcohol and controlled substances information from previous employers.
- Subpart E: Consequences for Drivers Engaging in Substance Use-Related Conduct
- 38–382.501. Removal from safety-sensitive function.
- 38–382.503. Required evaluation and testing.
- 38–382.505. Other alcohol-related conduct.
- 38–382.507. Penalties.
- Subpart F: Alcohol Misuse and Controlled Substances Use Information, Training, and Referral
- 38–382.601. Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.
- 38–382.603. Training for supervisors.
- 38–382.605. Referral, evaluation, and treatment.

SUBPART A
General

38–382.101. Purpose.

The purpose of part 38–382 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.103. Applicability.

(a) 38–382 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 38–383 of these regulations;
- (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 38–382 that apply to employers and the requirements in 38–382 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 Regulation 38-390.3(f) of this regulation do not apply to 38–382. The employers and drivers identified in Regulation 38-390.3(f) of this regulation must comply with the requirements of 38–382, unless otherwise specifically provided in paragraph (d).

(d) Exceptions. 38–382 shall not apply to employers and their drivers:

- (1) Required to comply with the alcohol and/or controlled substances testing requirements of part 655 (Federal Transit Administration alcohol and controlled substances testing regulations); or
- (2) Who a State must waive from the requirements of part 38–383 of this regulation. 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 38–383 of this regulation. 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.105. Testing procedures.

Each employer shall ensure that all alcohol or controlled substances testing conducted under 38–382 complies with the procedures set forth in part 40. The provisions of part 40 that address alcohol or controlled substances testing are made applicable to employers by 38–382.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.107. Definitions.

Words or phrases used are defined in Sections 38–386.2 and 38–390.5 of this regulation, and Section 40.3 of the Federal Motor Carrier Safety Administration's procedures for transportation workplace drug and alcohol testing programs, except as provided below:

Actual knowledge for the purpose of subpart B, 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 Regulation 38–382.121. 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 Regulation 38–382.307.

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.

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".

Controlled substances mean those substances identified in Section 40.85 of the Federal Motor Carrier Safety Administration's procedures for transportation workplace drug and alcohol testing programs.

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.

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. The term 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 and any applicable DOT agency regulations. Service agents are not employers for the purposes of 38-382.

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 38-382 plus the number of refusals of random drug tests required by 38-382, divided by the total number of random drug tests results (i.e., positives, negatives, and refusals) under 38-382.

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 Section 40.6Ha of the Federal Motor Carrier Safety Administration's procedures for transportation workplace drug and alcohol testing programs);

(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 Section 40.63(c) of the Federal Motor Carrier Safety Administration's procedures for transportation workplace drug and alcohol testing programs) 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 38-382 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 Section 40.63(c) of the Federal Motor Carrier Safety Administration's procedures for transportation workplace drug and alcohol testing programs) 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 Sections 40.67(1) and 40.69(g) of the Federal Motor Carrier Safety Administration's procedures for transportation workplace drug and alcohol testing programs);

(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 Section 40.193(d)(2) of the Federal Motor Carrier Safety Administration's procedures for transportation workplace drug and alcohol testing programs);

(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 Section 40.193(d) of the Federal Motor Carrier Safety Administration's procedures for transportation workplace drug and alcohol testing programs. 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 Regulations 38-392.7 and 38-392.8 of these regulations 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 Regulation 38-393.76 of this regulation);

(5) AH 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 38–382 plus the number of refusals of random alcohol tests required by 38–382, divided by the total number of random alcohol screening tests (including refusals) conducted under 38–382.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.109. Preemption of State and local laws.

(a) Except as provided in paragraph (b), 38–382 preempts any State or local law, rule, regulation, or order to the extent that:

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

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

(b) 38–382 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.111. Other requirements imposed by employers.

Except as expressly provided in 38–382, nothing in 38–382 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.113. Requirement for notice.

Before performing each alcohol or controlled substances test under 38–382, each employer shall notify a driver that the alcohol or controlled substances test is required by 38–382. No employer shall falsely represent that a test is administered under 38–382.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.115. Starting date for testing programs.

(a) All domestic-domiciled employers must implement the requirements of 38–382 on the date the employer begins commercial motor vehicle operations.

(b) All foreign-domiciled employers must implement the requirements of 38–382 on the date the employer begins commercial motor vehicle operations in the United States.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.117. 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.119. Stand-down waiver provision (Company must file waiver with FMCSA.).

(a) Employers are prohibited from standing employees down, except consistent with a waiver from the Federal Motor Carrier Safety Administration as required under 38–382.119.

(b) An employer subject to 38–382 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 Federal Motor Carrier Safety Administrator (or the Administrator's designee). U.S. Department of Transportation, 400 Seventh Street, SW. Washington, DC 20590.

(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 Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The telephone number is (202) 366-5720.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-382.121. 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 38-382 and part 40, 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) above;

(2) The driver does not self-identify in order to avoid testing under the requirements of 38-382;

(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 38-382.121;

(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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART B ***Prohibitions***

38-382.201. 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-382.205. 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.207. 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.209. Use following an accident.

No driver required to take a post-accident alcohol test under Regulation 38–382.303 shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.211. 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 38–382.303, a random alcohol or controlled substances test required under 38–382.305, a reasonable suspicion alcohol or controlled substances test required under 38–382.307, or a follow-up alcohol or controlled substances test required under Regulation 38–382.311. No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.213. 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 Regulation 38–382.107, 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.215. 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

*SUBPART C
Tests Required*

38–382.301. 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). 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) if:

(1) The driver has participated in a controlled substances testing program that meets the requirements of 38–382 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 38–382 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) 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. Verification that the driver is qualified under the rules of 38–382, 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 38–382.

(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) at least once every six months. The records prepared under this paragraph shall be maintained in accordance with Regulation 38–382.401. If the employer cannot verify that the driver is participating in a controlled substances testing program in accordance with 38–382 and part 40 of the Federal Motor Carrier Safety Administration's procedures for transportation workplace drug and alcohol testing programs, 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 38–382. 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). J

(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.

(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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.303. 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 vehicle, 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):

TABLE FOR REGULATION 38-382.303(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

(d)(1) Alcohol tests. If a required test 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 required test 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 required test 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 38-382 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 38-382.

(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, 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,

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. 38–382 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 multipurpose passenger vehicle (as defined in the National Highway Traffic Safety Administration's Standard Section 571.3) 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 Section 177.823 of the Federal Motor Carrier Safety Administration's hazardous materials regulations.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.305. Random testing.

(a) Every employer shall comply with the requirements of 38–382. Every driver shall submit to random alcohol and controlled substance testing as required in 38–382.

(b)(1) Except as provided in paragraphs (c) through (e), 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), 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 Regulation 38–382.403. 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 Regulation 38–382.403 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 Regulation 38–382.403 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 Regulation 38–382.403 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 Regulation 38–382.403 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 Regulation 38–382–403. 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 Regulation 38–382.403 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 Regulation 38–382.403 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.

(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 38–382 are unannounced.

(2) Each employer shall ensure that the dates for administering random alcohol and controlled substances tests conducted under 38–382 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-382.307. 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 38-382 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 38-382 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 Regulation 38-382.603. 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 38-382 only if the observations required by paragraph (a) are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with 38-382. 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 38-382 is not administered within two hours following the determination under paragraph (a), 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 38-382 is not administered within eight hours following the determination under paragraph (a), 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 38-382, 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) that there is reasonable suspicion to believe that the driver has violated the prohibitions in 38-382 concerning the use of alcohol.

(3) Except as provided in paragraph (e)(2) of 38-382, no employer shall take any action under 38-382 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 38-382 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.309. Return-to-duty testing.

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

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.311. Follow-up testing.

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

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART D

Handling of Test Results, Records Retention, and Confidentiality

38–382.401. Retention of records.

(a) General requirement. Each employer shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in 38–382. The records shall be maintained in a secure location with controlled access.

(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 38–382.403.

(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) 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 38–382. 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 reasonable 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 Regulation 38–382.403.
- (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;
 - (iv) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by 38–382;
 - (v) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under 38–382; 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 Regulation 38–382.301, and
 - (B) Must obtain as required by Regulation 38–382.413.
- (3) Records related to other violations of 38–382.
- (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 Regulation 38–382.601 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 Section 40.213(a) of the Federal Motor Carrier Safety Administration's procedures for transportation workplace drug and alcohol testing programs; and
 - (v) Certification that any training conducted under 38–382 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);
 - (iii) Semi-annual laboratory statistical summaries of urinalysis required by Section 40.111(a) of the Federal Motor Carrier Safety Administration's procedures for transportation workplace drug and alcohol testing programs; and
 - (iv) The employer's alcohol and controlled substances testing policy and procedures.
- (d) Location of records. All records required by 38–382 shall be maintained as required by Regulation 38–390.31 of this regulation 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 38–382 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 38–382 are found in the following Regulations: Regulations 38–382.105, 38–382.113, 38–382.301, 38–382.303, 38–382.305, 38–382.307, 38–382.401, 38–382.403, 38–382.405, 38–382.409, 38–382.411, 38–382.601, and 38–382.603.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.403. 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 38–382 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 Section 40.26 and appendix H to part 40 of the Federal Motor Carrier Safety Administration’s procedures for transportation workplace drug and alcohol testing programs). 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.hm>.

(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 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.405. Access to facilities and records.

(a) Except as required by law or expressly authorized or required in 38–382, no employer shall release driver information that is contained in records required to be maintained under Regulation 38–382.401.

(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 38–382 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 38–382 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 38–382 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 38–382 (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 Section 40.323(a)(2) of the Federal Motor Carrier Safety Administration’s procedures for transportation workplace drug and alcohol testing programs.

(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 Section 40.32Kb of the Federal Motor Carrier Safety Administration’s procedures for transportation workplace drug and alcohol testing programs.

38–382.407. 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.409. 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. 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.

(b) 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 38–382, the information delineated in part 40, Subpart G.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–382.411. Employer notifications.

(a) An employer shall notify a driver of the results of a pre-employment controlled substances test conducted under 38–382, 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 38–382 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-382.413. 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 Section 40.25 of the Federal Motor Carrier Safety Administration's procedures for transportation workplace drug and alcohol testing programs.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART E

Consequences for Drivers Engaging in Substance Use-Related Conduct

38-382.501. Removal from safety-sensitive function.

(a) Except as provided in subpart F of 38-382, 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 38-382 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 38-382.

(c) For purposes of this subpart, commercial motor vehicle means a commercial motor vehicle in commerce as defined in Regulation 38-382.107, and a commercial motor vehicle in interstate commerce as defined in part 38-390 of this regulation.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-382.503. Required evaluation and testing.

No driver who has engaged in conduct prohibited by subpart B of 38-382 shall perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of part 40, subpart O. No employer shall permit a driver who has engaged in conduct prohibited by subpart B of 38-382 to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of part 40, subpart O.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-382.505. Other alcohol-related conduct.

(a) No driver tested under the provisions of subpart C of 38-382 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 38-382, no employer shall take any action under 38-382 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 38-382 from taking any action otherwise consistent with law.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-382.507. Penalties.

Any employer or driver who violates the requirements of 38-382 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).

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART F

Alcohol Misuse and Controlled Substances Use Information, Training, and Referral

38–382.601. 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 38–382 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 38–382 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 38–382;

(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 38–382;

(4) Specific information concerning driver conduct that is prohibited by 38–382;

(5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under 38–382, including post-accident testing under Regulation 38–382.303(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 Regulation 38–382.303(d);

(7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with 38–382;

(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 38–382, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under part 40, subpart O;

(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 38–382. 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 38–382. Each

employer shall maintain the original of the signed certificate and may provide a copy of die certificate to the driver.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-382.603. 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 Regulation 38-382.307. 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-382.605. Referral, evaluation, and treatment.

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

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-383. COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES.

Editor's Note

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

Table of Contents

Subpart A: General

- 38-383.1. Purpose and scope.
- 38-383.3. Applicability.
- 38-383.5. Definitions.
- 38-383.7. Waiver provisions.

Subpart B: Single License Requirement

- 38-383.21. Number of drivers' licenses.
- 38-383.23. Commercial driver's license.

Subpart C: Notification Requirements and Employer Responsibilities

- 38-383.31. Notification of convictions for driver violations.
- 38-383.33. Notification of driver's license suspensions.
- 38-383.35. Notification of previous employment.
- 38-383.37. Employer responsibilities.

Subpart D: Driver Disqualifications and Penalties

- 38-383.51. Disqualification of drivers.
- 38-383.53. Penalties.

Subpart E: Testing and Licensing Procedures

- 38-383.71. Driver application procedures.
- 38-383.72. Implied consent to alcohol testing.
- 38-383.73. State procedures.
- 38-383.75. Third party testing.
- 38-383.77. Substitute for driving skills tests.

Subpart F: Vehicle Groups and Endorsements

- 38-383.91. Commercial motor vehicle groups.

- 38–383.93. Endorsements.
- 38–383.95. Air brake restrictions.

Subpart G: Required Knowledge and Skills

- 38–383.110. General requirement.
 - 38–383.111. Required knowledge.
 - 38–383.113. Required skills.
 - 38–383.115. Requirements for double/triple trailers endorsement.
 - 38–383.117. Requirements for passenger endorsement.
 - 38–383.119. Requirements for tank vehicle endorsement.
 - 38–383.121. Requirements for hazardous materials endorsement.
- Appendix to Subpart G: Required Knowledge and Skills—Sample Guidelines

Subpart H: Tests

- 38–383.131. Test procedures.
- 38–383.133. Testing methods.
- 38–383.135. Minimum passing scores.

Subpart I: Requirement for Transportation Security Administration Approval of Hazardous Materials

Subpart J: Commercial Driver's License Document

- 38–383.151. General.
- 38–383.153. Information on the document and application.
- 38–383.155. Tamper proofing requirements.

SUBPART A
General

38–383.1. Purpose and scope.

(a) The purpose of 38–382 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) 38–382:

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

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

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

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

(5) Establishes periods of disqualification and penalties for those persons convicted of certain criminal and other offenses and serious traffic violations, or subject to any suspensions, revocations, or cancellations of certain driving privileges;

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

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

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

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

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

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

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–383.3. Applicability.

(a) The rules in 38–382 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 Regulation 38–390.3(g) of this regulation do not apply to 38–382. The employers and drivers identified in Regulation 38–390.3(g) must comply with the requirements of 38–382, unless otherwise provided in 38–383.

(c) Exception for certain military drivers. Each State must exempt from the requirements of 38–382 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 38–383 from the requirements of 38–382. 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 product, 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 38–382 and issue a CDL to each driver that meets the conditions set forth in paragraphs (e) (2) and (3) of 38–383:

(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 Regulation 38–383.153(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 38–383:

(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); 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 38–382 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 38–382, except Subpart H of 38–382. A restricted CDL issued pursuant to this paragraph shall be accorded the same reciprocity as a CDL meeting all of the requirements of 38–382. The restrictions imposed upon the issuance of this restricted CDL shall not limit a person's use of the CDL in a non CMV during either validated or non validated periods, nor shall the CDL affect a State's power to administer its driver licensing program for operators of vehicles other than CMVs.

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

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

(A) Has not had more than one license (except in the instances specified in Regulation 38–383.21(b));

(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 Regulation 38–383.51(b)(2);

(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 document 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 38–382.

(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) 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 38–382 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 Section 172.704 of the Federal Motor Carrier Safety Administration’s hazardous materials regulations 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 38–382. The State may impose any requirements it believes is necessary to ensure itself that a driver is properly trained pursuant to Section 172.704 of the Federal Motor Carrier Safety Administration’s hazardous materials regulations.

(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 38–382, 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 38–382. 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–383.5. Definitions.

As used in 38–382:

Administrator means the Federal Highway Administrator, the chief executive of the Federal Highway 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 the Internal Revenue Code of 1954.

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.

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

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

Commercial driver's license information system (CDLIS) means the CDLIS established by FHWA 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 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 38–383.

Controlled substance has the meaning such term has under section 102(6), of the Controlled Substances Act (21 U.S.C. 802(6)) and includes all substances listed on schedules I through V of 21 CFR part 1308, as they may be revised from time to time. Schedule I substances are identified in appendix D of this regulation and schedules II through V are identified in appendix E of this regulation.

Conviction means an un-vacated 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 un-vacated 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 either:

- (a) The suspension, revocation, cancellation, or any other withdrawal by a State of a person's privileges to drive a commercial motor vehicle; or
- (b) A determination by the FHWA, under the rules of practice for motor carrier safety contained in part 386, that a person is no longer qualified to operate a commercial motor vehicle under part 38–391; or
- (c) The loss of qualification which automatically follows conviction of an offense listed in Regulation 38–383.51.

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: driving a CMV while the person's alcohol concentration is 0.04 percent or more; driving under the influence of alcohol, as prescribed by State law; or refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of Regulation 38–383.51(b)(2)(i)(A) or (B), or Regulation 38–392.5(a)(2).

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 vehicle weight rating" means the actual weight or the value specified by the manufacturer as maximum loaded weight of a single or a combination vehicle or the registered gross weight, whichever is greater. The gross vehicle weight rating of a combination vehicle (commonly referred to as the "gross combination weight rating") is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating of a towed unit. South Carolina Code of Laws Section 56-1-2030.

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.

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 to an individual domiciled in a foreign country.

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 Regulations 386.72, 38-392.5, 395.13, 38-38-396.9, 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.

Serious traffic violation means conviction, when operating a commercial motor vehicle, of:

(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 commercial motor vehicle 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 a fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense; or

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

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

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

“Tank vehicle” means a vehicle that is designed to transport a liquid or gaseous material within a tank that either is attached permanently or temporarily to the vehicle and which has a capacity of one thousand gallons or more. South Carolina Code of Laws Section 56-1-2030.

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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-383.7. Validity of CDL issued by decertified State.

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

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART B Single License Requirement

38-383.21. Number of drivers' licenses.

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

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-383.23. 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 38-382 for the commercial motor vehicle that person operates or expects to operate.

(2) Effective April 1, 1992, except as provided in paragraph (b), no person shall operate a commercial motor vehicle unless such person possesses a CDL which meets the standards contained in Subpart J of 38-382, issued by his/her State or jurisdiction of domicile.

(b) Exception. If a commercial motor vehicle operator is domiciled in a foreign jurisdiction which, as determined by the Administrator, does not test drivers and issue a CDL in accordance with, or similar to, the standards contained in Subparts F, G, and H of 38-382, the person shall obtain a Nonresident CDL from a State which does comply with the testing and licensing standards contained in such Subparts F, G, and H.

(c) Learner's permit. State learner's 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 time accompanied by the holder of a valid CDL; and

(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 automobile drivers' licenses.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART C Notification Requirements and Employer Responsibilities

38-383.31. 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 Regulation 38-383.31(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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-383.33. 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-383.35. 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).

(b) All employers shall request the information specified in paragraph (c) 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) may be used, and the applicant's previous employers may be contacted for the purpose of investigating the applicant's work history.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–383.37. Employer responsibilities.

No employer shall knowingly allow, require, permit, or authorize an employee to operate a commercial motor vehicle 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 commercial motor vehicle in a State, or has been disqualified from operating a commercial motor vehicle;

(b) During any period in which the employee has more than one commercial motor vehicle driver’s license;

(c) During any period in which the employee, or the motor vehicle he/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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART D

Driver Disqualifications and Penalties

38–383.51. 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), if the holder of a CDL driver 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 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), (Table 1 to Regulation 38–383.51) 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), (Table 1 to Regulation 38–383.51) must be reinstated.

(b) Disqualification for major offenses. Table 1 to Regulation 38–383.51 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 Sec. 38–383.51

If a driver operates a motor vehicle and is convicted of:	For a first conviction of 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	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	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
---	---	---	---	--	---

				172, sub- part F), a person re- quired to have a CDL and CDL holder must be disquali- fied from operating a CMV for...	be disquali- fied from operating a CMV for...	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 Sec. 38-383.72 of 38-382	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	1 year	Not applicable	3 years	Life	Not applicable	

motor vehicle manslaughter, homicide by motor vehicle and negligent homicide.

(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 Regulation 38–383.51 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 Sec. 38–383.51

If a 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, 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 and 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.	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

(d) Disqualification for violation of out of service orders. Table 3 to Regulation 38–383.51 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 3 to Sec. 38–383.51

If a 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 Regulation 38–383.51 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 Sec. 38–383.51

If a driver operates a motor vehicle 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 non-hazardous materials.	No less than 90 days or more than 1 year.	No less than 1 year 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, 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–383.53. Penalties.

(a) General rule. Any person who violates the rules set forth in Subparts B and C of 38–382 may be subject to civil or criminal penalties as provided for in 49 U.S.C. 521(b).

(b) Special penalties pertaining to violation of out of service orders

(1) Driver violations. A driver who is convicted of violating an out of service order shall be subject to a civil penalty of not less than \$1,000 nor more than \$2,500, in addition to disqualification under Regulation 38–383.51(d).

(2) Employer violations. An employer who is convicted of a violation of Regulation 38–383.37(c) shall be subject to a civil penalty of not less than \$2,500 nor more than \$10,000.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART E Testing and Licensing Procedures

38–383.71. Driver application procedures.

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

(1) A person who operates or expects to operate in interstate or foreign commerce, or is otherwise subject to part 38–391, shall certify that he/she meets the qualification requirements contained in

part 38–391. A person who operates or expects to operate entirely in intrastate commerce and is not subject to part 38–391, is subject to State driver qualification requirements and must certify that he/she is not subject to part 38–391;

(2) Pass a knowledge test in accordance with the standards contained in Subparts G and H of 38–382 for the type of motor vehicle the person operates or expects to operate;

(3) Pass a driving or skills test in accordance with the standards contained in Subparts G and H of 38–382 taken in a motor vehicle which is representative of the type of motor vehicle the person operates or expects to operate; or provide evidence that he/she has successfully passed a driving test administered by an authorized third party;

(4) Certify that the motor vehicle in which the person takes the driving skills test is representative of the type of motor vehicle that person operates or expects to operate;

(5) Provide to the State of issuance the information required to be included on the CDL as specified in Subpart J of 38–382;

(6) Certify that he/she is not subject to any disqualification, suspension, revocation, or cancellation as contained in Regulation 38–383.51 and that he/she does not have a driver’s license from more than one State or jurisdiction.

(7) The applicant shall surrender his/her non CDL driver’s licenses to the State.

(8) 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.

(9) If applying for a hazardous materials endorsement, comply with Transportation Security Administration requirements codified in 49 CFR Part 1572, and provide proof of citizenship or immigration status as specified in Table 1. A lawful permanent resident of the United States requesting a hazardous materials endorsement must additionally provide his or her Bureau of Citizenship and Immigration Services (BCTS) Alien registration number.

Table 1 to Regulation 38–383.71—List of Acceptable Proofs of Citizenship or Immigration

Status	Proof of Status
U.S. Citizen:	<ol style="list-style-type: none"> 1. U.S. Passport 2. Certificate of birth that bears an official seal and was issued by a State, county, municipal authority, or outlying possession of the United States 3. Certification of Birth Aboard issued by the U.S. Department of State (Form FS-545 or DS 1350) 4. Certificate of Naturalization (Form N-550 or N-570) 5. Certificate of U.S. Citizenship (Form N-560 or N-561)
Lawful Permanent Resident:	<ol style="list-style-type: none"> 1. Permanent Resident Card, Alien Registration Receipt Card (Form I-551) 2. Temporary I-551 stamp in foreign passport 3. Temporary I-551 stamp on Form I-94, Arrival/Departure Record, with photograph of the bearer 4. Re-entry Permit (Form I-327)

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

(1) Provide to the new State of domicile the certifications contained in Regulation 38–383.71(a) (1) and (6);

(2) Provide to the new State of domicile updated information as specified in Subpart J of 38–382;

(3) If the applicant wishes to retain a hazardous materials endorsement, comply with State requirements as specified in Regulation 38–383.73(b)(4);

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

(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 Regulation 38–383.71(a)(1);
 - (2) Provide update information as specified in Subpart J of 38–382;
 - (3) If a person wishes to retain a hazardous materials endorsement, he/she must comply with the requirements specified in Regulation 387.71(a)(9) and pass the test for such endorsement; and
 - (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 Regulation 38–383.71(a) (1) and (a)(4);
 - (2) Pass all tests specified in Regulation 38–383.71(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 Regulation 387.71(a)(9).
- (e) Nonresident CDL. When an applicant is domiciled in a foreign jurisdiction, as defined in Regulation 38–383.5, where the commercial motor vehicle operator testing and licensing standards do not meet the standards contained in Subparts G and H of 38–382, 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 Regulation 38–383.71(a); and
 - (2) After receipt of the CDL, and for as long as it is valid, notify the State which issued the CDL of any adverse action taken by any jurisdiction or governmental agency, foreign or domestic, against his/ her driving privileges. Such adverse actions would include but not be limited to license suspension or revocation, or disqualification from operating a commercial motor vehicle for the convictions described in 38–383.51. Notifications shall be made within the time periods specified in Regulation 38–383.33.
- (f) If a State uses the alternative method described in Regulation 38–383.73(i) to achieve the objectives of the certifications in Regulation 38–383.71(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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–383.72. Implied consent to alcohol testing.

Any person who holds a CDL shall be deemed to have consented to such testing as is required of him/her by any State or jurisdiction in the enforcement of Regulation 38–383.51(b)(2)(i) and Regulation 38–392.5(a)(2). Consent is implied by driving a commercial motor vehicle.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–383.73. 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 Secs. 38–383.71(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, suspensions, revocations, or cancellations as contained in Regulation 38–383.51 and that the person does not have a driver's license from more than one State. The record check shall include but not be 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 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; and

(iii) A check with the National Driver Register (NDR), when it is determined to be operational by the National Highway Traffic Safety Administrator, 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 Drivers 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

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

(5) For persons applying for a hazardous materials endorsement, require compliance with the standards for such endorsement specified in Regulation 387.71(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 Regulation 38–383.71(a);

(2) Complete a check of the driver applicant's record as contained in Regulation 38–383.73(a)(3);

(3) Request and receive updates of information specified in Subpart J of 38–382;

(4) If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in Regulation 38–383.71(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 Regulation 38–383.121; 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 Regulation 38–383.121; and

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

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

(1) Require the driver applicant to make the certifications contained in Regulation 38–383.71(a);

(2) Complete a check of the driver applicant's record as contained in Regulation 38–383.73(a)(3);

(3) Request and receive updates of information specified in Subpart J of 38–382; and

(4) If such applicant wishes to retain a hazardous materials endorsement, require the driver to pass the test specified in Regulation 38–383.121 and comply with the standards specified in Regulation 38–383.71(a)(9) for such endorsement.

(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 Regulation 38–383.71(d); and

(2) Complete a check of the driver applicant's record as described in Regulation 38–383.73(a)(3).

(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 38–382. 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 Regulation 38–383.153(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 Regulation 38-383.73(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 38–382 or any of the certifications required in Regulation 38–383.71(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 Regulation 38–383.71(a) (1), (4), and (6), provided those procedures ensure that the driver meets the requirements of those paragraphs.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–383.75. 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 38–382, if the following conditions are met:

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

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

(i) Allow the FHWA, 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–383.77. Substitute for driving skills tests.

At the discretion of a State, the driving skill test as specified in Regulation 38–383.113 may be waived for a CMV operator who is currently licensed at the time of his/her application for a CDL, and substituted with either an applicant's driving record and previous passage of an acceptable skills test, or an applicant's driving record in combination with certain driving experience. The State shall impose conditions and limitations to restrict the applicants from whom a State may accept alternative requirements for the skills test described in Regulation 38–383.113. 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 Regulation 38–383.21(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 Regulation 38–383.51(b)(2);

(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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART F ***Vehicle Groups and Endorsements***

38–383.91. 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 38–382, 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, 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 Regulation 38–383.113, a representative vehicle for a given vehicle group contained in Regulation 38–383.91(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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-383.93. Endorsements.

(a) General. In addition to taking and passing the knowledge and skills tests described in Subpart G of 38-382, all persons who operate or expect to operate the type(s) of motor vehicles described in paragraph (b) 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; or

(4) Used to transport hazardous material as defined in Regulation 38-383.5.

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

(1) Double/Triple Trailers a knowledge test;

(2) Passenger a knowledge and a skills test;

(3) Tank vehicle a knowledge test; and

(4) Hazardous Materials a knowledge test.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-383.95. Air brake restrictions.

(a) 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 shall indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with air brakes.

(b) 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART G *Required Knowledge and Skills*

38-383.110. 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-383.111. 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 391, 392, 38, 395, 396, and 397, such as: Motor vehicle inspection, repair, and maintenance requirements; procedures for safe vehicle operations; the effects of fatigue, poor vision, hearing, and general health upon safe commercial motor vehicle operation; the types of motor vehicles and cargoes subject to the requirements; and the effects of alcohol and drug use upon safe commercial motor vehicle operations.

(b) Commercial motor vehicle safety control systems. Proper use of the motor vehicle's safety system, including lights, horns, side and rear view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, motor vehicle operation characteristics, and diagnosing malfunctions. Commercial motor vehicle drivers shall have knowledge on the correct procedures needed to use these safety systems in an emergency situation, e.g., skids and loss of brakes.

(c) Safe vehicle control

(1) Control systems. The purpose and function of the controls and instruments commonly found on commercial motor vehicles.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The effect of undiscovered malfunctions upon safety.

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

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

(5) Reporting findings.

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

(g) Air brake knowledge as follows:

(1) Air brake system nomenclature;

(2) The dangers of contaminated air supply;

- (3) Implications of severed or disconnected air lines between the power unit and the trailer(s);
- (4) Implications of low air pressure readings;
- (5) Procedures to conduct safe and accurate pre trip inspections.
- (6) Procedures for conducting enroute and post trip inspections of air actuated brake systems, including ability to detect defects which may cause the system to fail.
- (h) Operators for the combination vehicle group shall also have knowledge of:
 - (1) Coupling and uncoupling: The procedures for proper coupling and uncoupling a tractor to semi trailer.
 - (2) Vehicle inspection: The objectives and proper procedures that are unique for performing vehicle safety inspections on combination vehicles.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-383.113. 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 Regulation 38-393.95, 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 Regulation 38-383.113 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-383.115. 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–383.117. 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 Regulation 38–383.91.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–383.119. 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;
- (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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–383.121. 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.

SUBPART H

Tests

38–383.131. 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 Regulation 38–383.71, the implied consent to alcohol testing described in Regulation 38–383.72, the procedures and penalties, contained in Regulation 38–383.51(b) to which a CDL holder is exposed for refusal to comply with such alcohol testing, State procedures described in Regulation 38–383.73, and other appropriate driver information contained in Subpart E of 38–382;
- (2) Information on vehicle groups and endorsements as specified in Subpart F of 38–382;
- (3) The substance of the knowledge and skills which drivers shall have as outlined in Subpart G of 38–382 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 Regulation 38–383.71, State procedures described in Regulation 38–383.73, and other appropriate driver information contained in Subpart E of 38–382;
- (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;
- (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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–383.133. 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 38–382 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 Regulation 38–383.135.
- (e) Knowledge and skills tests shall be based solely on the information contained in the driver manuals referred to in Regulation 38–383.131(a).
- (f) Each knowledge test shall be valid and reliable so as to assure that driver applicants possess the knowledge required under Regulation 38–383.111.
- (g) Each basic knowledge test, i.e., the test covering the areas referred to in Regulation 38–383.111 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 Regulation 38–383.111(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 inter-examiner reliability, that are sufficient to ensure fairness of pass/fail rates.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–383.135. Minimum passing scores.

- (a) The driver applicant must correctly answer at least 80 percent of the questions on each knowledge test in 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 Regulation 38–383.113.
- (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 (Regulation 38–383.95):
 - (1) If the applicant scores less than 80 percent on the air brake component of the basic knowledge test as described in Regulation 38–383.111(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 Regulation 38–383.113(c) and, if the driver is issued a CDL, the air brake restriction shall be indicated on the license.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART I

Requirement for Transportation Security Administration Approval of Hazardous Materials Endorsement Issuances

38–383.141. General.

(a) Applicability date. Beginning on January 31, 2005, 38–383 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 180 days before 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 screening 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 90 days before the date of expiration of the endorsement. An individual who does not successfully complete the Transportation Security Administration security screening process referenced in paragraph (b) 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) at least every 5 years.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART J

Commercial Driver's License Document

38–383.151. 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 Regulation 38–383.153.

38–383.153. 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 Regulation 38–383.153(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 the tank vehicle and hazardous materials endorsements; and

(vi) 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 Regulation 38-383.95, 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-383.155. 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.

HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-390. GENERAL.

Editor's Note

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998. Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

Table of Contents

Subpart A: General Applicability and Definitions

- 38-390.1. Purpose.
- 38-390.3. General applicability.
- 38-390.5. Definitions.
- 38-390.7. Rules of construction.

Subpart B: General Requirements and Information

- 38-390.9. State and local laws, effect on.
- 38-390.11. Motor carrier to require observance of driver regulations.
- 38-390.13. Aiding or abetting violations.
- 38-390.15. Assistance in investigations and special studies.
- 38-390.19. Additional equipment and accessories.
- 38-390.21. Marking of commercial motor vehicles.
- 38-390.33. Commercial motor vehicles used for purposes other than defined.
- 38-390.37. Violation and penalty.

SUBPART A
General Applicability and Definitions

38–390.1. Purpose.

38–382 Establishes general applicability, definitions, general requirements and information as they pertain to persons subject to this chapter.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–390.3. General applicability.

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

(b) The rules in Part 38–383, Commercial Driver’s License Standards; Requirements and Penalties, are applicable to every person who operates a commercial motor vehicle, as defined in Regulation 38–383.5 of this regulation, in interstate or intrastate commerce and to all employers of such persons.

(c) [Reserved]

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

(e) Knowledge of and compliance with the regulations.

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

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

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

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–390.5. Definitions.

Unless specifically defined elsewhere, in this regulation:

Accident means:

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

(i) A fatality;

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

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

(2) The term accident does not include:

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

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

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.

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

Commercial motor vehicle means any self propelled or towed vehicle used on public highways in interstate or intrastate commerce to transport passengers or property when the vehicle:

- (1) Has a gross vehicle weight rating or gross combination weight rating of (26,001 or more pounds); or more and is engaged solely in the intrastate transportation of unmanufactured forest products; or
- (2) Is designed to transport more than 8 passengers, including the driver for compensation; or
- (3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
- (4) Is used in transporting hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act (49 U.S.C. 5101 et. seq.).

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.

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

- (1) Inclusions: Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.
- (2) Exclusions:
 - (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
 - (ii) Tire disablement without other damage even if no spare tire is available.
 - (iii) Headlamp or taillight damage.
 - (iv) Damage to turn signals, horn, or windshield wipers which makes them inoperative.

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

Driver means any person who operates any commercial motor vehicle.

Driving a commercial motor vehicle while under the influence of alcohol means committing any one or more of the following acts in a CMV: Driving a CMV while the person's alcohol concentration is 0.04 percent or more; driving under the influence of alcohol, as prescribed by State law; or refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of Regulation 38-383.51(b)(2)(i)(A) or (B), or Regulation 38-392.5(a)(2).

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

- (1) A declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by the FMCSA Field Administrator for the geographical area in which the occurrence happens, or by other Federal, State or local government officials having authority to declare emergencies, or
- (2) A request by a police officer for tow trucks to move wrecked or disabled motor vehicles.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Between a place in a State and a place outside of such State (including a place outside of the United States);

(2) Between two places in a State through another State or a place outside of the United States; or

(3) Between two places in a State as part of trade, traffic, or transportation origination or terminating outside the State or the United States.

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

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

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

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

Operator See driver.

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

Out of service order means a declaration by an authorized enforcement officer of a Federal, State, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation, is out of service pursuant to Secs. 386.72, 38-392.5, 38-396.9, or compatible laws, or the North American Uniform Out of Service Criteria.

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

Previous employer means any DOT regulated person who employed the driver in the preceding 3 years, including any possible current employer.

Principal place of business means a single location designated by the motor carrier, normally its headquarters, where records required by parts 38-390 and 38-391 of this regulation will be maintained and where records required by part 38-382 must be made available for inspection within two business days after a request has been made by an authorized representative of the Federal/State Government.

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

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

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

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

- (1) Transported outside the driver's compartment of the commercial motor vehicle. For this purpose, the driver's compartment of a passenger carrying CMV shall include all space designed to accommodate both the driver and the passengers; and
- (2) Completely inaccessible to, inoperable by, and imperceptible to the driver while operating the commercial motor vehicle.

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

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

Trailer includes:

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

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

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

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

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

Unmanufactured Forest Products means logs, pulpwood, woodchips, bark, sawmill wood waste, stumps, pine straw and un-machined posts. This definition includes the movement of machinery and equipment:

- (a) To produce unmanufactured forest products; and
- (b) Used in silvicultural activities.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-390.7. Rules of construction.

- (a) [Reserved]
- (b) In this regulation the word
 - (1) Officer includes any person authorized by law to perform the duties of the office;
 - (2) Writing includes printing and typewriting;
 - (3) Shall is used in an imperative sense;
 - (4) Must is used in an imperative sense;
 - (5) Should is used in a recommendatory sense;
 - (6) May is used in a permissive sense; and

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

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART B

General Requirements and Information

38–390.9. State and local laws, effect on.

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

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–390.11. Motor carrier to require observance of driver regulations.

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

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–390.13. Aiding or abetting violations.

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

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–390.15. Assistance in investigations and special studies.

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

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

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

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

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

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–390.17. Additional equipment and accessories.

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

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–390.21. Marking of commercial motor vehicles.

(a) General. Every self propelled commercial motor vehicle operated in interstate or intrastate commerce and subject to the rules of regulation B of this chapter must be marked as specified in paragraphs (b), (c) and (d).

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

(1) The legal name or a single trade name of the motor carrier operating the self-propelled CMV.

(2) [Reserved]

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

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

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

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

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

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

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

(d) Construction and durability. The marking may be painted on the commercial motor vehicle or may consist of a removable device, if that device meets the identification and legibility requirements of 38–390, and such marking shall be maintained in such a manner as to remain legible as required. South Carolina Code of Laws Section 56–5–4150.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–390.31. Copies or records or documents.

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

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

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

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

(3) The reverse side of printed forms need not be copied if nothing has been added to the printed matter common to all such forms, but an identified specimen of each form shall be on the film of reference.

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

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

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

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

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-390.33. Commercial motor vehicles used for purposes other than defined.

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

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-390.37. Violation and penalty.

Any person who violates the rules set forth in this subchapter may be subject to civil or criminal penalties of the South Carolina Code of Laws 58-23-1120 or other related statutes.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-391. QUALIFICATIONS OF DRIVERS.

Editor's Note

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998. Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

Table of Contents

Subpart A: General

38-391.1. Scope of the rules in 38-382; additional qualifications; duties of carrier drivers.

Subpart B: Qualification and Disqualification of Drivers

38-391.11. Qualifications of drivers.
38-391.13. Responsibilities of drivers.
38-391.15. Disqualification of drivers.

Subpart C: Background and Character

38-391.21. Application for employment.
38-391.23. Investigation and inquiries.
38-391.25. Annual inquiry and review of driving record.
38-391.27. Record of violations.

Subpart D: Tests

38-391.31. Road test.
38-391.33. Equivalent of road test.

Subpart F: Files and Records

38-391.51. General requirements for driver qualification files.
38-391.52. Driver Investigation History File.

SUBPART A
General

38–391.1. Scope of the rules in 38–382; additional qualifications; duties of carrier drivers.

(a) The rules in 38–382 establish minimum qualifications for persons who drive commercial motor vehicles as, for, or on behalf of motor carriers. The rules in 38–382 also establish minimum duties of motor carriers with respect to the qualifications of their drivers.

(b) A motor carrier who employs himself/herself as a driver must comply with both the rules in 38–382 that apply to motor carriers and the rules in 38–382 that apply to drivers.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART B
Qualification and Disqualification of Drivers

38–391.11. General qualifications of drivers.

(a) A person shall not drive a commercial motor vehicle unless he/she is qualified to drive a commercial motor vehicle. Except as provided in Regulation 38–391.63, a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless that person is qualified to drive a commercial motor vehicle.

(b) Except as provided in subpart G of 38–382, a person is qualified to drive a motor vehicle if he/she—

(1) Is at least 18 years old;

(2) Can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records;

(3) Can, by reason of experience, training, or both, safely operate the type of commercial motor vehicle he/she drives;

(4) [Reserved]

(5) Has a currently valid commercial motor vehicle operator's license issued only by one State or jurisdiction;

(6) Has prepared and furnished the motor carrier that employs him/her with the list of violations or the certificate as required by Regulation 38–391.27;

(7) Is not disqualified to drive a commercial motor vehicle under the rules in Regulation 38–391.15; and

(8) [Reserved]

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–391.13. Responsibilities of drivers.

In order to comply with the requirements of Regulation 38–392.9(a) and Regulation 38–393.9 of this regulation, a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless the person:

(a) Can, by reason of experience, training, or both, determine whether the cargo he/she transports (including baggage in a passenger-carrying commercial motor vehicle) has been properly located, distributed, and secured in or on the commercial motor vehicle he/she drives;

(b) Is familiar with methods and procedures for securing cargo in or on the commercial motor vehicle he/she drives.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–391.15. Disqualification of drivers.

(a) General. A driver who is disqualified shall not drive a commercial motor vehicle. A motor carrier shall not require or permit a driver who is disqualified to drive a commercial motor vehicle.

(b) Disqualification for loss of driving privileges.

(1) A driver is disqualified for the duration of the driver's loss of his/her privilege to operate a commercial motor vehicle on public highways, either temporarily or permanently, by reason of the revocation, suspension, withdrawal, or denial of an operator's license, permit, or privilege, until that operator's license, permit, or privilege is restored by the authority that revoked, suspended, withdrew, or denied it.

(c) Disqualification for criminal and other offenses.

(1) General rule. A driver who is convicted of (or forfeits bond or collateral upon a charge of) a disqualifying offense specified in paragraph (c)(2) is disqualified for the period of time specified in paragraph (c)(3), if—

(i) The offense was committed during on-duty time as defined in Regulation 390.5 (Driver) of this regulation or as otherwise specified; and

(ii) The driver is employed by a motor carrier or is engaged in activities that are in furtherance of a commercial enterprise in interstate, intrastate, or foreign commerce;

(2) Disqualifying offenses. The following offenses are disqualifying offenses:

(i) Driving a commercial motor vehicle while under the influence of alcohol. This shall include:

(A) Driving a commercial motor vehicle while the person's alcohol concentration is 0.04 percent or more;

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

(C) Refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of Regulation 38–391.15(c)(2)(i)(A) or (B), or Regulation 38–392.5(a)(2)

(ii) Driving a commercial motor vehicle under the influence of a 21 CFR 1308.11 Schedule I identified controlled substance, an amphetamine, a narcotic drug, a formulation of an amphetamine, or a derivative of a narcotic drug:

¹A copy of the Schedule I drugs and other substances may be obtained by writing to the Director, Office of Motor Carrier Research and Standards, Washington, DC 20590, or to any Regional Office of Motor Carriers of the Federal Highway Administration.

(iii) Transportation, possession, or unlawful use of a 21 CFR 1308.11 Schedule I identified controlled substance, amphetamines, narcotic drugs, formulations of an amphetamine, or derivatives of narcotic drugs while the driver is on duty, as the term driver is defined in Regulation 390.5 of this chapter;

(iv) Leaving the scene of an accident while operating a commercial motor vehicle; or

(v) A felony involving the use of a commercial motor vehicle.

(3) Duration of disqualification.

(i) First offenders. A driver is disqualified for 1 year after the date of conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, the driver was not convicted of, or did not forfeit bond or collateral upon a charge of an offense that would disqualify the driver under the rules of 38–391. Exemption. The period of disqualifications is 6 months if the conviction or forfeiture of bond or collateral solely concerned the transportation or possession of substances named in paragraph (c)(2)(iii).

(ii) Subsequent offenders. A driver is disqualified for 3 years after the date of his/her conviction or forfeiture of bond or collateral if, during the years preceding that date, he/she was convicted of, or forfeited bond or collateral upon a charge of, an offense that would disqualify him/her under the rules in 38–391.

(d) Disqualification for violation of out of service orders

(1) General rule. A driver who is convicted of violating an out of service order is disqualified for the period of time specified in paragraph (d)(2).

(2) Duration of disqualification for violation of out of service orders

(i) First violation. A driver is disqualified for not less than 90 days nor more than one year if the driver is convicted of a first violation of an out of service order.

(ii) Second violation. A driver is disqualified for not less than one year nor more than five years if, during any 10 year period, the driver is convicted of two violations of out of service orders in separate incidents.

(iii) Third or subsequent violation. A driver is disqualified for not less than three years nor more than five years if, during any 10 year period, the driver is convicted of three or more violations of out of service orders in separate incidents.

(iii) * Special rule for hazardous materials and passenger offenses. A driver is disqualified for a period of not less than 180 days nor more than two years if the driver is convicted of a first violation of an out of service order while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (49 U.S.C. 5101 et seq.), or while operating commercial motor vehicles designed to transport more than 15 passengers, including the driver. A driver is disqualified for a period of not less than three years nor more than five years if, during any 10 year period, the driver is convicted of any subsequent violations of out of service orders, in separate incidents, while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, or while operating commercial motor vehicles designed to transport more than 15 passengers, including the driver.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART C
Background and Character

38-391.21. Application for employment.

(a) Except as provided in subpart G of 38-382, a person shall not drive a commercial motor vehicle unless he/she has completed and furnished the motor carrier that employs him/her with an application for employment that meets the requirements of paragraph (b).

(b) The application for employment shall be made on a form furnished by the motor carrier. Each application form must be completed by the applicant, must be signed by him/her, and must contain the following information:

- (1) The name and address of the employing motor carrier;
- (2) The applicant's name, address, date of birth, and social security number;
- (3) The addresses at which the applicant has resided during the 3 years preceding the date on which the application is submitted;
- (4) The date on which the applicant is submitted;
- (5) The issuing State, number, and expiration date of each unexpired commercial motor vehicle operator's license or permit that has been issued to the applicant;
- (6) The nature and extent of the applicant's experience in the operation of motor vehicles, including they type of equipment (such as buses, trucks, truck tractors, semitrailers, full trailers, and pole trailers) which he/she has operated;
- (7) A list of all motor vehicle accidents in which the applicant was involved during the 3 years preceding the date the application is submitted, specifying the date and nature of each accident and any fatalities or personal injuries it caused;
- (8) A list of all violations of motor vehicle laws or ordinances (other than violations involving only parking) of which the applicant was convicted or forfeited bond or collateral during the 3 years preceding the date the application is submitted;
- (9) A statement setting forth in detail the facts and circumstances of any denial, revocation, or suspension of any license, permit, or privilege to operate a motor vehicle that has been issued to the applicant, or a statement that no such denial, revocation, or suspension has occurred;
- (10)(i) A list of the names and addresses of the applicant's employers during the 3 years preceding the date the application is submitted;
 - (ii) The dates he or she was employed by that employer;
 - (iii) The reason for leaving the employ of that employer;

* So in original. State Register Volume 30, Issue No. 4, eff April 28, 2006, promulgated two subparagraphs designated as (iii).

(iv) After October 29, 2004, whether the

(A) Applicant was subject to the FMCSRs while employed by that previous employer;

(B) Job was designated as a safety sensitive function in any DOT regulated mode subject to alcohol and controlled substances testing requirements as required by 49 CFT Part 40;

(11) For those drivers applying to operate a commercial motor vehicle as defined by Part 38–383 of this regulation, a list of the names and addresses of the applicant’s employers during the 7-year period preceding the 3 years contained in paragraph (b)(10) for which the applicant was an operator of a commercial motor vehicle, together with the dates of employment and the reasons for leaving such employment; and

(12) The following certification and signature line, which must appear at the end of the application form and be signed by the applicant:

This certifies that this application was completed by me, and that all entries on it and information in it are true and complete to the best of my knowledge.

(Date)

(Applicant’s signature)

(c) A motor carrier may require an applicant to provide information in addition to the information required by paragraph (b) on the application form.

(d) Before an application is submitted, the motor carrier must inform the applicant that the information he/she provides in accordance with paragraph (b)(10) may be used, and the applicant’s previous employers will be contacted, for the purpose of investigating the applicant’s safety performance history information as required by paragraphs (d) and (e) of Regulation 38–391.23. The prospective employer must also notify the driver in writing of his/her due process rights as specified in Regulation 38–391.23(i) regarding information received as a result of these investigations.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–391.23. Investigation and inquiries.

(a) Except as provided in subpart of 38–382, each motor carrier shall make the following investigations and inquiries with respect to each driver it employs, other than a person who has been a regularly employed driver of the motor carrier for a continuous period which began before January 1, 1971;

(1) An inquiry into the driver’s driving record during the preceding 3 years to the appropriate agency of every State in which the driver held a motor vehicle operator’s license or permit during those 3 years; and

(2) An investigation of the driver’s safety performance history with Department of Transportation regulated employers during the preceding three years.

(b) A copy of the driver record(s) obtained in response to the inquiry or inquiries to each State driver record agency required by paragraph (a)(1) must be placed in the driver qualification file within 30 days of the date the driver’s employment begins and be retained in compliance with Regulation 38–391.51. If no driving record exists from the State or States, the motor carrier must document a good faith effort to obtain such information, and certify that no record exists for that driver in that State. The inquiry to the State driver record agencies must be made in the form and manner each agency prescribes.

(c)(1) Replies to the investigations of the driver’s safety performance history required by paragraph (a)(2), or documentation of good faith efforts to obtain the investigation data, must be placed in the driver investigation history file, after October 29, 2004, within 30 days of the date the driver’s employment begins. Any period of time required to exercise the driver’s due process rights to review the information received, request a previous employer to correct or include a rebuttal, is separate and apart from this 30-day requirement to document investigation of the driver safety performance history data.

(2) The investigation may consist of personal interviews, telephone interviews, letters, or any other method for investigating that the carrier deems appropriate. Each motor carrier must make a written record with respect to each previous employer contacted, or good faith efforts to do so. The record must include the previous employer's name and address, the date the previous employer was contacted, or the attempts made, and the information received about the driver from the previous employer. Failures to contact a previous employer, or of them to provide the required safety performance history information, must be documented. The record must be maintained pursuant to Regulation 38–391.53.

(3) Prospective employers should report failures of previous employers to respond to an investigation to the FMCSA following procedures specified at Regulation 386.12 of this chapter and keep a copy of such reports in the Driver Investigation file as part of documenting a good faith effort to obtain the required information.

(4) Exception. For a driver(s) with no previous employment experience working for a DOT regulated employer during the preceding three years, documentation that no investigation was possible must be placed in the driver history investigation file, after October 29, 2004, within the required 30 days of the date the driver's employment begins.

(d) The prospective motor carrier must investigate, at a minimum, the information listed in this paragraph from all previous employers of the applicant that employed the driver to operate a CMV within the previous three years. The investigation request must contain specific contact information on where the previous motor carrier employers should send the information requested.

(1) General driver identification and employment verification information.

(2) The data elements as specified in Regulation 38–390.15(b)(1) of this chapter for accidents involving the driver that occurred in the three-year period preceding the date of the employment application.

(i) Any accidents as defined by Regulation 38–390.5 of this chapter.

(ii) Any accidents the previous employer may wish to provide that are retained pursuant to Regulation 38–390.15(b)(2), or pursuant to the employer's internal policies for retaining more detailed minor accident information.

(e) In addition to the investigations required by paragraph (d), the prospective motor carrier employers must investigate the information listed below in this paragraph from all previous DOT regulated employers that employed the driver within the previous three years from the date of the employment application, in a safety-sensitive function that required alcohol and controlled substance testing specified by 49 CFR Part 40.

(1) Whether, within the previous three years, the driver had violated the alcohol and controlled substances prohibitions under subpart B of Part 38–382 of this chapter, or 49 CFR part 40.

(2) Whether the driver failed to undertake or complete a rehabilitation program prescribed by a substance abuse professional (SAP) pursuant to Regulation 38–382.605 of this chapter, or 49 CFR part 40, subpart O. If the previous employer does not know this information (e.g., an employer that terminated an employee who tested positive on a drug test), the prospective motor carrier must obtain documentation of the driver's successful completion of the SAP's referral directly from the driver.

(3) For a driver who had successfully completed a SAP's rehabilitation referral, and remained in the employ of the referring employer, information on whether the driver had the following testing violations subsequent to completion of a Regulation 38–382.605 or 49 CFR part 40, subpart O referral:

(i) Alcohol tests with a result of 0.04 or higher alcohol concentration;

(ii) Verified positive drug tests;

(iii) Refusals to be tested (including verified adulterated or substituted drug test results).

(f) A prospective motor carrier employer must provide to the previous employer the driver's written consent meeting the requirements of Part 40.321(b) for the release of the information in paragraph (e). If the driver refuses to provide this written consent, the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle for that motor carrier.

(g) After October 29, 2004, previous employers must:

(1) Respond to each request for the DOT defined information in paragraphs (d) and (e) within 30 days after the request is received. If there is no safety performance history information to report for that driver, previous motor carrier employers are nonetheless required to send a response confirming the non-existence of any such data, including the driver identification information and dates of employment.

(2) Take all precautions reasonably necessary to ensure the accuracy of the records.

(3) Provide specific contact information in case a driver chooses to contact the previous employer regarding correction or referral of the data.

(4) Keep a record of each request and the response for one year, including the date, the party to whom it was released, and a summary identifying what was provided.

(5) Exception. Until May 1, 2006, carriers need only provide information for accidents that occurred after April 29, 2003.

(h) The release of information under 38–391 may take any form that reasonably ensures confidentiality, including letter, facsimile, or e-mail. The previous employer and its agents and insurers must take all precautions reasonably necessary to protect the driver safety performance history records from disclosure to any person not directly involved in forwarding the records, except the previous employer's insurer, except that the previous employer may not provide any alcohol or controlled substances information to the previous employer's insurer.

(i)(1) The prospective employer must expressly notify drivers with Department of Transportation regulated employment during the preceding three years -via the application form or other written document prior to any hiring decision—that he or she has the following rights regarding the investigative information that will be provided to the prospective employer pursuant to paragraphs (d) and (e):

(i) The right to review information provided by previous employers;

(ii) The right to have errors in the information corrected by the previous employer and for that previous employer to re-send the corrected information to the prospective employer.

(iii) *

(iv) The right to have a rebuttal statement attached to the alleged erroneous information, if the previous employer and the driver cannot agree on the accuracy of the information.

(2) Drivers who have previous Department of Transportation regulated employment history in the preceding three years, and wish to review previous employer-provided investigative information must submit a written request to the prospective employer, which may be done at any time, including when applying, or as late as 30 days after being employed or being notified of denial of employment. The prospective employer must provide this information to the applicant within five (5) business days of receiving the written request. If the prospective employer has not yet received the requested information from the previous employer(s), then the five-business day's deadline will begin when the prospective employer receives the requested safety performance history information. If the driver has not arranged to pick up or receive the requested records within thirty (30) days of the prospective employer making them available, the prospective motor carrier may consider the driver to have waived his/her request to review the records.

(j)(1) Drivers wishing to request correction of erroneous information in records received pursuant to paragraph (i) must send the request for the correction to the previous employer that provided the records to the prospective employer.

(2) After October 29, 2004, the previous employer must either correct and forward the information to the prospective motor carrier employer, or notify the driver within 15 days of receiving a driver's request to correct the data that it does not agree to correct to data. If the previous employer corrects and forwards the data as requested, that employer must also retain the corrected information as part of the driver's safety performance history record and provide it to subsequent prospective employers when requests for this information are received. If the previous employer

* So in original. No subparagraph (iii) was promulgated by State Register Volume 30, Issue No. 4, eff April 28, 2006.

corrects the data and forwards it to the prospective motor carrier employer, there is no need to notify the driver.

(3) Drivers wishing to rebut information in records received pursuant to paragraph (i) must send the rebuttal to the previous employer with instructions to include the rebuttal in that driver's safety performance history.

(4) After October 29, 2004, within five business days of receiving a rebuttal from a driver, the previous employer must:

(i) Forward a copy of the rebuttal to the prospective motor carrier employer;

(ii) Append the rebuttal to the driver's information in the carrier's appropriate file, to be included as part of the response for any subsequent investigating prospective employers for the duration of the three-year retention requirement.

(5) The driver may submit a rebuttal initially without a request for correction, or subsequent to a request for correction.

(6) The driver may report failures of previous employers to correct information or include the driver's rebuttal as part of the safety performance information, to the FMCSA following procedures specified at Regulation 386.12.

(k)(1) The prospective motor carrier employer must use the information described in paragraphs (d) and (e) only as part of deciding whether to hire the driver.

(2) The prospective motor carrier employer, its agents and insurers must take all precautions reasonably necessary to protect the records from disclosure to any person not directly involved in deciding whether to hire the driver. The prospective motor carrier employer may not provide any alcohol or controlled substances information to the prospective motor carrier employer's insurer.

(l)(1) No action or proceeding for defamation, invasion of privacy, or interference with a contract that is based on the furnishing or use of information in accordance with 38-391 may be brought against—

(i) A motor carrier investigating the information, described in paragraphs (d) and (e), of an individual under consideration for employment as a commercial motor vehicle driver.

(ii) A person who has provided such information; or

(iii) The agents or insurers of a person described in paragraph (l)(1)(i) or (ii), except insurers are not granted a limitation on liability for any alcohol and controlled substance information.

(2) The protections in paragraph (l)(1) do not apply to persons who knowingly furnish false information, or who are not in compliance with the procedures specified for these investigations.

(Approved by the Office of Management and Budget under control number 2126-0004)

38-391.25. Annual inquiry and review of driving record.

(a) Except as provided in subpart G of 38-382, each motor carrier shall, at least once every 12 months, make an inquiry into the driving record of each driver it employs, covering at least the preceding 12 months, to the appropriate agency of every State in which the driver held a commercial motor vehicle operator's license or permit during the time period.

(b) Except as provided in subpart G of 38-382, each motor carrier shall, at least once every 12 months, review the driving record of each driver it employs to determine whether that driver meets minimum requirements for safe driving or is disqualified to drive a commercial motor vehicle pursuant to Regulation 38-391.15.

(1) The motor carrier must consider any evidence that the driver has violated any applicable Federal Motor Carrier Safety Regulations in this regulation or Hazardous Materials Regulations (49 CFR chapter I, regulation C).

(2) The motor carrier must consider the driver's accident record and any evidence that the driver has violated laws governing the operation of motor vehicles, and must give great weight to violations, such as speeding, reckless driving, and operating while under the influence of alcohol or drugs, that indicates the driver has exhibited a disregard for the safety of the public.

(c) Recordkeeping.

(1) A copy of the response from each State agency to the inquiry required by paragraph (a) shall be maintained in the driver's qualification file.

(2) A note, including the name of the person who performed the review of the driving record required by paragraph (b) and the date of such review, shall be maintained in the driver's qualification file.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-391.27. Record of violations.

(a) Except as provided in subpart G of 38-382, each motor carrier shall, at least once every 12 months, require each driver it employs to prepare and furnish it with a list of all violations of motor vehicle traffic laws and ordinances (other than violations involving only parking) of which the driver has been convicted or on account of which he/she has forfeited bond or collateral during the preceding 12 months.

(b) Each driver shall furnish the list required in accordance with paragraph (a). If the driver has not been convicted of, or forfeited bond or collateral on account of, any violation which must be listed, he/she shall so certify.

(c) The form of the driver's list or certification shall be prescribed by the motor carrier. The following form may be used:

DRIVER'S CERTIFICATION

I certify that the following is a true and complete list of traffic violations (other than parking violations) for which I have been convicted or forfeited bond or collateral during the past 12 months.

Date of conviction	Offense
Location	Type of motor vehicle operated

If no violations are listed above, I certify that I have not been convicted or forfeited bond or collateral on account of any violation required to be listed during the past 12 months.

(Date of certification) (Driver's signature)

(Motor carrier's name)

(Motor carrier's address)

(Reviewed by: Signature) (Title)

(d) The motor carrier shall retain the list or certificate, or a copy of it, in its files as part of the driver's qualification file.

(e) Drivers who have provided information required by Regulation 38-383.31 of this regulation need not repeat that information in the annual list of violations.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART D
Tests

38-391.31. Road test.

(a) Except as provided in subpart G, a person shall not drive a commercial motor vehicle unless he/she has first successfully completed a road test and has been issued a certificate of driver's road test in accordance with this 38-391.

(b) The road test shall be given by the motor carrier or a person designated by it. However, a driver who is a motor carrier must be given the test by a person other than himself/herself. The test shall be given by a person who is competent to evaluate and determine whether the person who takes the test has demonstrated that he/she is capable of operating the commercial motor vehicle, and associated equipment, that the motor carrier intends to assign him/her.

(c) The road test must be of sufficient duration to enable the person who gives it to evaluate the skill of the person who takes it at handling the commercial motor vehicle, and associated equipment, that the motor carriers intends to assign to him/her. As a minimum, the person who takes the test must be

tested, while operating the type of commercial motor vehicle the motor carrier intends to assign him/her, on his/her skill at performing each of the following operations:

- (1) The pretrip inspection required by Regulation 38–392.7 of this regulation;
- (2) Coupling and uncoupling of combination units, if the equipment he/she may drive includes combination units;
- (3) Placing the commercial motor vehicle in operation;
- (4) Use of the commercial motor vehicles controls and emergency equipment;
- (5) Operating the commercial motor vehicle in traffic and while passing other motor vehicles;
- (6) Turning the commercial motor vehicle;
- (7) Braking, and slowing the commercial motor vehicle by means other than backing; and
- (8) Backing and parking the commercial motor vehicle.

(d) The motor carrier shall provide a road test form on which the person who gives the test shall rate the performance of the person who takes it at each operation or activity which is a part of the test. After he/she completes the form, the person who gave the test shall sign it.

(e) If the road test is successfully completed, the person who gave it shall complete a certificate of driver's road test in substantially the form prescribed in paragraph (f).

(f) The form for the certificate of driver's road test is substantially as follows:

CERTIFICATION OF ROAD TEST

Driver's name _____

Social Security No _____

Operator's or Chauffeur's License No _____

State _____

Type of power unit _____

Type of trailer(s) _____

If passenger carrier, type of bus _____

This is to certify that the above-named driver was given a road test under any supervision on _____, 20 ____, consisting of approximately _____ miles of driving.

It is my considered opinion that this driver possesses sufficient driving skill to operate safely the type of commercial motor vehicle listed above.

(Signature of examiner)

(Title)

(Organization and address of examiner)

(g) A copy of the certificate required by paragraph (e) shall be given to the person who was examined. The motor carrier shall retain in the driver qualification file of the person who was examined—

- (1) The original of the signed, road test form required by paragraph (d); and
- (2) The original or a copy of, the certificate required by paragraph (e).

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–391.33. Equivalent of road test.

(a) In place of, and as equivalent to, the road test required by Regulation 38–393.31, a person who seeks to drive a commercial motor vehicle may present, and a motor carrier may accept—

- (1) A valid Commercial Driver's License as defined in Regulation 38–383.5 of this regulation, but not including double/triple trailer or tank vehicle endorsements, which has been issued to him/her to operate specific categories of commercial motor vehicles and which, under the laws of that State, licenses him/her after successful completion of a road test in a commercial motor vehicle of the type the motor carrier intends to assign to him/her; or

(2) A copy of a valid certificate of driver's road test issued to him/her pursuant to Regulation 38-391.31 within the preceding 3 years.

(b) If a driver presents, and a motor carrier accepts, a license or certificate as equivalent to the road test, the motor carrier shall retain a legible copy of the license or certificate in its files as part of the driver's qualification file.

(c) A motor carrier may require any person who presents a license or certificate as equivalent to the road test to take a road test or any other test of his/her driving skill as a condition to his/her employment as a driver.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-391.53. Driver Investigation History File.

(a) After October 29, 2004, each motor carrier must maintain records relating to the investigation into the safety performance history of a new or prospective driver pursuant to paragraphs (d) and (e) of Regulation 38-391.23. This file must be maintained in a secure location with controlled access.

(1) The motor carrier must ensure that access to this data is limited to those who are involved in the hiring decision or who control access to the data. In addition, the motor carrier's insurer may have access to the data, except the alcohol and controlled substances data.

(2) This data must only be used for the hiring decision.

(b) The file must include:

(1) A copy of the driver's written authorization for the motor carrier to seek information about a driver's alcohol and controlled substances history as required under Regulation 38-391.23(d).

(2) A copy of the response(s) received for investigations required by paragraphs (d) and (e) of Regulation 38-391.23 from each previous employer, or documentation of good faith efforts to contact them. The record must include the previous employer's name and address, the date the previous employer was contacted, and the information received about the driver from the previous employer. Failures to contact a previous employer, or of them to provide the required safety performance history information, must be documented.

(c) The safety performance histories received from the previous employers for a driver who is hired must be retained for as long as the driver is employed by that motor carrier and for three years thereafter.

(d) A motor carrier must make all records and information in this file available an authorized representative or special agent of the Federal Motor Carrier Safety Administration, an authorized State or local enforcement agency representative, or an authorized third party, upon request or as part of any inquiry within the time period specified by the requesting representative.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-392. DRIVING OF COMMERCIAL MOTOR VEHICLES.

Editor's Note

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998. Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

Table of Contents

Subpart A: General

38-392.1.	Scope of the rules in 38-382.
38-392.2.	Applicable operating rules.
38-392.3.	Ill or fatigued operator.
38-392.4.	Drugs and other substances.
38-392.5.	Alcohol prohibition.
38-392.6.	Schedules to conform with speed limits.
38-392.7.	Equipment, inspection and use.
38-392.8.	Emergency equipment, inspection, and use.
38-392.9.	Inspection of cargo, cargo securement devices and systems.

Subpart B: Driving of Commercial Motor Vehicles

- 38-392.10. Railroad grade crossings; stopping required.
- 38-392.11. Railroad grade crossings; slowing down required.
- 38-392.14. Hazardous conditions; extreme caution.
- 38-392.16. Use of seat belts.

Subpart C: Stopped Commercial Motor Vehicles

- 38-392.22. Emergency signals; stopped commercial motor vehicles.
- 38-392.24. Emergency signals; flame producing.
- 38-392.25. Flame producing devices.

Subpart D: Use of Lighted Lamps and Reflectors

- 38-392.33. Obscured lamps or reflectors.

Subpart F: Fueling Precautions

- 38-392.50. Ignition of fuel; prevention.
- 38-392.51. Reserve fuel; materials of trade.

Subpart G: Prohibited Practices

- 38-392.60. Unauthorized persons not to be transported.
- 38-392.66. Carbon monoxide; use of commercial motor vehicle when detected.
- 38-392.67. Heater, flame producing; on commercial motor vehicle in motion.
- 38-392.71. Radar detectors; use and/or possession.

SUBPART A
General

38-392.1. Scope of the rules in 38-392.

Every motor carrier, its officers, agents, representatives, and employees responsible for the management, maintenance, operation, or driving of commercial motor vehicles, or the hiring, supervising, training, assigning, or dispatching of drivers, shall be instructed in and comply with the rules in 38-382.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-392.2. Applicable operating rules.

Every commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. However, if the South Carolina Unmanufactured Forest Products Trucking Regulations impose a higher standard of care than that law, ordinance, or regulation, the South Carolina Unmanufactured Forest Products Trucking Regulation must be complied with.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-392.3. Ill or fatigued operator.

No driver shall operate a commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a commercial motor vehicle, while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle. However, in a case of grave emergency where the hazard to occupants of the commercial motor vehicle or other users of the highway would be increased by compliance with this 38-392, the driver may continue to operate the commercial motor vehicle to the nearest place at which that hazard is removed.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–392.4. Drugs and other substances.

(a) No driver shall be on duty and possess, be under the influence of, or use, any of the following drugs or other substances:

(1) Any Schedule I drug or other substance identified in appendix D to this regulation;

(2) An amphetamine or any formulation thereof (including, but not limited, to “pep pills,” and “bennies”);

(3) A narcotic drug or any derivative thereof; or

(4) Any other substance, to a degree which renders the driver incapable of safely operating a motor vehicle.

(b) No motor carrier shall require or permit a driver to violate paragraph (a).

(c) Paragraphs (a) (2), (3), and (4) do not apply to the possession or use of a substance administered to a driver by or under the instructions of a licensed medical practitioner, as defined in Regulation 38–382.107 of this regulation, who has advised the driver that the substance will not affect the driver’s ability to safely operate a motor vehicle.

(d) As used in 38–392, “possession” does not include possession of a substance which is manifested and transported as part of a shipment.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–392.5. Alcohol prohibition.

(a) No driver shall

(1) Use alcohol, as defined in Regulation 38–382.107 of this regulation, or be under the influence of alcohol, within 4 hours before going on duty or operating, or having physical control of, a commercial motor vehicle; or

(2) Use alcohol, be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol, while on duty, or operating, or in physical control of a commercial motor vehicle; or

(3) Be on duty or operate a commercial motor vehicle while the driver possesses wine of not less than one half of one per centum of alcohol by volume, beer as defined in 26 U.S.C. 5052(a), of the Internal Revenue Code of 1954, and distilled spirits as defined in section 5002(a)(8), of such Code. However, this does not apply to possession of wine, beer, or distilled spirits which are:

(i) Manifested and transported as part of a shipment; or

(ii) Possessed or used by bus passengers.

(b) No motor carrier shall require or permit a driver to

(1) Violate any provision of paragraph (a); or

(2) Be on duty or operate a commercial motor vehicle if, by the driver’s general appearance or conduct or by other substantiating evidence, the driver appears to have used alcohol within the preceding four hours.

(c) Any driver who is found to be in violation of the provisions of paragraph (a) or (b) shall be placed out of service immediately for a period of 24 hours.

(1) The 24 hour out of service period will commence upon issuance of an out of service order.

(2) No driver shall violate the terms of an out of service order issued under 38–392.

(d) Any driver who is issued an out of service order under 38–392 shall:

(1) Report such issuance to his/her employer within 24 hours; and

(2) Report such issuance to a State official, designated by the State which issued his/her driver’s license, within 30 days unless the driver chooses to request a review of the order. In this case, the driver shall report the order to the State official within 30 days of an affirmation of the order by either the Regional Director of Motor Carriers for the Region or the Associate Administrator.

(e) Any driver who is subject to an out of service order under 38–392 may petition for review of that order by submitting a petition for review in writing within 10 days of the issuance of the order to the

Regional Director of Motor Carriers for the Region in which the order was issued. The Regional Director of Motor Carriers may affirm or reverse the order.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–392.6. Schedules to conform with speed limits.

No motor carrier shall schedule a run nor permit nor require the operation of any commercial motor vehicle between points in such period of time as would necessitate the commercial motor vehicle being operated at speeds greater than those prescribed by the jurisdictions in or through which the commercial motor vehicle is being operated.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–392.7. Equipment, inspection and use.

No commercial motor vehicle shall be driven unless the driver thereof shall have satisfied himself/herself that the following parts and accessories are in good working order, nor shall any driver fail to use or make use of such parts and accessories when and as needed:

Service brakes, including trailer brake connections.

Parking (hand) brake.

Steering mechanism.

Lighting devices and reflectors.

Tires.

Horn.

Windshield wiper or wipers.

Rear vision mirror or mirrors.

Coupling devices.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–392.8. Emergency equipment, inspection and use.

No commercial motor vehicle shall be driven unless the driver thereof is satisfied that the emergency equipment required by Regulation 38–393.95 of this regulation is in place and ready for use; nor shall any driver fail to use or make use of such equipment when and as needed.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–392.9. Inspection of cargo, cargo securement devices and systems.

(a) General. A driver may operate a commercial motor vehicle and a motor carrier may not require or permit a driver to operate a commercial motor vehicle unless

(1) The commercial motor vehicle's cargo is properly distributed and adequately secured as specified in Secs. 38–393.100 to 38–393.118, 38–393.128 and 38–393.130 of this regulation.

(2) The commercial motor vehicle's tailgate, tailboard, doors, tarpaulins, spare tire and other equipment used in its operation, and the means of fastening the commercial motor vehicle's cargo are secured; and

(3) The commercial motor vehicle's cargo or any other object does not obscure the driver's view ahead or to the right or left sides, interfere with the free movement of his/her arms or legs, prevent his/her free and ready access to accessories required for emergencies, or prevent the free and ready exit of any person from the commercial motor vehicle's cab or driver's compartment.

(b) Drivers of trucks and truck tractors. Except as provided in paragraph (b)(4), the driver of a truck or truck tractor must

(1) Assure himself/herself that the provisions of paragraph (a) have been complied with before he/she drives that commercial motor vehicle;

(2) Inspect the cargo and the devices used to secure the cargo, within the first 50 miles after beginning a trip and cause any adjustments to be made to the cargo or load securement devices as

necessary, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from the commercial motor vehicle; and

(3) Reexamine the commercial motor vehicle's cargo and its load securement devices during the course of transportation and make any necessary adjustment to the cargo or load securement devices, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from, the commercial motor vehicle. Reexamination and any necessary adjustments must be made whenever—

- (i) The driver makes a change of his/her duty status; or
- (ii) The commercial motor vehicle has been driven for 3 hours; or
- (iii) The commercial motor vehicle has been driven for 150 miles, whichever occurs first.

(4) The rules in this paragraph (b) do not apply to the driver of a sealed commercial motor vehicle who has been ordered not to open it to inspect its cargo or to the driver of a commercial motor vehicle that has been loaded in a manner that makes inspection of its cargo impracticable.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART B
Driving of Commercial Motor Vehicles

38–392.10. Railroad grade crossings; stopping required.

(a) Except as provided in paragraph (b), the driver of a commercial motor vehicle specified in paragraphs (a) (1) through (6) shall not cross a railroad track or tracks at grade unless he/she first: Stops the commercial motor vehicle within 50 feet of, and not closer than 15 feet to, the tracks; thereafter listens and looks in each direction along the tracks for an approaching train; and ascertains that no train is approaching. When it is safe to do so, the driver may drive the commercial motor vehicle across the tracks in a gear that permits the commercial motor vehicle to complete the crossing without a change of gears. The driver must not shift gears while crossing the tracks.

- (1) Every bus transporting passengers,
- (2) Every commercial motor vehicle transporting any quantity of a Division 2.3 chlorine.
- (3) Every commercial motor vehicle which, in accordance with the regulations of the Department of Transportation, is required to be marked or placarded with one of the following classifications:
 - (i) Division 1.1; Explosives
 - (ii) Division 1.2, or Division 1.3; Explosives
 - (iii) Division 2.3; Poisonous Gas
 - (iv) Division 4.3; Dangerous When Wet
 - (v) Class 7; Radioactive
 - (vi) Class 3; Flammable
 - (vii) Division 5.1; Oxidizer
 - (viii) Division 2.2; Non-Flammable Gas
 - (ix) Division 2.3; Chlorine
 - (x) Division 6.1; Poison
 - (xi) Division 2.2; Oxygen
 - (xii) Division 2.1; Flammable Gas
 - (xiii) Class 3; Combustible liquid
 - (xiv) Division 4.1; Flammable Solid
 - (xv) Division 5.1; Oxidizer
 - (xvi) Division 5.2; Organic Peroxide
 - (xvii) Class 8; Corrosive
 - (xviii) Division 1.4; Explosives

(4) Every cargo tank motor vehicle, whether loaded or empty, used for the transportation of any hazardous material as defined in the Hazardous Materials Regulations of the Department of Transportation, Parts 107 through 180.

(5) Every cargo tank motor vehicle transporting a commodity which at the time of loading has a temperature above its flash point as determined by Part 173.120.

(6) Every cargo tank motor vehicle, whether loaded or empty, transporting any commodity under exemption in accordance with the provisions of Subpart B of part 107.

(b) A stop need not be made at:

(1) A streetcar crossing, or railroad tracks used exclusively for industrial switching purposes, within a business district, as defined in Regulation 38–390.5 of this chapter.

(2) A railroad grade crossing when a police officer or crossing flagman directs traffic to proceed,

(3) A railroad grade crossing controlled by a functioning highway traffic signal transmitting a green indication which, under local law, permits the commercial motor vehicle to proceed across the railroad tracks without slowing or stopping.

(4) An abandoned railroad grade crossing which is marked with a sign indicating that the rail line is abandoned,

(5) An industrial or spur line railroad grade crossing marked with a sign reading “Exempt.” Such “Exempt” signs shall be erected only by or with the consent of the appropriate State or local authority.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–392.11. Railroad grade crossings; slowing down required.

Every commercial motor vehicle other than those listed in Regulation 38–392.10 shall, upon approaching a railroad grade crossing, be driven at a rate of speed which will permit said commercial motor vehicle to be stopped before reaching the nearest rail of such crossing and shall not be driven upon or over such crossing until due caution has been taken to ascertain that the course is clear.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–392.14. Hazardous conditions; extreme caution.

Extreme caution in the operation of a commercial motor vehicle shall be exercised when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke, adversely affect visibility or traction. Speed shall be reduced when such conditions exist. If conditions become sufficiently dangerous, the operation of the commercial motor vehicle shall be discontinued and shall not be resumed until the commercial motor vehicle can be safely operated. Whenever compliance with the foregoing provisions of this rule increases hazard to passengers, the commercial motor vehicle may be operated to the nearest point at which the safety of passengers is assured.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–392.16. Use of seat belts.

A commercial motor vehicle which has a seat belt assembly installed at the driver’s seat shall not be driven unless the driver has properly restrained himself/herself with the seat belt assembly.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART C

Stopped Commercial Motor Vehicles

38–392.22. Emergency signals; stopped commercial motor vehicles.

(a) Hazard warning signal flashers. Whenever a commercial motor vehicle is stopped upon the traveled portion of a highway or the shoulder of a highway for any cause other than necessary traffic stops, the driver of the stopped commercial motor vehicle shall immediately activate the vehicular hazard warning signal flashers and continue the flashing until the driver places the warning devices required by paragraph (b). The flashing signals shall be used during the time the warning devices are picked up for storage before movement of the commercial motor vehicle. The flashing lights may be

used at other times while a commercial motor vehicle is stopped in addition to, but not in lieu of, the warning devices required by paragraph (b).

(b) Placement of warning devices

(1) General rule. Except as provided in paragraph (b)(2), whenever a commercial motor vehicle is stopped upon the traveled portion or the shoulder of a highway for any cause other than necessary traffic stops, the driver shall, as soon as possible, but in any event within 10 minutes, place the warning devices required by Regulation 38–393.95 of this regulation, in the following manner:

(i) One at the traffic side of and 4 paces (approximately 3 meters or 10 feet) from the stopped commercial motor vehicle in the direction of approaching traffic;

(ii) One at 40 paces (approximately 30 meters or 100 feet) from the stopped commercial motor vehicle in the center of the traffic lane or shoulder occupied by the commercial motor vehicle and in the direction of approaching traffic; and

(iii) One at 40 paces (approximately 30 meters or 100 feet) from the stopped commercial motor vehicle in the center of the traffic lane or shoulder occupied by the commercial motor vehicle and in the direction away from approaching traffic.

(2) Special rules

(i) Fusees and liquid burning flares. The driver of a commercial motor vehicle equipped with only fusees or liquid burning flares shall place a lighted fusee or liquid burning flare at each of the locations specified in paragraph (b)(1). There shall be at least one lighted fusee or liquid burning flare at each of the prescribed locations, as long as the commercial motor vehicle is stopped. Before the stopped commercial motor vehicle is moved, the driver shall extinguish and remove each fusee or liquid burning flare.

(ii) Daylight hours. Except as provided in paragraph (b)(2)(iii), during the period lighted lamps are not required, three bi-directional reflective triangles, or three lighted fusees or liquid burning flares shall be placed as specified in paragraph (b)(1) within a time of 10 minutes. In the event the driver elects to use only fusees or liquid burning flares in lieu of bi-directional reflective triangles or red flags, the driver must ensure that at least one fusee or liquid burning flare remains lighted at each of the prescribed locations as long as the commercial motor vehicle is stopped or parked.

(iii) Business or residential districts. The placement of warning devices is not required within the business or residential district of a municipality, except during the time lighted lamps are required and when street or highway lighting is insufficient to make a commercial motor vehicle clearly discernable at a distance of 500 feet to persons on the highway.

(iv) Hills, curves, and obstructions. If a commercial motor vehicle is stopped within 500 feet of a curve, crest of a hill, or other obstruction to view, the driver shall place the warning signal required by paragraph (b)(1) in the direction of the obstruction to view a distance of 100 feet to 500 feet from the stopped commercial motor vehicle so as to afford ample warning to other users of the highway.

(v) Divided or one way roads. If a commercial motor vehicle is stopped upon the traveled portion or the shoulder of a divided or one way highway, the driver shall place the warning devices required by paragraph (b)(1), one warning device at a distance of 200 feet and one warning direction toward approaching traffic in the center of the lane or shoulder occupied by the commercial motor vehicle. He/she shall place one warning device at the traffic side of the commercial motor vehicle within 10 feet of the rear of the commercial motor vehicle.

(vi) Leaking, flammable material. If gasoline or any other flammable liquid, or combustible liquid or gas seeps or leaks from a fuel container or a commercial motor vehicle stopped upon a highway, no emergency warning signal producing a flame shall be lighted or placed except at such a distance from any such liquid or gas as will assure the prevention of a fire or explosion.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–392.24. Emergency signals; flame producing.

No driver shall attach or permit any person to attach a lighted fusee or other flame producing emergency signal to any part of a commercial motor vehicle.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–392.25. Flame producing devices.

No driver shall use or permit the use of any flame producing emergency signal for protecting any commercial motor vehicle transporting Division 1.1, Division 1.2, or Division 1.3 explosives; any cargo tank motor vehicle used for the transportation of any Class 3 or Division 2.1, whether loaded or empty; or any commercial motor vehicle using compressed gas as a motor fuel. In lieu thereof, emergency reflective triangles, red electric lanterns, or red emergency reflectors shall be used, the placement of which shall be in the same manner as prescribed in Regulation 38–392.22(b).

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART D

Use of Lighted Lamps and Reflectors

38–392.33. Obscured lamps or reflectors.

No commercial motor vehicle shall be driven when any of the required lamps or reflectors are obscured by the tailboard, by any part of the load, by dirt, or otherwise.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART F

Fueling Precautions

38–392.50. Ignition of fuel; prevention.

No driver or any employee of a motor carrier shall:

- (a) Fuel a commercial motor vehicle with the engine running, except when it is necessary to run the engine to fuel the commercial motor vehicle;
- (b) Smoke or expose any open flame in the vicinity of a commercial motor vehicle being fueled;
- (c) Fuel a commercial motor vehicle unless the nozzle of the fuel hose is continuously in contact with the intake pipe of the fuel tank;
- (d) Permit, insofar as practicable, any other person to engage in such activities as would be likely to result in fire or explosion.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–392.51. Reserve fuel; materials of trade.

Small amounts of fuel for the operation or maintenance of a commercial motor vehicle (including its auxiliary equipment) may be designated as materials of trade (see 49 CFR 171.8).

- (a) The aggregate gross weight of all materials of trade on a motor vehicle may not exceed 200 kg (440 pounds).
- (b) Packaging for gasoline must be made of metal or plastic and conform to requirements of 49 CFR Parts 171, 172, 173, and 178 or requirements of the Occupational Safety and Health Administration contained in 29 CFR 1910.106
- (c) For Packing Group II (including gasoline), Packing Group III (including aviation fuel and fuel oil), or ORM-D, the material is limited to 30 kg (66 pounds) or 30 L (8 gallons).
- (d) For diesel fuel, the capacity of the package is limited to 450 L (119 gallons).
- (e) A Division 2.1 material in a cylinder is limited to a gross weight of 100 kg (220 pounds). (A Division 2.1 material is a flammable gas, including liquefied petroleum gas, butane, propane, liquefied natural gas, and methane).

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART G

Prohibited Practices

38–392.60. Unauthorized persons not to be transported.

- (a) Unless specifically authorized in writing to do so by the motor carrier under whose authority the commercial motor vehicle is being operated, no driver shall transport any person or permit any person

to be transported on any commercial motor vehicle other than a bus. When such authorization is issued, it shall state the name of the person to be transported, the points where the transportation is to begin and end, and the date upon which such authority expires. No written authorization, however, shall be necessary for the transportation of:

- (1) Employees or other persons assigned to a commercial motor vehicle by a motor carrier;
- (2) Any person transported when aid is being rendered in case of an accident or other emergency;
- (3) An attendant delegated to care for livestock.

(b) 38-392 shall not apply to the operation of commercial motor vehicles controlled and operated by any farmer and used in the transportation of agricultural commodities or products thereof from his/her farm or in the transportation of supplies to his/her farm.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-392.66. Carbon monoxide; use of commercial motor vehicle when detected.

(a) No person shall dispatch or drive any commercial motor vehicle or permit any passengers thereon, when the following conditions are known to exist, until such conditions have been remedied or repaired:

- (1) Where an occupant has been affected by carbon monoxide;
- (2) Where carbon monoxide has been detected in the interior of the commercial motor vehicle;
- (3) When a mechanical condition of the commercial motor vehicle is discovered which would be likely to produce a hazard to the occupants by reason of carbon monoxide.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-392.67. Heater, flame producing; on commercial motor vehicle in motion.

No open flame heater used in the loading or unloading of the commodity transported shall be in operation while the commercial motor vehicle is in motion.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-392.71. Radar detectors; use and/or possession.

(a) No driver shall use a radar detector in a commercial motor vehicle, or operate a commercial motor vehicle that is equipped with or contains any radar detector.

(b) No motor carrier shall require or permit a driver to violate paragraph (a).

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393. PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION.

Editor's Note

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998. Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

Table of Contents

Subpart A: General

- 38-393.1. Scope of the rules of 38-382.
- 38-393.3. Additional equipment and accessories.
- 38-393.5. Definitions.
- 38-393.7. Matter incorporated by reference.

Subpart B: Lighting Devices, Reflectors, and Electrical Equipment

- 38-393.9. Lamps operable.
- 38-393.11. Lighting devices and reflectors.
- 38-393.13. Retro-reflective sheeting and reflex reflectors, requirements for semitrailers and trailers manufactured before December 1, 1993.
- 38-393.17. Lamps and reflectors - combinations in driveaway-towaway operation.
- 38-393.19. Requirements for turn signaling systems.

- 38-393.20. Clearance lamps to indicate extreme width and height.
- 38-393.22. Combination of lighting devices and reflectors.
- 38-393.23. Lighting devices to be electric.
- 38-393.24. Requirements for head lamps and auxiliary road lighting lamps.
- 38-393.25. Requirements for lamps other than head lamps.
- 38-393.26. Requirements for reflectors.
- 38-393.27. Wiring specifications.
- 38-393.28. Wiring to be protected.
- 38-393.29. Grounds.
- 38-393.30. Battery installation.
- 38-393.31. Overload protective devices.
- 38-393.32. Detachable electrical connections.
- 38-393.33. Wiring, installation.

Subpart C: Brakes

- 38-393.40. Required brake systems.
- 38-393.41. Parking brake system.
- 38-393.42. Brakes required on all wheels.
- 38-393.43. Breakaway and emergency braking.
- 38-393.45. Brake tubing and hose, adequacy.
- 38-393.46. Brake tubing and hose connections.
- 38-393.47. Brake lining.
- 38-393.48. Brakes to be operative.
- 38-393.49. Single valve to operate all brakes.
- 38-393.50. Reservoirs required.
- 38-393.51. Warning devices and gauges.
- 38-393.52. Brake performance.
- 38-393.53. Automatic brake adjusters and brake adjustment indicators.

Subpart D: Glazing and Window Construction

- 38-393.60. Glazing in specified openings.
- 38-393.61. Window construction.
- 38-393.62. Window obstructions.

Subpart E: Fuel Systems

- 38-393.65. All fuel systems.
- 38-393.67. Liquid fuel tanks.
- 38-393.69. Liquefied petroleum gas systems.

Subpart F: Coupling Devices and Towing Methods

- 38-393.70. Coupling devices and towing methods, except for driveaway towaway operations.
- 38-393.71. Coupling devices and towing methods, driveaway towaway operations.

Subpart G: Miscellaneous Parts and Accessories

- 38-393.75. Tires.
- 38-393.76. Sleeper berths.
- 38-393.77. Heaters.
- 38-393.78. Windshield wipers.
- 38-393.79. Defrosting device.
- 38-393.80. Rear vision mirrors.
- 38-393.81. Horn.
- 38-393.82. Speedometer.
- 38-393.83. Exhausts system.
- 38-393.84. Floors.
- 38-393.86. Rear end protection.
- 38-393.87. Flags on projecting loads.
- 38-393.88. Television receivers.

38-393.93. Seats, seat belt assemblies, and seat belt assembly anchorages.

Subpart H: Emergency Equipment

38-393.95. Emergency equipment on all power units.

Subpart I: Protection against Shifting or Falling Cargo

- 38-393.100. Which type of commercial motor vehicles are subject to the cargo securement standards of this subpart, and what general requirements apply?
- 38-393.102. What are the minimum performance criteria for cargo securement devices and systems?
- 38-393.104. What standards must cargo securement devices and systems meet in order to satisfy the requirements of this subpart?
- 38-393.106. What are the general requirements for securing articles of cargo?
- 38-393.108. How is the working load limit of a tiedown determined?
- 38-393.110. What else do I have to do to determine the minimum number of tiedowns?
- 38-393.112. Must a tiedown be adjustable?
- 38-393.114. What are the requirements for front end structures used as part of a cargo securement system?

Specific Securement requirements by Commodity Type

- 38-393.116.1 What are the rules for securing logs?
- 38-393.118. What are the rules for securing dressed lumber or similar building products?
- 38-393.128. What are the rules for securing automobiles, light trucks and vans?
- 38-393.130. What are the rules for securing heavy vehicles, equipment and machinery?

Subpart J: Frames, Cab and Body Components, Wheels, Steering, and Suspension Systems

- 38-393.201. Frames.
- 38-393.203. Cab and body components.
- 38-393.205. Wheels.
- 38-393.207. Suspension systems.
- 38-393.209. Steering wheel systems.

SUBPART A
General

38-393.1. Scope of the rules of 38-382.

Every employer and employee shall comply and be conversant with the requirements and specifications of 38-382. No employer shall operate a commercial motor vehicle, or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of 38-382.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.3. Additional equipment and accessories.

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

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.5. Definitions.

As used in 38-382, the following words and terms are construed to mean:

Aggregate working load limit. The summation of the working load limits or restraining capacity of all devices used to secure an article of cargo on a vehicle.

Anchor Point. Part of the structure, fitting or attachment on a vehicle or articles of cargo to which a tiedown is attached.

Antilock Brake System or ABS means a portion of a service brake system that automatically controls the degree rotational wheel slip during braking by:

Article of cargo. A unit of cargo, other than a liquid, gas, or aggregate that lacks physical structure (e.g., grain, gravel, etc. including articles grouped together so that they can be handled as a single unit or unitized by wrapping, strapping, banding or edge protection device(s).

Blocking. A structure, device or other substantial article placed against or around an article of cargo to prevent horizontal movement of the article of cargo.

Bracing. A structure, device, or another substantial article placed against an article of cargo to prevent it from tipping that may also prevent it from shifting.

Brake. An energy conversion mechanism used to stop, or hold a vehicle stationary.

Brake Tubing/Hose. Metallic brake tubing, nonmetallic brake tubing and brake hose are conduits or lines used in a brake system to transmit or contain the medium (fluid or vacuum) used to apply the motor vehicle's brakes.

Chassis. The load supporting frame in a truck or trailer, exclusive of any appurtenances which might be added to accommodate cargo.

Clearance Lamp. A lamp used on the front and the rear of a motor vehicle to indicate its overall width and height.

Converter Dolly. A motor vehicle consisting of a chassis equipped with one or more axles, a fifth wheel and/or equivalent mechanism, and drawbar, the attachment of which converts a semitrailer to a full trailer.

Curb Weight. The weight of a motor vehicle with standard equipment, maximum capacity of fuel, oil, and coolant; and, if so equipped, air conditioning and additional weight of optional engine. Curb weight does not include the driver.

Dunnage. All loose materials used to support and protect cargo.

Emergency Brake System. A mechanism designed to stop a vehicle after a single failure occurs in the service brake system of a part designed to contain compressed air or brake fluid or vacuum (except failure of a common valve, manifold brake fluid housing or brake chamber housing).

Fifth Wheel. A device mounted on a truck tractor or similar towing vehicle (e.g., converter dolly) which interfaces with and couples to the upper coupler assembly of a semitrailer.

Frame vehicle. A vehicle with skeletal structure fitted with one or more bunk units for transporting logs. A bunk unit consists of U-shaped front and rear bunks that together cradle logs. The bunks are welded, gusseted or otherwise firmly fastened to the vehicle's main beams, and are an integral part of the vehicle.

Fuel Tank Fitting. Any removable device affixed to an opening in the fuel tank with the exception of the filler cap.

Grommet. A device that serves as a support and protection to that which passes through it.

Hazard Warning Signal. Lamps that flash simultaneously to the front and rear, on both the right and left sides of a commercial motor vehicle, to indicate to an approaching driver the presence of a vehicular hazard.

Head Lamps. Lamps used to provide general illumination ahead of a motor vehicle.

Heater. Any device or assembly of devices or appliances used to heat the interior of any motor vehicle. This includes a catalytic heater which must meet the requirements of Section 177.834(1) of the Federal Motor Carrier Safety Administration's hazardous materials regulations when flammable liquid or gas is transported.

Heavy Hauler Trailer. A trailer with one or more of the following characteristics:

(1) Its brake lines are designed to adapt to separation or extension of the vehicle frame; or

(2) Its body consists only of a platform whose primary cargo carrying surface is not more than 40 inches above the ground in an unloaded condition, except that it may include sides that are designed to be easily removable and a permanent "front end structure" as that term is used in Regulation 38-393.106.

Identification Lamps. Lamps used to identify certain types of commercial motor vehicles.

Lamp. A device used to produce artificial light.

License Plate Lamp. A lamp used to illuminate the license plate on the rear of a motor vehicle.

Longwood. All logs that are not shortwood, i.e., are over 4.9 m (16 feet) long. Such logs are usually described as long logs or treelength.

Low chassis vehicle. (1) A trailer or semitrailer manufactured on or after January 26, 1998, having a chassis which extends behind the rearmost point of the rearmost tires and which has a lower rear surface that meets the guard width, height, and rear surface requirements of the National Highway Traffic Safety Administration's Standard Section 571.224 in effect on the date of manufacture, or a subsequent edition. (2) A motor vehicle, not described by paragraph (1) of this definition, having a chassis which extends behind the rearmost point of the rearmost tires and which has a lower rear surface that meets the guard configuration requirements of State Regulation 38-39386(b)(1).

Parking Brake System. A brake system used to hold a vehicle stationary.

Play. Any free movement of components.

Pulpwood Trailer. A trailer or semitrailer that is designed exclusively for harvesting logs or pulpwood and constructed with a skeletal frame with no means for attachment of a solid bed, body or container.

Rail Vehicle. A vehicle whose skeletal structure is fitted with stakes at the front and rear to contain logs loaded crosswise.

Rear Extremity. The rearmost point on a vehicle when the vehicle's cargo doors, tailgate or other permanent structure are positioned as they normally are when the vehicle is being driven. Non structural protrusions such as tail lights, hinges, and latches are deleted from the determination of the rearmost point.

Reflective Material. A material conforming to Federal Specification L S 300, "Sheeting and Tape, Reflective; Non exposed Lens, Adhesive Backing," (September 7, 1965) meeting the performance standard in either Table 1 or Table 1A of SAE Standard J594f, "Reflex Reflectors" (January, 1977).

Reflex Reflector. A device which is used on a vehicle to give an indication to an approaching driver by reflected lighted from the lamps on the approaching vehicle.

Saddle mount. A device, designed and constructed as to be readily demountable, used in driveway towaway operations to perform the functions of a conventional fifth wheel:

(1) Upper half. Upper half of a "saddle mount" means that part of the device which is securely attached to the towed vehicle and maintains a fixed position relative thereto, but does not include the "king pin;"

(2) Lower half. Lower half of a "saddle mount" means that part of the device which is securely attached to the towing vehicle and maintains a fixed position relative thereto but does not include the "king pin;" and

(3) King pin. King pin means that device which is used to connect the "upper half" to the "lower half" in such manner as to permit relative movement in a horizontal plane between the towed and towing vehicles.

Service Brake System. A primary brake system used for slowing and stopping a vehicle.

Shortwood. All logs typically up to 4.9 m (16 feet) long. Such logs are often described as cut-up logs, cut-to-length logs, bolts or pulpwood. Shortwood may be loaded lengthwise or crosswise, though that crosswise is usually no more than 2.6 m (102 inches) long.

Side Extremities. The outermost point on the sides of the vehicle. Nonstructural protrusions such as tail lights, hinges, and latches are excluded from the determination of the outermost point.

Side Marker Lamp (Intermediate). A lamp shown to the side of a trailer to indicate the approximate middle of a trailer 30 feet or more in length.

Side Marker Lamps. Lamps used on each side of a trailer to indicate its overall length.

Steering Wheel Lash. The condition in which the steering wheel may be turned through some part of a revolution without associated movement of the front wheels.

Stop Lamps. Lamps shown to the rear of a motor vehicle to indicate that the service brake system is engaged.

Tail Lamps. Lamps used to designate the rear of a motor vehicle.

Tiedown. A combination of securing devices which forms an assembly that attaches articles of cargo to, or restrains articles of cargo on, a vehicle or trailer, and is attached to anchor point(s).

Tractor-pole trailer. A combination vehicle that carries logs lengthwise so that they form the body of the vehicle. The logs are supported by a bunk located on the rear of the tractor, and another bunk on the skeletal trailer. The tractor bunk may rotate about a vertical axis, and the trailer may have a fixed, scoping, or cabled reach, or other mechanical freedom, to allow it to turn.

Turn Signals. Lamps used to indicate a change in direction by emitting a flashing light on the side of a motor vehicle towards which a turn will be made.

Upper Coupler Assembly. A structure consisting of an upper coupler plate, king pin and supporting framework which interfaces with and couples to a fifth wheel.

Upper Coupler Plate. A plate structure through which the king pin neck and collar extend. The bottom surface of the plate contacts the fifth wheel when coupled.

Working load limit (WLL). The maximum load that may be applied to a component of a cargo securement system during normal service, usually assigned by the manufacturer of the component.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–393.7. Matter incorporated by reference.

(a) Incorporation by reference. Part 38–393 includes references to certain matter or materials. The text of the materials is not included in the regulations contained in part 38–393. The materials are hereby made a part of the regulations in part 38–393. The Director of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the Federal Register and specified in the regulation is incorporated. Material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the Federal Register.

(b) Availability. The materials incorporated by reference are available as follows:

(1) Standards of the Underwriters Laboratories, Inc. Information and copies may be obtained by writing to: Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(2) Specifications of the American Society for Testing and Materials. Information and copies may be obtained by writing to: American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(3) Specifications of the National Association of Chain Manufacturers. Information and copies may be obtained by writing to: National Association of Chain Manufacturers, P.O. Box 3143, York, Pennsylvania 17402 0143.

(4) Specifications of the Web Sling and Tiedown Association. Information and copies may be obtained by writing to: Web Sling and Tiedown Association, Inc., 710 East Ogden Avenue, suite 113, Naperville, Illinois 60563.

(5) Manuals of the Wire Rope Technical Board. Information and copies may be obtained by writing to: Wire Rope Technical Committee, P.O. Box 849, Stevensville, Maryland 21666.

(6) Standards of the Cordage Institute. Information and copies may be obtained by writing to: Cordage Institute, 350 Lincoln Street, No. 115, Hingham, Massachusetts 02043.

(7)–(9) [Reserved]

(10) All of the materials incorporated by reference are available for inspection at:

(i) The Federal Motor Carrier Safety Administration, Office of Bus and Truck Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590; and

(ii) The Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART B
Lighting Devices, Reflectors, and Electrical Equipment

38-393.9. Lamps operable.

All lamps required by this subpart shall be capable of being operated at all times.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.11. Lighting devices and reflectors.

The following Table 1 sets forth the required color, position, and required lighting devices by type of commercial motor vehicle. Diagrams illustrating the locations of lighting devices and reflectors, by type and size of commercial motor vehicle, are shown immediately following Table 1. All lighting devices on motor vehicles placed in operation after March 7, 1989, must meet the requirements of 49 CFR 571.108 in effect at the time of manufacture of the vehicle. Motor vehicles placed in operation on or before March 7, 1989, must meet either the requirements of this regulation or part 571 in effect at the time of manufacture.

TABLE 1 - REQUIRED COMMERCIAL VEHICLE LIGHTING EQUIPMENT							
	Qty	Color	Location	Position	Height above road surface in inches measured from the center of the lamp at curb weight	Required lighting devices/vehicles	
Headlamps	2 Least	At White	Front	On the front at the same height, an equal number at each side of the vertical centerline as far apart as practicable	not less than 22 nor more than 54	A,B,C	
Turn Signal (Front) See Footnotes #2 & 12	2	Amber	At or Near Front	One on each side of the vertical centerline at the same height and as far apart as practicable	Not less than 15 nor more than 83	A,B,C	
Identification Lamp (Front) Footnote #1	3	Amber	Front	Mounted on the vertical centerline of the vehicle or the vertical centerline of the cab where different from the centerline of the vehicle	All three on same level as close as practicable to the top of the vehicle with lamp centers spaced not less than 6 inches or more than 12 inches apart	B,C	
Tail Lamp See Footnotes #5 & 11	2	Red	Rear	One lamp each side of the vertical centerline at the same height and as far apart as practicable	Both on the same level between 15 and 72	A,B,C,D,E,F,G,H	
Stop Lamp See Footnotes #5 & 13	2	Red	Rear	One lamp each side of the vertical centerline at the same height and as far apart as practicable	Both on the same level between 15 and 72	A,B,C,D,E,F,G,H	
Clearance Lamps See Footnotes #9 & 10	2	Amber	One on each side of front	One on each side of the vertical centerline to indicate width	Both on same level as high as practicable	B,C,D,G,H	
	2	Red	One on each side of rear	One on each side of the vertical centerline to indicate overall width	Both on same level as high as practicable	B,D,G,H	
Side Marker Lamp, Intermediate	2	Amber	One on each side	At or near midpoint between front and rear side marker	Not less than 15	A,B,D,F,G	

					lamps, if over 30' in length	
Reflex Reflector Intermediate (Side)	2	Amber	One on each side	At or near midpoint between front and rear side reflectors if over 30' in length	Between 15 and 60	A,B,D,F,G
Reflex Reflector (Rear) See Footnotes #5,6, & 8	2	Red	Rear	One on each side of vertical centerline, as far apart as practicable	Both on same level, between 15 and 60	A,B,C,D,E,F,G
Reflex Reflector (Rear Side) Footnote #4	2	Red	One on each side (Rear)	As far to the rear as practicable	Both on same level, between 15 and 60	A,B,D,F,G
Reflex Reflector (Front Side)	2	Amber	One on each side (Front)	As far to the front as practicable	Between 15 and 60	A,B,C,D,F,G
License Plate Lamp Rear See Footnote #11	1	White	At rear license plate	To illuminate the license plate from the top or sides	No requirements	A,B,C,D,F,G
Side Marker Lamp (Front)	2	Amber	One on each side	As far to the front as practicable	Not less than 15	A,B,C,D,F
Side Marker Lamp (Rear) See Footnotes #4 & 8	2	Red	One on each side	As far to the rear as practicable	Not less than 15 and on the rear of trailer, not more than 60	A,B,D,F,G
Turn Signal (Rear) See Footnotes #3 & 12	2	Amber or Red	Rear	One lamp on each side of the vertical centerline as far apart as practicable	Both on the same level, between 15 and 83	A,B,C,D,E,F,G
Vehicular Hazard Flashing Lamps See Footnote #12	2	Amber	Front	One lamp on each side of vertical centerline as far apart as practicable	Both on same level, between 15 and 83	A,B,C,D,E,F,G
	2	Amber or Red	Rear	
Backup Lamp See Footnote #14	1	White	Rear	Rear	No requirement	A,B,C
Parking Lamp	2	Amber or White	Front	One lamp on each side of vertical centerline as far apart as practicable	Both on same level, between 15 and 72	A

*Lighting Required per Type of Commercial Vehicle as Shown Last Column of Table.

- A. Small trucks less than 80 inches in overall width.
- B. Trucks 80 inches or more in overall width.
- C. Truck Tractors.
- D. Large semitrailers and full trailers 80 inches or more in overall width except converter dollies.
- E. Converter dolly.
- F. Small semitrailers and full trailers less than 80 inches in overall width.
- G. Pole Trailers & Pulpwood Trailers.
- H. Projecting loads.

Lamps and reflectors may be combined as permitted by Paragraphs 38-393.22 and S4.4 of 49 CFR 571.108, Equipment combinations. Exception - Pulpwood, Longwood and Pole Trailers shall not be

subject to use of side marker lamps, combination marker lamps or reflectors which require mounting at the top of the rear load standard as provided.

Footnote 1

Identification lamps may be mounted on the vertical centerline of the cab where different from the centerline of the vehicle, except where the cab is not more than 42 inches wide at the front roofline, then a single lamp at the center of the cab shall be deemed to comply with the requirements for identification lamps. No part of the identification lamps or their mountings may extend below the top of the vehicle windshield.

Footnote 2

Unless the turn signals on the front are so constructed (double faced) and located as to be visible to passing drivers, two turn signals are required on the rear of the truck tractor, one at each side as far apart as practicable.

Footnote 3

The identification lamps need not be visible or lighted if obscured by a vehicle in the same combination.

Footnote 4

Any semitrailer or full trailer vehicles manufactured on and after March 1, 1979, shall be equipped with rear side marker lamps at a height of not less than 15 inches (381 mm) nor more than 60 inches (1524 mm) above the road surface, as measured from the center of the lamp on the vehicle at curb weight. The rear side marker lamps shall be visible in the vehicle's rearview mirrors when the trailer is tracking straight.

Footnote 5

For purposes of these regulations, each converter dolly shall be equipped with one stop lamp, one tail lamp, and two reflectors on the rear at each side when towed singly by another vehicle. Each converter dolly shall be equipped with turn signals at the rear if the converter dolly obscures the turn signals at the rear of the towing vehicle when towed singly by another vehicle.

Footnote 6

Pole and pulpwood trailers will have two reflectors, one on each side, placed to indicate extreme width of the trailer.

Footnote 7

Pole and pulpwood trailers may have three identification lamps mounted on the vertical centerline of the rear of the cab of the truck tractor drawing the pole trailer, and higher than the load being transported, in lieu of the three identification lamps mounted on the rear vertical centerline of the trailer.

Footnote 8

Pole and pulpwood trailers shall have on the rearmost support for the load, one combination marker lamp or two single lamps showing amber to the front and red to the rear and side, mounted on each side to indicate maximum width of the pole trailer; and one red reflector on each side of the rearmost support for the load.

Footnote 9

Any motor vehicle transporting a load which extends more than 4 inches beyond the width of the motor vehicle, or having projections beyond the rear of such vehicles, shall be equipped with the following lamps in addition to other required lamps, have the loads marked.

Loads projecting more than 4 inches beyond sides of motor vehicles:

- (1) The foremost edge of the projecting load at its outermost extremity shall be marked with an amber lamp visible from the front and both sides.
- (2) The rearmost edge of the projecting load at its outermost extremity shall be marked with a red lamp visible from the rear and side.
- (3) If any portion of the projecting load extends beyond both the foremost and rearmost edge, it shall be marked with an amber lamp visible from the front, both sides, and rear.

(4) If the protecting load does not measure more than 3 feet from front to rear, it shall be marked with an amber lamp visible from the front, both sides, and rear, except that if the projection is located at or near the rear it shall be marked by a red lamp visible from front, side, and rear.

Footnote 10

Projections beyond rear of motor vehicle. On motor vehicles transporting loads which extend to the rear four (4) feet or more beyond the bed or body of the vehicle there must be displayed at the extreme rear end of the load, from a half hour after sunset to a half hour before sunrise, and at any other time when windshield wipers are required to be in use as a result of rain, sleet, or snow, or other inclement weather, a red light or lantern plainly visible from a distance of at least five hundred feet to the sides or rear. The red light or lantern required is in addition to the red rear light required upon every vehicle. At any other time of day there must be displayed at the extreme rear of the load a red flag or cloth not less than twelve inches by twelve inches and so hung that the entire area is visible to the driver of a vehicle approaching from the rear. South Carolina Code of Law - 56-5-4630.

Footnote 11

To be illuminated when tractor headlamps are illuminated.

Footnote 12

Every truck, and truck tractor shall be equipped with a signaling system that, in addition to signaling turning movements, shall have a switch or combination of switches that will cause the two front turn signals and the two rear signals to flash simultaneously as a vehicular traffic signal warning, required by Regulation 38-392 22(a). The system shall be capable of flashing simultaneously with the ignition of the vehicle on or off.

Footnote 13

To be actuated upon application of service brakes.

Footnote 14

Backup lamp required to operate when truck or truck tractor is in reverse.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.13. Retroreflective sheeting and reflex reflectors, requirements for semitrailers and trailers manufactured before December 1, 1993.

(a) Applicability. All trailers and semitrailers manufactured prior to December 1, 1993, which have an overall width of 2,032 mm (80 inches) or more and a gross vehicle weight rating of 4,536 kg (10,001 pounds) or more, except trailers that are manufactured exclusively for use as offices or dwellings, pole trailers (as defined in Regulation 38-390.5 of these regulation), and trailers transported in a driveaway-towaway operation, must be equipped with retroreflective sheeting or an array of reflex reflectors that meet the requirements. Motor carriers operating trailers, other than container chassis (as defined in Regulation 38-393.5), have until June 1, 2001, to comply with the requirements of 38-393. Motor carriers operating container chassis have until December 1, 2001, to comply with the requirements of 38-393.

(b) Retroreflective sheeting and reflex reflectors. Motor carriers are encouraged to retrofit their trailers with a conspicuity system that meets all of the requirements applicable to trailers manufactured on or after December 1, 1993, including the use of retroreflective sheeting or reflex reflectors in a red and white pattern (see Federal Motor Vehicle Safety Standard No. 108 (49 CFR 571.108), S5.7, Conspicuity systems). Motor carriers which do not retrofit their trailers to meet the requirements of FMVSS No. 108, for example by using an alternative color pattern, must comply with the remainder of this paragraph and with paragraph (c) or (d). Retroreflective sheeting or reflex reflectors in colors or color combinations other than red and white may be used on the sides or lower rear area of the semitrailer or trailer until June 1, 2009. The alternate color or color combination must be uniform along the sides and lower rear area of the trailer. The retroreflective sheeting or reflex reflectors on the upper rear area of the trailer must be white and conform to the requirements of FMVSS No. 108 (S5.7). Red retroreflective sheeting or reflex reflectors shall not be used along the sides of the trailer unless it is used as part of a red and white pattern. Retroreflective sheeting shall have a width of at least 50 mm (2 inches).

(c) Locations for retroreflective sheeting.

(1) Sides. Retroreflective sheeting shall be applied to each side of the trailer or semitrailer. Each strip of retroreflective sheeting shall be positioned as horizontally as practicable, beginning and ending as close to the front and rear as practicable. The strip need not be continuous but the sum of the length of all of the segments shall be at least half of the length of the trailer and the spaces between the segments of the strip shall be distributed as evenly as practicable. The centerline for each strip of retroreflective sheeting shall be between 375 mm (15 inches) and 1,525 mm (60 inches) above the road surface when measured with the trailer empty or unloaded, or as close as practicable to this area. If necessary to clear rivet heads or other similar obstruction, 50 mm (2 inches) wide retroreflective sheeting may be separated into two 25 mm (1 inch) wide strips of the same length and color, separated by a space of not more than 25 mm (1 inch).

(2) Lower rear area. The rear of each trailer and semitrailer must be equipped with retroreflective sheeting. Each strip of retroreflective sheeting shall be positioned as horizontally as practicable, extending across the full width of the trailer, beginning and ending as close to the extreme edges as practicable. The centerline for each of the strips of retroreflective sheeting shall be between 375 mm (15 inches) and 1,525 mm (60 inches) above the road surface when measured with the trailer empty or unladen, or as close as practicable to this area.

(3) Upper rear area. Two pairs of white strips of retroreflective sheeting, each pair consisting of strips 300 mm (12 inches) long, must be positioned horizontally and vertically on the right and left upper corners of the rear of the body of each trailer and semitrailer, as close as practicable to the top of the trailer and as far apart as practicable. If the perimeter of the body, as viewed from the rear, is not square or rectangular, the strips may be applied along the perimeter, as close as practicable to the uppermost and outermost areas of the rear of the body on the left and right sides.

(d) Locations for reflex reflectors.

(1) Sides. Reflex reflectors shall be applied to each side of the trailer or semitrailer. Each array of reflex reflectors shall be positioned as horizontally as practicable, beginning and ending as close to the front and rear as practicable. The array need not be continuous but the sum of the length of all of the array segments shall be at least half of the length of the trailer and the spaces between the segments of the strip shall be distributed as evenly as practicable. The centerline for each array of reflex reflectors shall be between 375 mm (15 inches) and 1,525 mm (60 inches) above the road surface when measured with the trailer empty or unladen, or as close as practicable to this area. The center of each reflector shall not be more than 100 mm (4 inches) from the center of each adjacent reflector in the segment of the array. If reflex reflectors are arranged in an alternating color pattern, the length of reflectors of the first color shall be as close as practicable to the length of the reflectors of the second color.

(2) Lower rear area. The rear of each trailer and semitrailer must be equipped with reflex reflectors. Each array of reflex reflectors shall be positioned as horizontally as practicable, extending across the full width of the trailer, beginning and ending as close to the extreme edges as practicable. The centerline for each array of reflex reflectors shall be between 375 mm (15 inches) and 1,525 mm (60 inches) above the road surface when measured with the trailer empty or unladen, or as close as practicable to this area. The center of each reflector shall not be more than 100 mm (4 inches) from the center of each adjacent reflector in the segment of the array.

(3) Upper rear area. Two pairs of white reflex reflector arrays, each pair at least 300 mm (12 inches) long, must be positioned horizontally and vertically on the right and left upper corners of the rear of the body of each trailer and semitrailer, as close as practicable to the top of the trailer and as far apart as practicable. If the perimeter of the body, as viewed from the rear, is not square or rectangular, the arrays may be applied along the perimeter, as close as practicable to the uppermost and outermost areas of the rear of the body on the left and right sides. The center of each reflector shall not be more than 100 mm (4 inches) from the center of each adjacent reflector in the segment of the array.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.19. Requirements for turn signaling systems.

(a) Every truck, or truck tractor shall be equipped with a signaling system that in addition to signaling turning movements shall have a switch or combination of switches that will cause the two front turn signals and the two rear turn signals to flash simultaneously as a vehicular traffic hazard warning as required by Regulation 38-392.22 with the ignition on or off.

(b) Every semitrailer and full trailer shall be equipped so as to have the two rear turn signals to flash simultaneously with the two front turn signals of the towing vehicle as a vehicular traffic hazard warning as required by Regulation 38-392.22(a).

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.20. Clearance lamps to indicate extreme width and height.

Clearance lamps shall be mounted so as to indicate the extreme width of the motor vehicle (not including mirrors) and as near the top thereof as practicable: Provided, That when rear identification lamps are mounted at the extreme height of the vehicle, rear clearance lamps may be mounted at optional height: And provided further, That when mounting of front clearance lamps at the highest point of a trailer results in such lamps failing to mark the extreme width of the trailer, such lamps may be mounted at optional height but must indicate the extreme width of the trailer. Clearance lamps on truck tractors shall be so located as to indicate the extreme width of the truck tractor cab.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.22. Combination of lighting devices and reflectors.

(a) Permitted combinations. Except as provided in paragraph (b), two or more lighting devices and reflectors (whether or not required by the rules in 38-382) may be combined optically if

(1) Each required lighting device and reflector conforms to the applicable rules in 38-382; and

(2) Neither the mounting nor the use of a non-required lighting device or reflector impairs the effectiveness of a required lighting device or reflector or causes that device or reflector to be inconsistent with the applicable rules in 38-382.

(b) Prohibited combinations.

(1) A turn signal lamp must not be combined optically with either a head lamp or other lighting device or combination of lighting devices that produces a greater intensity of light than the turn signal lamp.

(2) A turn signal lamp must not be combined optically with a stop lamp unless the stop lamp function is always deactivated when the turn signal function is activated.

(3) A clearance lamp must not be combined optically with a tail lamp or identification lamp.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.23. Lighting devices to be electric.

Lighting devices shall be electric, except that red liquid burning lanterns may be used on the end of loads in the nature of poles, pipes, and ladders projecting to the rear of the motor vehicle.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.24. Requirements for head lamps and auxiliary road lighting lamps.

(a) Mounting. Head lamps and auxiliary road lighting lamps shall be mounted so that the beams are readily adjustable, both vertically and horizontally, and the mounting shall be such that the aim is not readily disturbed by ordinary conditions of service.

(b) Head lamps required. Every truck, and truck tractor shall be equipped with a headlighting system composed of at least two head lamps, not including fog or other auxiliary lamps, with an equal number on each side of the vehicle. The headlighting system shall provide an upper and lower distribution of light, selectable at the driver's will.

(c) Fog, adverse weather, and auxiliary road lighting lamps. For the purposes of 38-393, fog, adverse weather, and auxiliary road lighting lamps, when installed, are considered to be a part of the headlighting system. Such lamps may be used in lieu of head lamps under conditions making their use advisable if there be at least one such lamp conforming to the appropriate SAE Standard¹ for such lamps on each side of the vehicle.

(d) Aiming and intensity. Head lamps shall be constructed and installed so as to provide adequate and reliable illumination and shall conform to the appropriate specification set forth in the SAE

Standards¹ for “Electric Head Lamps for Motor Vehicles” or “Sealed Beam Head Lamp Units for Motor Vehicles.”

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–393.25. Requirements for lamps other than head lamps.

(a) Mounting. All lamps shall be permanently and securely mounted in workmanlike manner on a permanent part of the motor vehicle, except that temporary lamps on motor vehicles being transported in driveaway towaway operations and temporary electric lamps on projecting loads need not be permanently mounted nor mounted on a permanent part of the vehicle. The requirement for three identification lamps on the centerline of a vehicle will be met as to location by one lamp on the centerline, with the other two at right and left. All temporary lamps must be firmly attached.

(b) Visibility. All required exterior lamps shall be so mounted as to be capable of being seen at all distances between 500 feet and 50 feet under clear atmospheric conditions during the time lamps are required to be lighted. The light from front clearance and front identification lamps shall be visible to the front, that from sidemarker lamps to the side, that from rear clearance, rear identification, and tail lamps to the rear, and that from projecting loadmarker lamps from those directions required by Regulation 38–393.11. This shall not be construed to apply to lamps on one unit which are obscured by another unit of a combination of vehicles.

(c) Specifications. All required lamps except those already installed on vehicles tendered for transportation in driveaway and towaway operations shall conform to appropriate requirements of the SAE Standards and/or Recommended Practices¹ as indicated below, except that the minimum required marking of lamps conforming to the 1985 requirements shall be as specified in paragraph (d). Projecting load marker lamps shall conform to the requirements for clearance, side marker, and identification lamps. Turn signals shall conform to the requirements for class A, Type I turn signals, provided.

(1) Lamps on vehicles made before July 1, 1961, excepting replacement lamps as specified in paragraph (c)(2), shall conform to the 1952 requirements.

(2) Lamps on vehicles made on and after July 1, 1961, and replacement lamps installed on and after December 31, 1961, shall conform to the 1985 requirements.

(3) Lamps temporarily attached to vehicles transported in driveaway and towaway operations on and after December 31, 1961, shall conform to the 1985 requirements.

(d) Certification and markings. All lamps required to conform to the requirements of the SAE Standards¹ shall be certified by the manufacturer or supplier that they do so conform, by markings indicated below. The markings in each case shall be visible when the lamp is in place on the vehicle.

(1) Stop lamps shall be marked with the manufacturers or supplier’s name or trade name and shall be marked “SAE S”.

(2) Turn signal units shall be marked with the manufacturers or supplier’s name or trade name and shall be marked “SAE AI” or “SAE I”.

(3) Tail lamps shall be marked with the manufacturers or supplier’s name or trade name and shall be marked “SAE T”.

(4) Clearance, side marker, identification, and projecting load marker lamps, except combination lamps, shall be marked with the manufacturers or supplier’s name or trade name and shall be marked “SAE” or “SAE P”.

(5) Combination lamps shall be marked with the manufacturers or supplier’s name or trade name and shall be marked “SAE” followed by the appropriate letters indicating the individual lamps combined. The letter “A”, as specified in Regulation 38–393.26(c), may be included to certify that a reflector in the combination conforms to the requirements appropriate to such marking. If the letter “I” follows the letter “A” immediately the two letters shall be deemed to refer to a turn signal unit, as specified in paragraph (d)(2) of 38–393. Combination clearance and side marker lamps may be marked “SAE PC”.

(e) Lighting devices to be steady burning. All exterior lighting devices shall be of the steady burning type except turn signals on any vehicle, stop lamps when used as turn signals, warning lamps on school when operating as such, and warning lamps on emergency and service vehicles authorized

by State or local authorities, and except that lamps combined into the same shell or housing with any turn signal may be turned off by the same switch that turns the signal on for flashing and turned on again when the turn signal as such is turned off. This paragraph shall not be construed to prohibit the use of vehicular hazard warning signal flashers as required by Regulation 38–392.22 or permitted by Regulation 38–392.18.

(f) Stop lamp operation. All stop lamps on each motor vehicle or combination of motor vehicles shall be actuated upon application of any of the service brakes, except that such actuation is not required upon activation of the emergency feature of trailer brakes by means of either manual or automatic control on the towing vehicle, and except that stop lamps on a towing vehicle need not be actuated when service brakes are applied to the towed vehicles or vehicles only, and except that no stop lamp need be actuated as such when it is in use as a turn signal or when it is turned off by the turn signal switch as provided in paragraph (e).

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–393.26. Requirements for reflectors.

(a) Mounting. All required reflectors shall be mounted upon the motor vehicle at a height not less than 15 inches nor more than 60 inches above the ground on which the motor vehicle stands, except that reflectors shall be mounted as high as practicable on motor vehicles which are so constructed as to make compliance with the 15 inch requirement impractical. They shall be so installed as to perform their function adequately and reliably, and except for temporary reflectors required for vehicles in driveway towaway operations, or on projecting loads, all reflectors shall be permanently and securely mounted in workmanlike manner so as to provide the maximum of stability and the minimum likelihood of damage. Required reflectors otherwise properly mounted may be securely installed on flexible strapping or belting provided that under conditions of normal operation they reflect light in the required directions. Required temporary reflectors mounted on motor vehicles during the time they are in transit in any driveway towaway operation must be firmly attached.

(b) Specifications. All required reflectors except those installed on vehicles tendered for transportation in driveway and towaway operations shall comply with FMVSS 571.108 (49 CFR 571.108) in effect at the time the vehicle was manufactured or the current FMVSS 571.108 requirements.

(c) Certification and markings. All reflectors required to conform to the specifications in paragraph (b) shall be certified by the manufacturer or supplier that they do so conform, by marking with the manufacturer's or supplier's name or trade name and the letters "SAE A". The marking in each case shall be visible when the reflector is in place on the vehicle.

(d) Retroreflective surfaces. Retroreflective surfaces other than required reflectors may be used, provided:

(1) Designs do not resemble traffic control signs, lights, or devices, except that straight edge striping resembling a barricade pattern may be used.

(2) Designs do not tend to distort the length and/or width of the motor vehicle.

(3) Such surfaces shall be at least 3 inches from any required lamp or reflector unless of the same color as such lamp or reflector.

(4) No red color shall be used on the front of any motor vehicle, except for display of markings or placards required by Section 177.823 of the Federal Motor Carrier Safety Administration's hazardous materials regulations.

(5) Retroreflective license plates required by State or local authorities may be used.

South Carolina Code of State Laws 56–5–4580 (section 7) on every pole truck or trailer, a strip of light reflecting paint, tape or reflectors on the external sides of the pole support frame or bolsters, or both, where practical.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–393.27. Wiring specifications.

(a) Wiring for both low voltage (tension) and high voltage (tension) circuits shall be constructed and installed so as to meet design requirements. Wiring shall meet or exceed, both mechanically and electrically, the following SAE Standards as found in the 1985 edition of the SAE Handbook:

- (1) Commercial vehicle engine ignition systems SAE J557 High Tension Ignition Cable.
- (2) Commercial vehicle battery cable SAE J1127 Jan 80 Battery Cable.
- (3) Other commercial vehicle wiring SAE J1128 Low Tension Primary Cable.

(b) The source of power and the electrical wiring shall be of such size and characteristics as to provide the necessary voltage as the design requires to comply with FMVSS 571.108.

(c) Lamps shall be properly grounded.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.28. Wiring to be protected.

(a) The wiring shall

(1) Be so installed that connections are protected from weather, abrasion, road splash, grease, oil, fuel and chafing;

(2) Be grouped together, when possible, and protected by nonconductive tape, braid, or other covering capable of withstanding severe abrasion or shall be protected by being enclosed in a sheath or tube;

(3) Be properly supported in a manner to prevent chafing;

(4) Not be so located as to be likely to be charred, overheated, or enmeshed in moving parts;

(5) Not have terminals or splices located above the fuel tank except for the fuel sender wiring and terminal; and

(6) Be protected when passing through holes in metal by a grommet, or other means, or the wiring shall be encased in a protective covering.

(b) The complete wiring system including lamps, junction boxes, receptacle boxes, conduit and fittings must be weather resistant.

(c) Harness connections shall be accomplished by a mechanical means.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.29. Grounds.

The battery ground and trailer return ground connections on a grounded system shall be readily accessible. The contact surfaces of electrical connections shall be clean and free of oxide, paint, or other nonconductive coating.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.30. Battery installation.

Every storage battery on every vehicle, unless located in the engine compartment, shall be covered by a fixed part of the motor vehicle or protected by a removable cover or enclosure. Removable covers or enclosures shall be substantial and shall be securely latched or fastened. The storage battery compartment and adjacent metal parts which might corrode by reason of battery leakage shall be painted or coated with an acid resisting paint or coating and shall have openings to provide ample battery ventilation and drainage. Wherever the cable to the starting motor passes through a metal compartment, the cable shall be protected against grounding by an acid and waterproof insulating bushing. Wherever a battery and a fuel tank are both placed under the driver's seat, they shall be partitioned from each other, and each compartment shall be provided with an independent cover, ventilation, and drainage.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.31. Overload protective devices.

(a) The current to all low tension circuits shall pass through overload protective devices except that this requirement shall not be applicable to battery to starting motor or battery to generator circuits, ignition and engine control circuits, horn circuits, electrically operated fuel pump circuits, or electric brake circuits.

(b) Trucks and truck tractors meeting the definition of a commercial motor vehicle and manufactured after June 30, 1953 shall have protective devices for electrical circuits arranged so that:

(1) The headlamp circuit or circuits shall not be affected by a short circuit in any other lighting circuits on the motor vehicle; or

(2) The protective device shall be an automatic reset overload circuit breaker if the headlight circuit is protected in common with other circuits.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–393.32. Detachable electrical connections.

Electrical wiring between towing and towed vehicles shall be contained in a cable or cables or entirely within another substantially constructed protective device. All such electrical wiring shall be mechanically and electrically adequate and free of short or open circuits. Suitable provision shall be made in every such detachable connection to afford reasonable assurance against connection in an incorrect manner or accidental disconnection. Detachable connections made by twisting together wires from the towed and towing units are prohibited. Precaution shall be taken to provide sufficient slack in the connecting wire or cable to accommodate without damage all normal motions of the parts to which they are attached.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–393.33. Wiring, installation.

Electrical wiring shall be systematically arranged and installed in a workmanlike manner. All detachable wiring, except temporary wiring connections for driveaway towaway operations, shall be attached to posts or terminals by means of suitable cable terminals which conform to the SAE Standard¹ for “Cable Terminals” or by cable terminals which are mechanically and electrically at least equal to such terminals. The number of wires attached to any post shall be limited to the number which such post was designed to accommodate. The presence of bare, loose, dangling, chafing, or poorly connected wires is prohibited.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART C ***Brakes***

38–393.40. Required brake systems.

(a) General. A truck, truck tractor, or a combination of motor vehicles must have brakes adequate to control the movement of, and to stop and hold, the vehicle or combination of vehicles.

(b) Specific systems required.

(1) A truck, truck tractor, or combination of motor vehicles must have

(i) A service brake system that conforms to the requirements of Regulation 38–393.52; and

(ii) A parking brake system that conforms to the requirements of Regulation 38–393.41.

(2) A truck, truck tractor, or a combination of motor vehicles manufactured on or after July 1, 1973, must have an emergency brake system that conforms to the requirements of Regulation 38–393.52(b) and consists of either

(i) Emergency features of the service brake system; or

(ii) A system separate from the service brake system.

A control by which the driver applies the emergency brake system must be located so that the driver can readily operate it when he/she is properly restrained by any seat belt assembly provided for his/her use. The control for applying the emergency brake system may be combined with either the control for applying the service brake system or the control for applying the parking brake system. However, all three controls may not be combined.

(c) Interconnected systems.

(1) If the brake systems specified in paragraph (b) are interconnected in any way, they must be designed, constructed, and maintained so that, upon the failure of any part of the operating mechanism of one or more of the systems (except the service brake actuation pedal or valve)

- (i) The vehicle will have operative brakes; and
 - (ii) In the case of a vehicle manufactured on or after July 1, 1973, the vehicle will have operative brakes capable of performing as specified in Regulation 38–393.52(b).
- (2) A motor vehicle to which the emergency brake system requirements of Federal Motor Vehicle Safety Standard No. 105 (Section 571.105) applied at the time of its manufacture conforms to the requirements of paragraph (c)(1) if
- (i) It is maintained in conformity with the emergency brake requirements of Standard No. 105 in effect on the date of its manufacture; and
 - (ii) It is capable of performing as specified in Regulation 38–393.52(b), except upon structural failure of its brake master cylinder body or effectiveness indicator body.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–393.41. Parking brake system.

- (a) Every commercial motor vehicle manufactured on and after March 7, 1990, except an agricultural commodity trailer, converter dolly, heavy hauler or pulpwood trailer, shall at all times be equipped with a parking brake system adequate to hold the vehicle or combination under any condition of loading as required by FMVSS 571.121. An agricultural commodity trailer, heavy hauler or pulpwood trailer shall carry sufficient chocking blocks to prevent movement when parked.
- (b) The parking brake system shall at all times be capable of being applied in conformance with the requirements of paragraph (a) of 38–393.41 either the driver’s muscular effort, or by spring action, or by other energy, provided, that if such other energy is depended on for application of the parking brake, then an accumulation of such energy shall be isolated from any common source and used exclusively for the operation of the parking brake.
- (c) The parking brake system shall be held in the applied position by energy other than fluid pressure, air pressure, or electric energy. The parking brake system shall be such that it cannot be released unless adequate energy is available upon release of the parking brake to make immediate further application with the required effectiveness.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–393.42. Brakes required on all wheels.

- (a) Every commercial motor vehicle shall be equipped with brakes acting on all wheels.
- (b) Exception.
- (1) Trucks or truck tractors having three or more axles
 - (i) Need not have brakes on the front wheels if the vehicle was manufactured before July 25, 1980; or
 - (ii) Manufactured between July 24, 1980, and October 27, 1986, must be retrofitted to meet the requirements of 38–393 within one year from February 26, 1987, if the brake components have been removed.
 - (2) Any motor vehicle being towed in a driveaway towaway operation must have operative brakes as may be necessary to ensure compliance with the performance requirements of Regulation 38–393.52. This paragraph is not applicable to any motor vehicle towed by means of a tow bar when any other vehicle is full mounted on such towed motor vehicle or any combination of motor vehicles utilizing three or more saddle mounts. (See Regulation 38–393.71(a)(3).)
 - (3) Any full trailer, any semitrailer, or any pole trailer having a GVWR of 3,000 pounds or less must be equipped with brakes if the weight of the towed vehicle resting on the towing vehicle exceeds 40 percent of the GVWR of the towing vehicle.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–393.43. Breakaway and emergency braking.

- (a) Every motor vehicle, if used to tow a trailer equipped with brakes, shall be equipped with means for providing that in case of breakaway of such trailer the service brakes on the towing vehicle will be sufficiently operative to stop the towing vehicle.

(b) Every truck or truck tractor equipped with air brakes, when used for towing other vehicles equipped with air brakes, shall be equipped with two means of activating the emergency features of the trailer brakes. One of these means shall operate automatically in the event of reduction of the towing vehicle air supply to a fixed pressure which shall not be lower than 20 pounds per square inch nor higher than 45 pounds per square inch. The other means shall be a manually controlled device readily operable by a person seated in the driving seat. Its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and manual means required may be, but are not required to be, separate.

(c) Every truck tractor and truck when used for towing other vehicles equipped with vacuum brakes, shall have, in addition to the single control required by Regulation 38–393.49 to operate all brakes of the combination, a second manual control device which can be used to operate the brakes on the towed vehicles in emergencies. Such second control shall be independent of brake air, hydraulic, and other pressure, and independent of other controls, unless the braking system be so arranged that failure of the pressure on which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required by this rule to provide modulated or graduated braking.

(d) Every trailer required to be equipped with brakes shall be equipped with brakes of such character as to be applied automatically and promptly upon breakaway from the towing vehicle, and means shall be provided to maintain application of the brakes on the trailer in such case for at least 15 minutes.

(e) Air brake systems installed on towed vehicles shall be so designed, by the use of “no bleed back” relay emergency valves or equivalent devices, that the supply reservoir used to provide air for brakes shall be safeguarded against backflow of air to the towing vehicle upon reduction of the towing vehicle air pressure.

(f) The requirements of paragraphs (b), (c), and (d) shall not be applicable to motor vehicles in driveaway towaway operations.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–393.45. Brake tubing and hose, adequacy.

(a) General requirements. Brake tubing and brake hose must

(1) Be designed and constructed in a manner that insures proper, adequate, and continued functioning of the tubing or hose;

(2) Be installed in a manner that insures proper continued functioning of the tubing or hose;

(3) Be long and flexible enough to accommodate without damage all normal motions of the parts to which it is attached;

(4) Be suitably secured against chafing, kinking, or other mechanical damage;

(5) Be installed in a manner that prevents it from contacting the vehicle’s exhaust system or any other source of high temperatures; and

(6) Conform to the applicable requirements of paragraph (b) or (c). In addition, all hose installed on and after January 1, 1981, must conform to those applicable subsections of FMVSS 106 (49 CFR 571.106).

(b) Special requirements for metallic brake tubing, nonmetallic brake tubing, coiled nonmetallic brake tubing and brake hose.

(1) Metallic brake tubing, nonmetallic brake tubing, coiled nonmetallic brake tubing, and brake hose installed on a commercial motor vehicle on and after March 7, 1989, must meet or exceed one of the following specifications set forth in the SAE Handbook, 1985 edition:

(i) Metallic Air Brake Tubing SAE Recommended Practice J1149 Metallic Air Brake System Tubing and Pipe July 76.

(ii) Nonmetallic Air Brake Tubing SAE Recommended Practice J844 Nonmetallic Air Brake System Type B OCT 80.

(iii) Air Brake Hose SAE Recommended Practice J1402 Automotive Air Brake Hose and Hose Assemblies JUN 85.

(iv) Hydraulic Brake Hose SAE Recommended Practice J1401 Road Vehicle Hydraulic Brake Hose Assemblies for Use with Non Petroleum Base Hydraulic Fluid JUN 85.

(v) Vacuum Brake Hose SAE Recommended Practice J1403 Vacuum Brake Hose JUN 85.

(2) Except as provided in paragraph (c), brake hose and brake tubing installed on a motor vehicle before March 7, 1989, must conform to 49 CFR 393.45 effective October 31, 1983.

(c) Nonmetallic brake tubing. Coiled nonmetallic brake tubing may be used for connections between towed and towing vehicles or between the frame of a towed vehicle and the unsprung subframe of an adjustable axle of that vehicle if

(1) The coiled tubing has a straight segment (pigtail) at each end that is at least 2 inches in length and is encased in a spring guard or similar device which prevents the tubing from kinking at the fitting at which it is attached to the vehicle; and

(2) The spring guard or similar device has at least 2 inches of closed coils or similar surface at its interface with the fitting and extends at least 1 1/2 inches into the coiled segment of the tubing from its straight segment.

(d) Brake tubing and brake hose, uses. Metallic and nonmetallic brake tubing is intended for use in areas of the brake system where relative movement in the line is not anticipated. Brake hose and coiled nonmetallic brake tubing is intended for use in the brake system where substantial relative movement in the line is anticipated or the hose/coiled nonmetallic brake tubing is exposed to potential tension or impact such as between the frame and axle in a conventional type suspension system (axle attached to frame by suspension system). Nonmetallic brake tubing may be used through an articulation point provided movement is less than 4.5 degrees in a vertical plane, and 7.4 degrees in a transverse horizontal plane.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.46. Brake tubing and hose connections.

All connections for air, vacuum, or hydraulic braking systems shall:

(a) Be adequate in material and construction to insure proper continued functioning;

(b) Be designed, constructed, and installed so as to insure, when properly connected, an attachment free of leaks, constrictions, or other defects;

(c) Have suitable provision in every detachable connection to afford reasonable assurance against accidental disconnection;

(d) Have the vacuum brake engine manifold connection at least three eighths inch in diameter.

(e) If installed on a vehicle on or after January 1, 1981, meet requirements under applicable subsections of FMVSS 106 (49 CFR 571.106).

(f) Splices in tubing if installed on a vehicle after March 7, 1989, must use fittings that meet the requirements of SAE Standard J512 OCT 80 Automotive Tube Fittings or for air brake systems SAE J246 March 81 Spherical and Flanged Sleeve (Compression) Tube Fittings as found in the SAE Handbook 1985 edition.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.47. Brake lining.

The brake lining on every motor vehicle shall be so constructed and installed as not to be subject to excessive fading and grabbing and shall be adequate in thickness, means of attachment, and physical characteristics to provide for safe and reliable stopping of the motor vehicle.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.48. Brakes to be operative.

(a) General rule. Except as provided in paragraphs (b) and (c), all brakes with which a motor vehicle is equipped must at all times be capable of operating.

(b) Devices to reduce or remove front wheel braking effort. A motor vehicle may be equipped with a device to reduce the braking effort upon its front wheels or, in the case of a three axle truck or truck tractor manufactured before March 1, 1975, to remove the braking effort upon its front wheels, if that device conforms to, and is used in compliance with, the rules in paragraph (b) (1) or (2).

(1) Manually operated devices. A manually operated device to reduce or remove the front wheel braking effort must not be

- (i) Installed in a motor vehicle other than a truck, or truck tractor; or
- (ii) Installed in a truck, or truck tractor manufactured after February 28, 1975; or
- (iii) Used in the reduced mode except when the vehicle is operating under adverse conditions such as wet, snowy, or icy roads.

(2) Automatic devices. An automatic device to reduce the front wheel braking effort by up to 50 percent of the normal braking force, regardless of whether or not antilock system failure has occurred on any axle, must not

- (i) Be operable by the driver except upon application of the control that activates the braking system; and
- (ii) Be operable when the pressure that transmits brake control application force exceeds
 - (A) 85 psig on air mechanical braking systems; or
 - (B) 85 percent of the maximum system pressure in the case of vehicles utilizing other than compressed air.

(c) Towed vehicle. Paragraph (a) does not apply to

- (1) A disabled vehicle being towed; or
- (2) A vehicle being towed in a driveaway towaway operation which is exempt from the general rule of 38-393.42 under paragraph (b) of that regulation.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.49. Single valve to operate all brakes.

Every motor vehicle, the date of manufacture of which is subsequent to June 30, 1953, which is equipped with power brakes, shall have the braking system so arranged that one application valve shall when applied operate all the service brakes on the motor vehicle or combination of motor vehicles. This requirement shall not be construed to prohibit motor vehicles from being equipped with an additional valve to be used to operate the brakes on a trailer or trailers or as provided in Regulation 38-393.44. 38-393 shall not be applicable to driveaway towaway operations unless the brakes on such operations are designed to be operated by a single valve.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.50. Reservoirs required.

(a) General. Every commercial motor vehicle using air or vacuum for breaking shall be equipped with reserve capacity or a reservoir sufficient to ensure a full service brake application with the engine stopped without depleting the air pressure or vacuum below 70 percent of that pressure or degree of vacuum indicated by the gauge immediately before the brake application is made. For purposes of 38-393, a full service brake application is considered to be made when the service brake pedal is pushed to the limit of its travel.

(b) Safeguarding of air and vacuum.

(1) Every truck, and truck tractor, when equipped with air or vacuum reservoirs and regardless of date of manufacture, shall have such reservoirs so safeguarded by a check valve or equivalent device that in the event of failure or leakage in its connection to the source of compressed air or vacuum the air or vacuum supply in the reservoir shall not be depleted by the leak or failure.

(2) Means shall be provided to establish the check valve to be in working order. On and after May 1, 1966, means other than loosening or disconnection of any connection between the source of compressed air or vacuum and the check valve, and necessary tools for operation of such means, shall be provided to prove that the check valve is in working order. The means shall be readily accessible either from the front, side, or rear of the vehicle, or from the driver's compartment.

(i) In air brake systems with one reservoir, the means shall be a cock, valve, plug, or equivalent device arranged to vent a cavity having free communication with the connection between the check valve and the source of compressed air or vacuum.

(ii) Where air is delivered by a compressor into one tank or compartment (wet tank), and air for braking is taken directly from another tank or compartment (dry tank) only, with the required check valve between the tanks or compartments, a manually operated drain cock on the first (wet) tank or compartment will serve as a means herein required if it conforms to the requirements herein.

(iii) In vacuum systems stopping the engine will serve as the required means, the system remaining evacuated as indicated by the vacuum gauge.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.51. Warning devices and gauges.

(a) General. In the manner and to the extent specified in paragraphs (b), (c), (d), and (e), a truck, or truck tractor must be equipped with a signal that provides a warning to the driver when a failure occurs in the vehicle's service brake system.

(b) Hydraulic brakes. A vehicle manufactured on or after July 1, 1973, and having service brakes activated by hydraulic fluid must be equipped with a warning signal that performs as follows:

(1) If Federal Motor Vehicle Safety Standard No. 105 (Section 571.105) was applicable to the vehicle at the time it was manufactured, the warning signal must conform to the requirements of that standard.

(2) If Federal Motor Vehicle Safety Standard No. 105 (Section 571.105) was not applicable to the vehicle at the time it was manufactured, the warning signal must become operative, before or upon application of the brakes in the event of a hydraulic type complete failure of a partial system. The signal must be readily audible or visible to the driver.

(c) Air brakes. A vehicle (regardless of the date it was manufactured) having service brakes activated by compressed air (air mechanical brakes) or a vehicle towing a vehicle having service brakes activated by compressed air (air mechanical brakes) must be equipped, and perform, as follows:

(1) The vehicle must have a low air pressure warning device that conforms to the requirements of either paragraph (c)(1) (i) or (ii).

(i) If Federal Motor Vehicle Safety Standard No. 121 (Section 571.121) was applicable to the vehicle at the time it was manufactured, the warning device must conform to the requirements of that standard.

(ii) If Federal Motor Vehicle Safety Standard No. 121 (Section 571.121) was not applicable to the vehicle at the time it was manufactured, the vehicle must have a device that provides a readily audible or visible continuous warning to the driver whenever the pressure of the compressed air in the braking system is below a specified pressure, which must be at least one half of the compressor governor cutout pressure.

(2) The vehicle must have a pressure gauge which indicates to the driver the pressure in pounds per square inch available for braking.

(d) Vacuum brakes. A vehicle (regardless of the date it was manufactured) having service brakes activated by vacuum or a vehicle towing a vehicle having service brakes activated by vacuum must be equipped with

(1) A device that provides a readily audible or visible continuous warning to the driver whenever the vacuum in the vehicle's supply reservoir is less than 8 inches of mercury; and

(2) A vacuum gauge which indicates to the driver the vacuum in inches of mercury available for braking.

(e) Hydraulic brakes applied or assisted by air or vacuum. A vehicle having a braking system in which hydraulically activated service brakes are applied or assisted by compressed air or vacuum must be equipped with both a warning signal that conforms to the requirements of paragraph (b) and a warning device that conforms to the requirements of either paragraph (c) or paragraph (d).

(f) Maintenance. The warning signals, devices, and gauges required by 38–393 must be maintained in operative condition.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–393.52. Brake performance.

(a) Upon application of its service brakes, a motor vehicle or combination of motor vehicles must under any condition of loading in which it is found on a public highway, be capable of

(1) Developing a braking force at least equal to the percentage of its gross weight specified in the table in paragraph (d);

(2) Decelerating to a stop from 20 miles per hour at not less than the rate specified in the table in paragraph (d); and

(3) Stopping from 20 miles per hour in a distance, measured from the point at which movement of the service brake pedal or control begins, that is not greater than the distance specified in the table in paragraph (d).

(b) Upon application of its emergency brake system and with no other brake system applied, a motor vehicle or combination of motor vehicles must, under any condition of loading in which it is found on a public highway, be capable of stopping from 20 miles per hour in a distance, measured from the point at which movement of the emergency brake control begins, that is not greater than the distance specified in the table in paragraph (d).

(c) Conformity to the stopping distance requirements of paragraphs (a) and (b) shall be determined under the following conditions:

(1) Any test must be made with the vehicle on a hard surface that is substantially level, dry, smooth, and free of loose material.

(2) The vehicle must be in the center of a 12 foot wide lane when the test begins and must not deviate from that lane during the test.

(d) Vehicle brake performance table:

Type of motor vehicle	Service brake systems		Emergency brake systems	
	Braking fore as a percentage of gross vehicle or combination weight	Deceleration in feet per second per second	Application and braking distance in feet from initial speed of 20 m.p.h.	Application and braking distance in feet from initial speed of 20 m.p.h.
A. <i>Passenger-carrying vehicles.</i>	65.2	21	20	54
(1) Vehicles with a seating capacity of 10 persons or less, including driver, and built on a passenger car chassis				
(2) Vehicles with a seating capacity of more than 10 persons, including driver, and built on a passenger car chassis; vehicles built on a truck chassis and having a manufacturer's GVWR of 10,000 pounds or less	52.8	17	25	66
(3) All other passenger-carrying vehicles	43.5	14	35	85
B. <i>Property-carrying vehicles.</i>	52.8	17	25	66
(1) Single unit vehicles having a manufacturer's GVWR of 10,000 pounds or less	43.4	14	35	85
(2) Single unit vehicles having a manufacturer's GVWR of more than 10,000 pounds, except truck tractors. Combinations of a 2-axle towing vehicle and trailer having a GVWR or 3,000 pounds or less. All combinations of 2 or less vehicles in driveway or towaway operation	43.5	14	40	90

(3) All other property-carrying vehicles and combinations of property-carrying vehicles

Notes: (a) There is a definite mathematical relationship between the figures in columns 2 and 3. If the decelerations set forth in column 3 are divided by 32.2 feet per second per second, the figures in column 2 will be obtained. (For example, 21 divided by 32.2 equals 65.2 percent.) Column 2 is included in the tabulation because certain brake testing devices utilize this factor.

(b) The decelerations specified in column 3 are an indication of the effectiveness of the basic brakes, and as measured in practical brake testing are the maximum decelerations attained at some time during the stop. These decelerations as measured in brake tests cannot be used to compute the values in column 4 because the deceleration is not sustained at the same rate over the entire period of the stop. The deceleration increases from zero to a maximum during a period of brake system application and brake force buildup. Also, other factors may cause the deceleration to decrease after reaching a maximum. The added distance which results because maximum deceleration is not sustained is included in the figures in column 4 but is not indicated by the usual brake testing devices for checking deceleration.

(c) The distances in column 4 and the decelerations in column 3 are not directly related. "Brake system application and braking distance in feet" (column 4) is a definite measure of the overall effectiveness of the braking system, being the distance traveled between the point at which the driver starts to move the braking controls and the point at which the vehicle comes to rest. It includes distance traveled while the brakes are being applied and distance traveled while the brakes are retarding the vehicle.

(d) The distance traveled during the period of brake system application and brake force buildup varies with vehicle type, being negligible for many passenger cars and greatest for combinations of commercial vehicles. This fact accounts for the variation from 20 to 40 feet in the values in column 4 for the various classes of vehicles.

(e) The terms "GVWR" and "GVW" refer to the manufacturer's gross vehicle rating and the actual gross vehicle weight, respectively.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.53. Automatic brake adjusters and brake adjustment indicators.

(a) Automatic brake adjusters (hydraulic brake systems). Each commercial motor vehicle manufactured on or after October 20, 1993, and equipped with a hydraulic brake system, shall meet the automatic brake adjustment system requirements of Federal Motor Vehicle Safety Standard No. 105 (49 CFR 571.105, S5.1) applicable to the vehicle at the time it was manufactured.

(b) Automatic brake adjusters (air brake systems). Each commercial motor vehicle manufactured on or after October 20, 1994, and equipped with an air brake system shall meet the automatic brake adjustment system requirements of Federal Motor Vehicle Safety Standard No. 121 (49 CFR 571.121, S5.1.8) applicable to the vehicle at the time it was manufactured.

(c) Brake adjustment indicator (air brake systems). On each commercial motor vehicle manufactured on or after October 20, 1994, and equipped with an air brake system which contains an external automatic adjustment mechanism and an exposed pushrod, the condition of service brake under adjustment shall be displayed by a brake adjustment indicator conforming to the requirements of Federal Motor Vehicle Safety Standard No. 121 (49 CFR 571.121, S5.1.8) applicable to the vehicle at the time it was manufactured.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART D

Glazing and Window Construction

38-393.60. Glazing in specified openings.

(a) Glazing material. Glazing material used in windshields, windows, and doors on a motor vehicle manufactured on or after December 25, 1968, shall at a minimum meet the requirements of Federal

Motor Vehicle Safety Standard (FMVSS) No. 205 in effect on the date of manufacture of the motor vehicle. The glazing material shall be marked in accordance with FMVSS No. 205 (49 CFR 571.205, S6)

(b) Windshield required. Each bus, truck and truck-tractor shall be equipped with a windshield. Each windshield or portion of a multi-piece windshield shall be mounted using the full periphery of the glazing material.

(c) Windshield condition. With the exception of the condition listed in paragraphs (c)(1), (c)(2), and (c)(3), each windshield shall be free of discoloration or damage in the area extending upward from the height of the top of the steering wheel (excluding a 51 mm (2 inch) border at the top of the windshield) and extending from a 25 mm (1 inch) border at each side of the windshield or windshield panel. Exception:

(1) Coloring or tinting which meets the requirements of paragraph (d);

(2) Any crack that is not intersected by any other cracks;

(3) Any damaged area which can be covered by a disc 19 mm (3.4 inch) in diameter if not closer than 76 mm (3 inches) to any other similarly damaged area.

(d) Use of vision reducing matter. No motor vehicle may be operated with any label, sticker, decalcomania, or other vision reducing matter covering any portion of its windshield or windows at either side of the driver's compartment, except that stickers required by law may be affixed at the bottom of the windshield, provided no portion of any label, sticker, decalcomania, or other vision reducing matter may extend upward more than 4 1/2 inches from the bottom of such windshield.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.62. Window obstructions.

Windows, if otherwise capable of complying with Regulation 38-393.61 (a) and (b), shall not be obstructed by bars or other such means located either inside or outside such windows such as would hinder the escape of occupants unless such bars or other such means are so constructed as to provide a clear opening, at least equal to the opening provided by the window to which it is adjacent, when subjected to the same test specified in Regulation 38-393.61(c). The point of application of such test force shall be such as will be most likely to result in the removal of the obstruction.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART E

Fuel Systems

38-393.65. All fuel systems.

(a) Application of the rules. The rules apply to systems for containing and supplying fuel for the operation of motor vehicles or for the operation of auxiliary equipment installed on, or used in connection with, motor vehicles.

(b) Location. Each fuel system must be located on the motor vehicle so that

(1) No part of the system extends beyond the widest part of the vehicle;

(2) No part of a fuel tank is forward of the front axle of a power unit;

(3) Fuel spilled vertically from a fuel tank while it is being filled will not contact any part of the exhaust or electrical systems of the vehicle, except the fuel level indicator assembly;

(4) Fill pipe openings are located outside the vehicle's passenger compartment and its cargo compartment;

(5) A fuel line does not extend between a towed vehicle and the vehicle that is towing it while the combination of vehicles is in motion; and

(c) Fuel tank installation. Each fuel tank must be securely attached to the motor vehicle in a workmanlike manner.

(d) Gravity or syphon feed prohibited. A fuel system must not supply fuel by gravity or syphon feed directly to the carburetor or injector.

(e) Selection control valve location. If a fuel system includes a selection control valve which is operable by the driver to regulate the flow of fuel from two or more fuel tanks, the valve must be installed so that either

(1) The driver may operate it while watching the roadway and without leaving his/her driving position; or

(2) The driver must stop the vehicle and leave his/her seat in order to operate the valve.

(f) Fuel lines. A fuel line which is not completely enclosed in a protective housing must not extend more than 2 inches below the fuel tank or its sump. Diesel fuel crossover, return, and withdrawal lines which extend below the bottom of the tank or sump must be protected against damage from impact. Every fuel line must be

(1) Long enough and flexible enough to accommodate normal movements of the parts to which it is attached without incurring damage; and

(2) Secured against chafing, kinking, or other causes of mechanical damage.

(g) Excess flow valve. When pressure devices are used to force fuel from a fuel tank, a device which prevents the flow of fuel from the fuel tank if the fuel feed line is broken must be installed in the fuel system.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.67. Liquid fuel tanks.

(a) Application of the rules.

(1) A liquid fuel tank manufactured on or after January 1, 1973, and a side mounted gasoline tank must conform to all the rules.

(2) [Reserved]

(3) A diesel fuel tank manufactured before January 1, 1973, and mounted on a vehicle must conform to the rules in paragraph (c)(7)(iii) Reserved

(4) *

(5) A gasoline tank, other than a side mounted gasoline tank, manufactured before January 1, 1973, and mounted on a vehicle must conform to the rules in paragraphs (c) (1) through (10), inclusive.

(6) Private motor carrier of passengers. Motor carriers engaged in the private transportation of passengers may continue to operate a commercial motor vehicle which was not subject to 38-393 or 49 CFR 571.301 at the time of its manufacture, provided the fuel tank of such vehicle is maintained to the original manufacturer's standards.

(b) Definitions. As used in 38-393

(1) The term liquid fuel tank means a fuel tank designed to contain a fuel that is liquid at normal atmospheric pressures and temperatures.

(2) A side mounted fuel tank is a liquid fuel tank which

(i) If mounted on a truck tractor, extends outboard of the vehicle frame and outside of the plan view outline of the cab; or

(ii) If mounted on a truck, extends outboard of a line parallel to the longitudinal centerline of the truck and tangent to the outboard side of a front tire in a straight ahead position. In determining whether a fuel tank on a truck or truck tractor is side mounted, the fill pipe is not considered a part of the tank.

(c) Construction of liquid fuel tanks

(1) Joints. Joints of a fuel tank body must be closed by arc, gas, seam, or spot welding, by brazing, by silver soldering, or by techniques which provide heat resistance and mechanical securement at least equal to those specifically named. Joints must not be closed solely by crimping or by soldering with a lead based or other soft solder.

* So in original. No paragraph (a)(4) was promulgated by State Register Volume 30, Issue No. 4, eff April 28, 2006.

(2) Fittings. The fuel tank body must have flanges or spuds suitable for the installation of all fittings.

(3) Threads. The threads of all fittings must be Dryseal American Standard Taper Pipe Thread or Dryseal SAE Short Taper Pipe Thread, specified in Society of Automotive Engineers Standard J476, as contained in the 1971 edition of the "SAE Handbook," except that straight (nontapered) threads may be used on fittings having integral flanges and using gaskets for sealing. At least four full threads must be in engagement in each fitting.

(4) Drains and bottom fittings.

(i) Drains or other bottom fittings must not extend more than three fourths of an inch below the lowest part of the fuel tank or sump.

(ii) Drains or other bottom fittings must be protected against damage from impact.

(iii) If a fuel tank has drains the drain fittings must permit substantially complete drainage of the tank.

(iv) Drains or other bottom fittings must be installed in a flange or spud designed to accommodate it.

(5) Fuel withdrawal fittings. Except for diesel fuel tanks, the fittings through which fuel is withdrawn from a fuel tank must be located above the normal level of fuel in the tank when the tank is full.

(6) [Reserved]

(7) Fill pipe.

(i) Each fill pipe must be designed and constructed to minimize the risk of fuel spillage during fueling operations and when the vehicle is involved in a crash.

(ii) The fill pipe and vents of a fuel tank having a capacity of more than 25 gallons of fuel must permit filling the tank with fuel at a rate of at least 20 gallons per minute without fuel spillage.

(iii) Each fill pipe must be fitted with a cap that can be fastened securely over the opening in the fill pipe. Screw threads or a bayonet type joint are methods of conforming to the requirements of this subdivision.

(8) Safety venting system. A liquid fuel tank with a capacity of more than 25 gallons of fuel must have a venting system which, in the event the tank is subjected to fire, will prevent internal tank pressure from rupturing the tank's body, seams, or bottom opening (if any).

(9) Pressure resistance. The body and fittings of a liquid fuel tank with a capacity of more than 25 gallons of fuel must be capable of withstanding an internal hydrostatic pressure equal to 150 percent of the maximum internal pressure reached in the tank during the safety venting systems test specified in paragraph (d)(1).

(10) Air vent. Each fuel tank must be equipped with a nonspill air vent (such as a ball check). The air vent may be combined with the fill pipe cap or safety vent, or it may be a separate unit installed on the fuel tank.

(11) Markings. If the body of a fuel tank is readily visible when the tank is installed on the vehicle, the tank must be plainly marked with its liquid capacity. The tank must also be plainly marked with a warning against filling it to more than 95 percent of its liquid capacity.

(12) Overfill restriction. A liquid fuel tank manufactured on or after January 1, 1973, must be designed and constructed so that

(i) The tank cannot be filled, in a normal filling operation, with a quantity of fuel that exceeds 95 percent of the tank's liquid capacity; and

(ii) When the tank is filled, normal expansion of the fuel will not cause fuel spillage.

(d) Liquid fuel tank tests. Each liquid fuel tank must be capable of passing the tests specified in paragraphs (d) (1) and (2).¹

(1) Safety venting system test

¹The specified tests are a measure of performance only. Manufacturers and carriers may use any alternative procedures which assure that their equipment meets the required performance criteria.

(i) Procedure. Fill the tank three fourths full with fuel, seal the fuel feed outlet, and invert the tank. When the fuel temperature is between 50 deg. F. and 80 deg. F., apply an enveloping flame to the tank so that the temperature of the fuel rises at a rate of not less than 6 deg. F. and not more than 8 deg. F. per minute.

(ii) Required performance. The safety venting system required by paragraph (c)(8) activate before the internal pressure in the tank exceeds 50 pounds per square inch, gauge, and the internal pressure must not thereafter exceed the pressure at which the system activated by more than five pounds per square inch despite any further increase in the temperature of the fuel.

(2) Leakage test

(i) Procedure. Fill the tank to capacity with fuel having a temperature between 50 deg. F. and 80 deg. F. With the fill pipe cap installed, turn the tank through an angle of 150 deg. in any direction about any axis from its normal position.

(ii) Required performance. Neither the tank nor any fitting may leak more than a total of one ounce by weight of fuel per minute in any position the tank assumes during the test.

(e) Side mounted liquid fuel tank tests. Each side mounted liquid fuel tank must be capable of passing the tests specified in paragraphs (e) (1) and (2) and the tests specified in paragraphs (d) (1) and (2).¹

(1) Drop test

(i) Procedure. Fill the tank with a quantity of water having a weight equal to the weight of the maximum fuel load of the tank and drop the tank 30 feet onto an unyielding surface so that it lands squarely on one corner.

(ii) Required performance. Neither the tank nor any fitting may leak more than a total of 1 ounce by weight of water per minute.

(2) Fill pipe test

(i) Procedure. Fill the tank with a quantity of water having a weight equal to the weight of the maximum fuel load of the tank and drop the tank 10 feet onto an unyielding surface so that it lands squarely on its fill pipe.

(ii) Required performance. Neither the tank nor any fitting may leak more than a total of 1 ounce by weight of water per minute.

(f) Certification and markings. Each liquid fuel tank shall be legibly and permanently marked by the manufacturer with the following minimum information:

(1) The month and year of manufacture,

(2) The manufacturer's name on tanks manufactured on and after July 1, 1988, and means of identifying the facility at which the tank was manufactured, and

(3) A certificate that it conforms to the rules 38-393 applicable to the tank. The certificate must be in the form set forth in either of the following:

(i) If a tank conforms to all rules 38-393 pertaining to side mounted fuel tanks: "Meets all FHWA side mounted tank requirements."

(ii) If a tank conforms to all rules in 38-393 pertaining to tanks which are not side mounted fuel tanks: "Meets all FHWA requirements for non side mounted fuel tanks."

(iii) The form of certificate specified in paragraph (f)(3) (i) or (ii) may be used on a liquid fuel tank manufactured before July 11, 1973, but it is not mandatory for liquid fuel tanks manufactured before March 7, 1989. The form of certification manufactured on or before March 7, 1989, must meet the requirements in effect at the time of manufacture.

38-393.69. Liquefied petroleum gas systems.

(a) A fuel system that uses liquefied petroleum gas as a fuel for the operation of a motor vehicle or for the operation of auxiliary equipment installed on, or used in connection with, a motor vehicle must conform to the "Standards for the Storage and Handling of Liquefied Petroleum Gases" of the National Fire Protection Association, Battery March Park, Quincy, MA 02269, as follows:

(1) A fuel system installed before December 31, 1962, must conform to the 1951 edition of the Standards.

(2) A fuel system installed on or after December 31, 1962, and before January 1, 1973, must conform to Division IV of the June 1959 edition of the Standards.

(3) A fuel system installed on or after January 1, 1973, and providing fuel for propulsion of the motor vehicle must conform to Division IV of the 1969 edition of the Standards.

(4) A fuel system installed on or after January 1, 1973, and providing fuel for the operation of auxiliary equipment must conform to Division VII of the 1969 edition of the Standards.

(b) When the rules require a fuel system to conform to a specific edition of the Standards, the fuel system may conform to the applicable provisions in a later edition of the Standards specified in 38–393.

(c) The tank of a fuel system must be marked to indicate that the system conforms to the Standards.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART F

Coupling Devices and Towing Methods

38–393.70. Coupling devices and towing methods, except for driveaway towaway operations.

(a) Tracking. When two or more vehicles are operated in combination, the coupling devices connecting the vehicles shall be designed, constructed, and installed, and the vehicles shall be designed and constructed, so that when the combination is operated in a straight line on a level, smooth, paved surface, the path of the towed vehicle will not deviate more than 3 inches to either side of the path of the vehicle that tows it.

(b) Fifth wheel assemblies

(1) Mounting

(i) Lower half. The lower half of a fifth wheel mounted on a truck tractor or converter dolly must be secured to the frame of that vehicle with properly designed brackets, mounting plates or angles and properly tightened bolts of adequate size and grade, or devices that provide equivalent security. The installation shall not cause cracking, warping, or deformation of the frame. The installation must include a device for positively preventing the lower half of the fifth wheel from shifting on the frame to which it is attached.

(ii) Upper half. The upper half of a fifth wheel must be fastened to the motor vehicle with at least the same security required for the installation of the lower half on a truck tractor or converter dolly.

(2) Locking. Every fifth wheel assembly must have a locking mechanism. The locking mechanism, and any adapter used in conjunction with it, must prevent separation of the upper and lower halves of the fifth wheel assembly unless a positive manual release is activated. The release may be located so that the driver can operate it from the cab. If a motor vehicle has a fifth wheel designed and constructed to be readily separable, the fifth wheel locking devices shall apply automatically on coupling.

(3) Location. The lower half of a fifth wheel shall be located so that, regardless of the condition of loading, the relationship between the kingpin and the rear axle or axles of the towing motor vehicle will properly distribute the gross weight of both the towed and towing vehicles on the axles of those vehicles, will not unduly interfere with the steering, braking, and other maneuvering of the towing vehicle, and will not otherwise contribute to unsafe operation of the vehicles comprising the combination. The upper half of a fifth wheel shall be located so that the weight of the vehicles is properly distributed on their axles and the combination of vehicles will operate safely during normal operation.

(c) Towing of full trailers. A full trailer must be equipped with a tow bar and a means of attaching the tow bar to the towing and towed vehicles. The tow bar and the means of attaching it must

(1) Be structurally adequate for the weight being drawn;

(2) Be properly and securely mounted;

(3) Provide for adequate articulation at the connection without excessive slack at that location; and

(4) Be provided with a locking device that prevents accidental separation of the towed and towing vehicles. The mounting of the trailer hitch (pintle hook or equivalent mechanism) on the towing vehicle must include reinforcement or bracing of the frame sufficient to produce strength and rigidity of the frame to prevent its undue distortion.

(d) Safety devices in case of tow bar failure or disconnection. Every full trailer and every converter dolly used to convert a semitrailer to a full trailer must be coupled to the frame, or an extension of the frame, of the motor vehicle which tows it with one or more safety devices to prevent the towed vehicle from breaking loose in the event the tow bar fails or becomes disconnected. The safety device must meet the following requirements:

(1) The safety device must not be attached to the pintle hook or any other device on the towing vehicle to which the tow bar is attached. However, if the pintle hook or other device was manufactured prior to July 1, 1973, the safety device may be attached to the towing vehicle at a place on a pintle hook forging or casting if that place is independent of the pintle hook.

(2) The safety device must have no more slack than is necessary to permit the vehicles to be turned properly.

(3) The safety device, and the means of attaching it to the vehicles, must have an ultimate strength of not less than the gross weight of the vehicle or vehicles being towed.

(4) The safety device must be connected to the towed and towing vehicles and to the tow bar in a manner which prevents the tow bar from dropping to the ground in the event it fails or becomes disconnected.

(5) Except as provided in paragraph (d)(6), if the safety device consists of safety chains or cables, the towed vehicle must be equipped with either two safety chains or cables or with a bridle arrangement of a single chain or cable attached to its frame or axle at two points as far apart as the configuration of the frame or axle permits. The safety chains or cables shall be either two separate pieces, each equipped with a hook or other means for attachment to the towing vehicle, or a single piece leading along each side of the tow bar from the two points of attachment on the towed vehicle and arranged into a bridle with a single means of attachment to be connected to the towing vehicle. When a single length of cable is used, a thimble and twin base cable clamps shall be used to form the forward bridle eye. The hook or other means of attachment to the towing vehicle shall be secured to the chains or cables in a fixed position.

(6) If the towed vehicle is a converter dolly with a solid tongue and without a hinged tow bar or other swivel between the fifth wheel mounting and the attachment point of the tongue eye or other hitch device

(i) Safety chains or cables, when used as the safety device for that vehicle, may consist of either two chains or cables or a single chain or cable used alone;

(ii) A single safety device, including a single chain or cable used alone as the safety device, must be in line with the centerline of the trailer tongue; and

(iii) The device may be attached to the converter dolly at any point to the rear of the attachment point of the tongue eye or other hitch device.

(7) Safety devices other than safety chains or cables must provide strength, security of attachment, and directional stability equal to, or greater than, safety chains or cables installed in accordance with paragraphs (d) (5) and (6).

(8) When two safety devices, including two safety chains or cables, are used and are attached to the towing vehicle at separate points, the points of attachment on the towing vehicle shall be located equally distant from, and on opposite sides of, the centerline of the towing vehicle. Where two chains or cables are attached to the same point on the towing vehicle, and where a bridle or a single chain or cable is used, the point of attachment must be on the longitudinal centerline of the towing vehicle. A single safety device, other than a chain or cable, must also be attached to the towing vehicle at a point on its longitudinal centerline.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.71. Coupling devices and towing methods, driveaway towaway operations.

(a) Number in combination.

(1) No more than three saddle mounts may be used in any combination.

(2) No more than one tow bar may be used in any combination.

(3) When motor vehicles are towed by means of triple saddle mounts, the towed vehicles shall have brakes acting on all wheels which are in contact with the roadway.

(b) Carrying vehicles on towing vehicle.

(1) When adequately and securely attached by means equivalent in security to that provided in paragraph (j)(2), a motor vehicle or motor vehicles may be full mounted on the structure of a towing vehicle engaged in any driveaway towaway operation.

(2) No motor vehicle or motor vehicles may be full mounted on a towing vehicle unless the relationship of such full mounted vehicles to the rear axle or axles results in proper distribution of the total gross weight of the vehicles and does not unduly interfere with the steering, braking, or maneuvering of the towing vehicle, or otherwise contribute to the unsafe operation of the vehicles comprising the combination.

(c) Carrying vehicles on towed vehicles.

(1) When adequately and securely attached by means equivalent in security to that provided in paragraph (j)(2), a motor vehicle or motor vehicles may be full mounted on the structure of towed vehicles engaged in any driveaway towaway operation.

(2) No motor vehicle shall be full mounted on a motor vehicle towed by means of a tow bar unless the towed vehicle is equipped with brakes and is provided with means for effective application of brakes acting on all wheels and is towed on its own wheels.

(3) No motor vehicle or motor vehicles shall be full mounted on a motor vehicle towed by means of a saddle mount unless the center line of the kingpin or equivalent means of attachment of such towed vehicle shall be so located on the towing vehicle that the relationship to the rear axle or axles results in proper distribution of the total gross weight of the vehicles and does not unduly interfere with the steering, braking, or maneuvering of the towing vehicle or otherwise contribute to the unsafe operation of vehicles comprising the combination; and unless a perpendicular to the ground from the center of gravity of the full mounted vehicles lies forward of the center line of the rear axle of the saddle mounted vehicle.

(4) If a motor vehicle towed by means of a double saddle mount has any vehicle full mounted on it, such saddle mounted vehicle shall at all times while so loaded have effective brakes acting on those wheels which are in contact with the roadway.

(d) Bumper tow bars on heavy vehicles prohibited. Tow bars of the type which depend upon the bumpers as a means of transmitting forces between the vehicles shall not be used to tow a motor vehicle weighing more than 5,000 pounds.

(e) Front wheels of saddle mounted vehicles restrained. A motor vehicle towed by means of a saddle mount shall have the motion of the front wheels restrained if under any condition of turning of such wheels they will project beyond the widest part of either the towed or towing vehicle.

(f) Vehicles to be towed in forward position. Unless the steering mechanism is adequately locked in a straight forward position, all motor vehicles towed by means of a saddle mount shall be towed with the front end mounted on the towing vehicle.

(g) Means required for towing.

(1) No motor vehicle or motor vehicles shall be towed in driveaway towaway operations by means other than tow bar or saddle mount connections which shall meet the requirements.

(2) For the purpose of the regulations of 38-382:

(i) Coupling devices such as those used for towing house trailers and employing ball and socket connections shall be considered as tow bars.

(ii) Motor vehicles or parts of motor vehicles adequately, securely, and rigidly attached by devices meeting the requirements of paragraph (n) shall be considered as one vehicle in any position in any combination.

(h) Requirements for tow bars. Tow bars shall comply with the following requirements:

(1) Tow bars, structural adequacy and mounting. Every tow bar shall be structurally adequate and properly installed and maintained. To insure that it is structurally adequate, it must, at least, meet the requirements of the following table:

Gross weight of towed vehicle (pounds) ¹	Longitudinal strength in tension and comparison ²		
	All tow-bars	New tow-bars acquired and used by a motor carrier after Sept. 30, 1948	Strength as a beam (in any direction concentrated load at center) ^{2,3}
	Pounds		
Less than 5,000	3,000	6,500	3,000
5,000 and over			
Less than 10,000	6,000	1	1
10,000 and over			
Less than 15,000	9,000	1	1

¹ The required strength of tow-bars for towed vehicles of 15,000 pounds and over gross weight and of new towbars acquired and used after Sept. 30, 1948, for towed vehicles of 5,000(¹) pounds and over gross weight shall be computed by means of the following formulae: Longitudinal strength = gross weight of towed vehicle x 1.3. Strength as a beam = gross weight of towed vehicle x 0.6.

² In testing, the whole unit shall be tested with all clamps, joints, and pins so mounted and fastened as to approximate conditions of actual operation.

³ This test shall be applicable only to tow-bars which are, in normal operation, subjected to a bending movement such as tow-bars for house trailer.

(2) Tow bars, jointed. The tow bar shall be so constructed as to freely permit motion in both horizontal and vertical planes between the towed and towing vehicles. The means used to provide the motion shall be such as to prohibit the transmission of stresses under normal operation between the towed and towing vehicles, except along the longitudinal axis of the tongue or tongues.

(3) Tow bar fastenings. The means used to transmit the stresses to the chassis or frames of the towed and towing vehicles may be either temporary structures or bumpers or other integral parts of the vehicles: Provided, however, that the means used shall be so constructed, installed, and maintained that when tested as an assembly, failure in such members shall not occur when the weakest new tow bar which is permissible under paragraph (h)(1) is subjected to the tests given therein.

(4) Means of adjusting length. On tow bars, adjustable as to length, the means used to make such adjustment shall fit tightly and not result in any slackness or permit the tow bar to bend. With the tow bar supported rigidly at both ends and with a load of 50 pounds at the center, the sag, measured at the center, in any direction shall not exceed 0.25 inch under any condition of adjustment as to length.

(5) Method of clamping. Adequate means shall be provided for securely fastening the tow bar to the towed and towing vehicles.

(6) Tow bar connection to steering mechanism. The tow bar shall be provided with suitable means of attachment to and actuation of the steering mechanism, if any, of the towed vehicle. The attachment shall provide for sufficient angularity of movement of the front wheels of the towed vehicle so that it may follow substantially in the path of the towing vehicle without cramping the tow bar. The tow bar shall be provided with suitable joints to permit such movement.

(7) Tracking. The tow bar shall be so designed, constructed, maintained, and mounted as to cause the towed vehicle to follow substantially in the path of the towing vehicle. Tow bars of such design on in our condition as to permit the towed vehicle to deviate more than 3 inches to either side of the path of a towing vehicle moving in a straight line as measured from the center of the towing vehicle are prohibited.

(8) Passenger car trailer type couplings. Trailer couplings used for driveaway towaway operations of passenger car trailers shall conform to Society of Automotive Engineers Standard No. J684c,

“Trailer Couplings and Hitches Automotive Type,” July 1970.¹

(9) Marking tow bars. Every tow bar acquired and used in driveaway towaway operations by a motor carrier shall be plainly marked with the following certification of the manufacturer thereof (or words of equivalent meaning):

This tow bar complies with the requirements of the Federal Highway Administration for (maximum gross weight for which tow bar is manufactured) vehicles.

Allowable Maximum Gross Weight _____

Manufactured _____

(month and year)

by _____

(name of manufacturer)

Tow bar certification manufactured before the effective date of this regulation must meet requirements in effect at the time of manufacture.

(10) Safety devices in case of tow bar failure or disconnection.

(i) The towed vehicle shall be connected to the towing vehicle by a safety device to prevent the towed vehicle from breaking loose in the event the tow bar fails or becomes disconnected. When safety chains or cables are used as the safety device for that vehicle, at least two safety chains or cables meeting the requirements of paragraph (h)(10)(ii) shall be used. The tensile strength of the safety device and the means of attachment to the vehicles shall be at least equivalent to the corresponding longitudinal strength for tow bars required in the table of paragraph (h)(1). If safety chains or cables are used as the safety device, the required strength shall be the combined strength of the combination of chains and cables.

(ii) If chains or cables are used as the safety device, they shall be crossed and attached to the vehicles near the points of bumper attachments to the chassis of the vehicles. The length of chain used shall be no more than necessary to permit free turning of the vehicles. The chains shall be attached to the tow bar at the point of crossing or as close to that point as is practicable.

(iii) A safety device other than safety chains or cables must provide strength, security of attachment, and directional stability equal to, or greater than, that provided by safety chains or cables installed in accordance with paragraph (h)(10)(ii). A safety device other than safety chains or cables must be designed, constructed, and installed so that, if the tow bar fails or becomes disconnected, the tow bar will not drop to the ground.

(i) [Reserved]

(j) Requirements for upper half of saddle mounts. The upper half of any saddle mount shall comply with the following requirements:

(1) Upper half connection to towed vehicle. The upper half shall be securely attached to the frame or axle of the towed vehicle by means of U bolts or other means providing at least equivalent security.

(2) U bolts or other attachments. U bolts used to attach the upper half to the towed vehicle shall be made of steel rod, free of defects, so shaped as to avoid at any point a radius of less than 1 inch: Provided, however, That a lesser radius may be utilized if the U bolt is so fabricated as not to cause more than 5 percent reduction in cross sectional area at points of curvature, in which latter event the minimum radius shall be one sixteenth inch. U bolts shall have a diameter not less than required by the following table:

DIAMETER OF U-BOLTS IN INCHES				
Weights in pounds of heaviest towed vehicle	Double or triple saddle mount			
	Front mount	Middle or front mount	Rear mount	Single saddle-mount ¹

¹ “Pursuant to direction of the South Carolina Legislative Council, this footnote 1 refers to note 1 following the table in (h)(1), ante.”

Up to 5,000	0.625	0.5625	0.0500	0.500
5,000 and over	0.6875	0.625	0.5625	0.5625

¹ The total weight of all the vehicles being towed shall govern. If other devices are used to accomplish the same purposes as U bolts they shall have at least equivalent strength of U bolts made of mild steel. Cast iron shall not be used for clamps or any other holding devices.

(3) U bolts and points of support, location. The distance between the most widely separated U bolts shall not be less than 9 inches. The distance between the widely separated points where the upper half supports the towed vehicle shall not be less than 9 inches, except that saddle mounts employing ball and socket joints shall employ a device which clamps the axle of the towed vehicle throughout a length of not less than 5 inches.

(4) Cradle type upper halves, specifications. Upper halves of the cradle type using vertical members to restrain the towed vehicle from relative movement in the direction of motion of the vehicles shall be substantially constructed and adequate for the purpose. Such cradle mounts shall be equipped with at least one bolt or equivalent means to provide against relative vertical movement between the upper half and the towed vehicle. Bolts, if used, shall be at least one half inch in diameter. Devices using equivalent means shall have at least equivalent strength. The means used to provide against relative vertical motion between the upper half and the towed vehicle shall be such as not to permit a relative motion of over one half inch. The distance between the most widely separated points of support between the upper half and the towed vehicle shall be at least 9 inches.

(5) Lateral movement of towed vehicle.

(i) Towed vehicles having a straight axle or an axle having a drop of less than 3 inches, unless the saddle mount is constructed in accordance with paragraph (m)(2), shall be securely fastened by means of chains or cables to the upper half so as to insure against relative lateral motion between the towed vehicle and the upper half. The chains or cables shall be at least 3/16 inch diameter and secured by bolts of at least equal diameter.

(ii) Towed vehicles with an axle with a drop of 3 inches or more, or connected by a saddle mount constructed in accordance with paragraph (m)(2), need not be restrained by chains or cables provided that the upper half is so designed as to provide against such relative motion.

(iii) Chains or cables shall not be required if the upper half is so designed as positively to provide against lateral movement of the axle.

(k) Requirements for lower half of saddle mounts. The lower half of any saddle mount shall comply with the following requirements:

(1) U bolts or other attachments. U bolts used to attach the lower half to the towing vehicle shall be made of steel rod, free of defects, so shaped as to avoid at any point a radius of less than 1 inch: Provided, however, That a lesser radius may be utilized if the U bolt is so fabricated as not to cause more than 5 percent reduction in cross sectional area at points of curvature, in which latter event the minimum radius shall be one sixteenth inch. U bolts shall have a total cross sectional area not less than as required by the following table:

Weights in pounds of heaviest towed vehicle	Total Cross-Sectional Area of U-Bolts in Square Inches			
	Double or triple saddle mount			Single saddle-mount ¹
	Front mount	Middle or front mount	Rear mount	
UP TO 5,000	1.2	1.0	0.8	0.8
5,000 and over	1.4	1.2	1.0	1.0

¹ The total weight of all the vehicles being towed shall govern. If other devices are used to accomplish the same purposes as U bolts they shall have at least equivalent strength of U bolts made of mild steel. Cast iron shall not be used for clamps or any other holding devices.

(2) Shifting. Adequate provision shall be made by design and installation to provide against relative movement between the lower half and the towing vehicle especially during periods of rapid acceleration and deceleration. To insure against shifting, designs of the tripod type shall be equipped with adequate and securely fastened hold back chains or similar devices.

(3) Swaying.

(i) Adequate provision shall be made by design and installation to provide against swaying or lateral movement of the towed vehicle relative to the towing vehicle. To insure against swaying, lower halves designed with cross members attached to but separable from vertical members shall have such cross members fastened to the vertical members by at least two bolts on each side. Such bolts shall be of at least equivalent cross sectional area as those required for U bolts for the corresponding saddle mount as given in the table in paragraph (k)(1). The minimum distance between the most widely separated points of support of the cross member by the vertical member shall be three inches as measured in a direction parallel to the longitudinal axis of the towing vehicle.

(ii) The lower half shall have a bearing surface on the frame of the towing vehicle of such dimensions that the pressure exerted by the lower half upon the frame of the towing vehicle shall not exceed 200 pounds per square inch under any conditions of static loading. Hardwood blocks or blocks of other suitable material, such as hard rubber, aluminum or brackelining, if used between the lower half and the frame of the towing vehicle shall be at least 1/2 inch thick, 3 inches wide, and a combined length of 6 inches.

(iii) Under no condition shall the highest point of support of the towed vehicle by the upper half be more than 24 inches, measured vertically, above the top of the frame of the towing vehicle, measured at the point where the lower half rests on the towing vehicle.

(4) Wood blocks.

(i) Hardwood blocks of good quality may be used to build up the height of the front end of the towed vehicle, provided that the total height of such wood blocks shall not exceed 8 inches and not over two separate pieces are placed upon each other to obtain such height; however, hardwood blocks, not over 4 in number, to a total height not to exceed 14 inches, may be used if the total cross sectional area of the U bolts used to attach the lower half of the towing vehicle is at least 50 percent greater than that required by the table contained in paragraph (k)(1), or, if other devices are used in lieu of U bolts, they shall provide for as great a resistance to bending as is provided by the larger U bolts above prescribed.

(ii) Hardwood blocks must be at least 4 inches in width and the surfaces between blocks or block and lower half or block and upper half shall be planed and so installed and maintained as to minimize any tendency of the towed vehicle to sway or rock.

(5) Cross member, general requirements. The cross member, which is that part of the lower half used to distribute the weight of the towed vehicle equally to each member of the frame of the towing vehicle, if used, shall be structurally adequate and properly installed and maintained adequately to perform this function.

(6) Cross member, use of wood. No materials, other than suitable metals, shall be used as the cross member, and wood may not be used structurally in any manner that will result in its being subject to tensile stresses. Wood may be used in cross members if supported throughout its length by suitable metal cross members.

(7) Lower half strength. The lower half shall be capable of supporting the loads given in the following table. For the purpose of test, the saddle mount shall be mounted as normally operated and the load applied through the upper half:

MINIMUM TEST LOAD IN POUNDS				
Weights in pounds of heaviest towed vehicle	Double or triple saddle mount			
	Front mount	Middle or front mount	Rear mount	Single saddle-mount ¹
UP TO 5,000	15,000	10,000	5,000	5,000
5,000 and over	30,000	20,000	10,000	10,000

¹ The total weight of all the vehicles being towed shall govern.

(l) Requirements for kingpins of saddle mounts. The kingpin of any saddle mount shall comply with the following requirements:

- (1) Kingpin size.

(i) Kingpins shall be constructed of steel suitable for the purpose, free of defects, and having a diameter not less than required by the following table:

DIAMETER OF SOLID KINGPIN IN INCHES								
Weights in pounds of heaviest towed vehicle	Double or triple saddle mount							
	Front mount		Middle or front mount		Rear mount		Single saddle-mount ¹	
	Mild steel	H.T.S. ²	Mild steel	H.T.S. ²	Mild steel	H.T.S. ²	Mild steel	H.T.S. ²
UP TO 5,000	1.125	1.000	1.000	0.875	0.875	0.750	0.875	0.750
5,000 and over	1.500	1.125	1.250	1.000	1.000	0.875	1.000	0.875

¹ The total weight of all the vehicles being towed shall govern.

² High tensile steel is steel having a minimum ultimate strength of 65,000 pounds per square inch.

(ii) If a ball and socket joint is used in place of a kingpin, the diameter of the neck of the ball shall be at least equal to the diameter of the corresponding solid kingpin given in the above table. If hollow kingpins are used, the metallic cross sectional area shall be at least equal to the cross sectional area of the corresponding solid kingpin.

(2) Kingpin fit. If a kingpin bushing is not used, the king pin shall fit snugly into the upper and lower halves but shall not bind. Those portions of the upper or lower halves in moving contact with the kingpin shall be smoothly machined with no rough or sharp edges. The bearing surface thus provided shall not be less in depth than the radius of the kingpin.

(3) Kingpin bushing on saddle mounts. The kingpin of all new saddle mounts acquired and used shall be snugly enclosed in a bushing at least along such length of the kingpin as may be in moving contact with either the upper or lower halves. The bearing surface thus provided shall not be less in depth than the radius of the kingpin.

(4) Kingpin to restrain vertical motion. The kingpin shall be so designed and installed as to restrain the upper half from moving in a vertical direction relative to the lower half.

(m) Additional requirements for saddle mounts. Saddle mounts shall comply with the following requirements:

(1) Bearing surface between upper and lower halves. The upper and lower halves shall be so constructed and connected that the bearing surface between the two halves shall not be less than 16 square inches under any conditions of angularity between the towing and towed vehicles: Provided, however, That saddle mounts using a ball and socket joint shall have a ball of such dimension that the static bearing load shall not exceed 800 pounds per square inch, based on the projected cross sectional area of the ball: And further provided, That saddle mounts having the upper half supported by ball, taper, or roller bearings shall not have such bearings loaded beyond the limits prescribed for such bearings by the manufacturer thereof. The upper half shall rest evenly and smoothly upon the lower half and the contact surfaces shall be lubricated and maintained so that there shall be a minimum of frictional resistance between the parts.

(2) Saddle mounts, angularity. All saddle mounts acquired and used shall provide for angularity between the towing and towed vehicles due to vertical curvatures of the highway. Such means shall not depend upon either the looseness or deformation of the parts of either the saddle mount or the vehicles to provide for such angularity.

(3) Tracking. The saddle mount shall be so designed, constructed, maintained, and installed that the towed vehicle or vehicles will follow substantially in the path of the towing vehicle without swerving. Towed vehicles shall not deviate more than 3 inches to either side of the path of the towing vehicle when moving in a straight line.

(4) Prevention of frame bending. Where necessary, provision shall be made to prevent the bending of the frame of the towing vehicle by insertion of suitable blocks inside the frame channel to prevent kinking. The saddle mount shall not be so located as to cause deformation of the frame by reason of cantilever action.

(5) Extension of frame. No saddle mount shall be located at a point to the rear of the frame of a towing vehicle.

(6) Nuts, secured. All nuts used on bolts, U bolts, king pins, or in any other part of the saddle mount shall be secured against accidental disconnection by means of cotter keys, lock washers,

double nuts, safety nuts, or equivalent means. Parts shall be so designed and installed that nuts shall be fully engaged.

(7) Inspection of all parts. The saddle mount shall be so designed that it may be disassembled and each separate part inspected for worn, bent, cracked, broken, or missing parts.

(8) Saddle mounts, marking. Every new saddle mount acquired and used in driveaway towaway operations by a motor carrier shall have the upper half and the lower half separately marked with the following certification of the manufacturer thereof (or words of equivalent meaning).

This saddle mount complies with the requirements of the Federal Highway Administration for vehicles up to 5,000 pounds (or over 5,000 pounds):

Manufactured _____

(month and year)

by _____

(name of manufacturer)

(n) Requirements for devices used to connect motor vehicles or parts of motor vehicles together to form one vehicle

(1) Front axle attachment. The front axle of one motor vehicle intended to be coupled with another vehicle as defined in paragraph (g)(2)(ii) shall be attached with U bolts meeting the requirements of paragraph (j)(2).

(2) Rear axle attachment. The rear axle of one vehicle shall be coupled to the frame of the other vehicle by means of a connecting device which when in place forms a rectangle. The device shall be composed of two pieces, top and bottom. The device shall be made of 4 inch by 1/2 inch steel bar bent to shape and shall have the corners reinforced with a plate at least 3 inches by 1/2 inch by 8 inches long. The device shall be bolted together with 3/4 inch bolts and at least three shall be used on each side. Wood may be used as spacers to keep the frames apart and it shall be at least 4 inches square.

SUBPART G

Miscellaneous Parts and Accessories

38-393.75. Tires.

(a) No motor vehicle shall be operated on any tire that (1) has body ply or belt material exposed through the tread or sidewall, (2) has any tread or sidewall separation, (3) is flat or has an audible leak, or (4) has a cut to the extent that the ply or belt material is exposed.

(b) Any tire on the front wheels of a truck, or truck tractor shall have a tread groove pattern depth of at least 4/32 of an inch when measured at any point on a major tread groove. The measurements shall not be made where tie bars, humps, or fillets are located.

(c) Except as provided in paragraph (b), tires shall have a tread groove pattern depth of at least 2/32 of an inch when measured in a major tread groove. The measurement shall not be made where tie bars, humps or fillets are located.

(d) [Reserved]

(e) No truck or truck tractor shall be operated with re-grooved tires on the front wheels which have a load carrying capacity equal to or greater than that of 8.25 20 8 ply rating tires.

(f) Tire loading restrictions. No motor vehicle (except manufactured homes, which are governed by paragraph (g)) shall be operated with tires that carry a weight greater than that marked on the sidewall of the tire or, in the absence of such a marking, a weight greater than that specified for the tires in any of the publications of any of the organizations listed in Federal Motor Vehicle Safety Standard No. 119 (49 CFR 571.119, S5.1(b) unless:

(1) The vehicle is being operated under the terms of a special permit issued by the State: and

(2) The vehicle is being operated at a reduced speed to compensate for the tire loading in excess of the manufacture's rated capacity for the tire. In no case shall the speed exceed 80 km/hr (50 mph).

TABLE 1 - INFLATION PRESSURE MEASUREMENT CORRECTION FOR HEAT

Average speed of tire in previous hour	Minimum inflation pressure buildup	
	Tires with 1,814 kg. (4,000 lbs) maximum load rating or less	Tires with over 1,814 kg. (4,000 lbs) load rating
66 to 88.5 km/h (41 to 55 mi/h)	34.5 kPa (5 psi)	103.4 kPa (15 psi)

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.76. Sleeper berths.

(a) Dimensions—

(1) Size. A sleeper berth must be at least the following size:

Date of installation on motor vehicle	Length measured on centerline of longitudinal axis (inches)	Width measured on centerline of transverse axis (inches)	Height measured from highest point of top of mattress (inches) ¹
Before January 1, 1953	72	18	18
After December 31, 1952, and before October 1, 1975	75	21	21
After September 30, 1975 . . .	75	24	24

¹ In the case of a sleeper berth which utilizes an adjustable mechanical suspension system, the required clearance can be measured when the suspension system is adjusted to the height to which it would settle when occupied by a driver.

(2) Shape. A sleeper berth installed on a motor vehicle on or after January 1, 1953 must be of generally rectangular shape, except that the horizontal corners and the roof corners may be rounded to radii not exceeding 10 1/2 inches.

(3) Access. A sleeper berth must be constructed so that an occupant's ready entrance to, and exit from, the sleeper berth is not unduly hindered.

(b) Location.

(1) A sleeper berth must not be installed in or on a semitrailer or a full trailer other than a house trailer.

(2) A sleeper berth located within the cargo space of a motor vehicle must be securely compartmentalized from the remainder of the cargo space. A sleeper berth installed on or after January 1, 1953 must be located in the cab or immediately adjacent to the cab and must be securely fixed with relation to the cab.

(c) Exit from the berth.

(1) Except as provided in paragraph (c)(2), there must be a direct and ready means of exit from a sleeper berth into the driver's seat or compartment. If the sleeper berth was installed on or after January 1, 1963, the exit must be a doorway or opening at least 18 inches high and 36 inches wide. If the sleeper berth was installed before January 1, 1963, the exit must have sufficient area to contain an ellipse having a major axis of 24 inches and a minor axis of 16 inches.

(2) A sleeper berth installed before January 1, 1953 must either:

(i) Conform to the requirements of paragraph (c)(1); or

(ii) Have at least two exits, each of which is at least 18 inches high and 21 inches wide, located at opposite ends of the vehicle and useable by the occupant without the assistance of any other person.

(d) Communication with the driver. A sleeper berth which is not located within the driver's compartment and has no direct entrance into the driver's compartment must be equipped with a means of communication between the occupant and the driver. The means of communication may consist of a telephone, speaker tube, buzzer, pull cord, or other mechanical or electrical device.

(e) Equipment. A sleeper berth must be properly equipped for sleeping. Its equipment must include:

- (1) Adequate bed clothing and blankets; and
- (2) Either:
 - (i) Springs and a mattress; or
 - (ii) An innerspring mattress; or
 - (iii) A cellular rubber or flexible foam mattress at least four inches thick; or
 - (iv) A mattress filled with a fluid and of sufficient thickness when filled to prevent "bottoming out" when occupied while the vehicle is in motion.

(f) Ventilation. A sleeper berth must have louvers or other means of providing adequate ventilation. A sleeper berth must be reasonably tight against dust and rain.

(g) Protection against exhaust and fuel leaks and exhaust heat. A sleeper berth must be located so that leaks in the vehicle's exhaust system or fuel system do not permit fuel, fuel system gases, or exhaust gases to enter the sleeper berth. A sleeper berth must be located so that it will not be overheated or damaged by reason of its proximity to the vehicle's exhaust system.

(h) Occupant restraint. A motor vehicle manufactured on or after July 1, 1971, and equipped with a sleeper berth must be equipped with a means of preventing ejection of the occupant of the sleeper berth during deceleration of the vehicle. The restraint system must be designed, installed, and maintained to withstand a minimum total force of 6,000 pounds applied toward the front of the vehicle and parallel to the longitudinal axis of the vehicle.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.77. Heaters.

On every motor vehicle, every heater shall comply with the following requirements:

(a) Prohibited types of heaters. The installation or use of the following types of heaters is prohibited:

(1) Exhaust heaters. Any type of exhaust heater in which the engine exhaust gases are conducted into or through any space occupied by persons or any heater which conducts engine compartment air into any such space.

(2) Unenclosed flame heaters. Any type of heater employing a flame which is not fully enclosed, except that such heaters are not prohibited when used for heating the cargo of tank motor vehicles.

(3) Heaters permitting fuel leakage. Any type of heater from the burner of which there could be spillage or leakage of fuel upon the tilting or overturning of the vehicle in which it is mounted.

(4) Heaters permitting air contamination. Any heater taking air, heated or to be heated, from the engine compartment or from direct contact with any portion of the exhaust system; or any heater taking air in ducts from the outside atmosphere to be conveyed through the engine compartment, unless said ducts are so constructed and installed as to prevent contamination of the air so conveyed by exhaust or engine compartment gases.

(5) Solid fuel heaters except wood charcoal. Any stove or other heater employing solid fuel except wood charcoal.

(6) Portable heaters. Portable heaters shall not be used in any space occupied by persons except the cargo space of motor vehicles which are being loaded or unloaded.

(b) Heater specifications. All heaters shall comply with the following specifications:

(1) Heating elements, protection. Every heater shall be so located or protected as to prevent contact therewith by occupants, unless the surface temperature of the protecting grilles or of any exposed portions of the heaters, inclusive of exhaust stacks, pipes, or conduits shall be lower than would cause contact burns. Adequate protection shall be afforded against igniting parts of the vehicle or burning occupants by direct radiation. Wood charcoal heaters shall be enclosed within a metal barrel, drum, or similar protective enclosure which enclosure shall be provided with a securely fastened cover.

(2) Moving parts, guards. Effective guards shall be provided for the protection of passengers or occupants against injury by fans, belts, or any other moving parts.

(3) Heaters, secured. Every heater and every heater enclosure shall be securely fastened to the vehicle in a substantial manner so as to provide against relative motion within the vehicle during normal usage or in the event the vehicle overturns. Every heater shall be so designed, constructed, and mounted as to minimize the likelihood of disassembly of any of its parts, including exhaust stacks, pipes, or conduits, upon overturn of the vehicle in or on which it is mounted. Wood charcoal heaters shall be secured against relative motion within the enclosure required by paragraph (c)(1), and the enclosure shall be securely fastened to the motor vehicle.

(4) Relative motion between fuel tank and heater. When either in normal operation or in the event of overturn, there is or is likely to be relative motion between the fuel tank for a heater and the heater, or between either of such units and the fuel lines between them, a suitable means shall be provided at the point of greatest relative motion so as to allow this motion without causing failure of the fuel lines.

(5) [Reserved]

(6) Heater hoses. Hoses for all hot water and steam heater systems shall be specifically designed and constructed for that purpose.

(7) Electrical apparatus. Every heater employing any electrical apparatus shall be equipped with electrical conductors, switches, connectors, and other electrical parts of ample current carrying capacity to provide against overheating; any electric motor employed in any heater shall be of adequate size and so located that it will not be overheated; electrical circuits shall be provided with fuses and/or circuit breakers to provide against electrical overloading; and all electrical conductors employed in or leading to any heater shall be secured against dangling, chafing, and rubbing and shall have suitable protection against any other condition likely to produce short or open circuits.

(8) Storage battery caps. If a separate storage battery is located within the personnel or cargo space, such battery shall be securely mounted and equipped with nonspill filler caps.

(9) Combustion heater exhaust construction. Every heater employing the combustion of oil, gas, liquefied petroleum gas, or any other combustible material shall be provided with substantial means of conducting the products of combustion to the outside of the vehicle:

Provided, however, That this requirement shall not apply to heaters used solely to heat the cargo space of motor vehicles where such motor vehicles or heaters are equipped with means specifically designed and maintained so that the carbon monoxide concentration will never exceed 0.2 percent in the cargo space. The exhaust pipe, stack, or conduit if required shall be sufficiently substantial and so secured as to provide reasonable assurance against leakage or discharge of products of combustion within the vehicle and, if necessary, shall be so insulated as to make unlikely the burning or charring of parts of the vehicle by radiation or by direct contact. The place of discharge of the products of combustion to the atmosphere and the means of discharge of such products shall be such as to minimize the likelihood of their reentry into the vehicle under all operating conditions.

(10) Combustion chamber construction. The design and construction of any combustion type heater except cargo space heaters permitted by the proviso of paragraph (c)(9) and unenclosed flame heaters used for heating cargo of tank motor vehicles shall be such as to provide against the leakage of products of combustion into air to be heated and circulated. The material employed in combustion chambers shall be such as to provide against leakage because of corrosion, oxidation, or other deterioration. Joints between combustion chambers and the air chambers with which they are in thermal and mechanical contact shall be so designed and constructed as to prevent leakage between the chambers and the materials employed in such joints shall have melting points substantially higher than the maximum temperatures likely to be attained at the points of jointure.

(11) [Reserved]

(12) Heater, automatic fuel control. Gravity or siphon feed shall not be permitted for heaters using liquid fuels. Heaters using liquid fuels shall be equipped with automatic means for shutting off the fuel or for reducing such flow of fuel to the smallest practicable magnitude, in the event of overturn of the vehicle. Heaters using liquefied petroleum gas as fuel shall have the fuel line equipped with automatic means at the source of supply for shutting off the fuel in the event of

separation, breakage, or disconnection of any of the fuel lines between the supply source and the heater.

(13) "Tell tale" indicators. Heaters subject to paragraph (c)(14) and not provided with automatic controls shall be provided with "tell tale" means to indicate to the driver that the heater is properly functioning. This requirement shall not apply to heaters used solely for the cargo space in semitrailers or full trailers.

(14) Shut off control. Automatic means, or manual means if the control is readily accessible to the driver without moving from the driver's seat, shall be provided to shut off the fuel and electrical supply in case of failure of the heater to function for any reason, or in case the heater should function improperly or overheat. This requirement shall not apply to wood charcoal heaters or to heaters used solely to heat the contents of cargo tank motor vehicles, but wood charcoal heaters must be provided with a controlled method of regulating the flow of combustion air.

(15) Certification required. Every combustion type heater, except wood charcoal heaters, the date of manufacture of which is subsequent to December 31, 1952, and every wood charcoal heater, the date of manufacture of which is subsequent to September 1, 1953, shall be marked plainly to indicate the type of service for which such heater is designed and with a certification by the manufacturer that the heater meets the applicable requirements for such use. For example, "Meets I.C.C. Flue Vented Cargo Space Heater Requirements," and after December 31, 1967, such certification shall read "Meets FHWA Flue Vented Cargo Space Heater Requirements," etc.

(i) Exception. The certification for a catalytic heater which is used in transporting flammable liquid or gas shall be as prescribed under Section 177.834(1) of the Federal Motor Carrier Safety Administration's hazardous materials regulations.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.78. Windshield wipers.

(a) Every truck, and truck tractor, having a windshield, shall be equipped with at least two automatically operating windshield wiper blades, one on each side of the centerline of the windshield, for cleaning rain, snow, or other moisture from the windshield and which shall be in such condition as to provide clear vision for the driver, unless one such blade be so arranged as to clean an area of the windshield extending to within 1 inch of the limit of vision through the windshield at each side: Provided, however, That in driveaway towaway operations shall apply only to the driven vehicle: And provided further, That one windshield wiper blade will suffice when such driven vehicle in driveaway towaway operation constitutes part or all of the property being transported and has no provision for two such blades.

(b) Every truck, and truck tractor, the date of manufacture of which is subsequent to June 30, 1953, which depends upon vacuum to operate the windshield wipers, shall be so constructed that the operation of the wipers will not be materially impaired by change in the intake manifold pressure.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.79. Defrosting device.

Every truck, and truck tractor having a windshield, when operating under conditions such that ice, snow, or frost would be likely to collect on the outside of the windshield or condensation on the inside of the windshield, shall be equipped with a device or other means, not manually operated, for preventing or removing such obstructions to the driver's view: Provided, however, That 38-393 shall not apply in driveaway towaway operations when the driven vehicle is a part of the shipment being delivered.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.80. Rear vision mirrors.

(a) Every truck, and truck tractor shall be equipped with two rear vision mirrors, one at each side, firmly attached to the outside of the motor vehicle, and so located as to reflect to the driver a view of the highway to the rear, along both sides of the vehicle. All such regulated rear vision mirrors and their replacements shall meet, as a minimum, the requirements of FMVSS No. 111 (49 CFR 571.111) in force at the time the vehicle was manufactured.

(b) Exceptions.

(1) Mirrors installed on a vehicle manufactured prior to January 1, 1981, may be continued in service, provided that if the mirrors are replaced they shall be replaced with mirrors meeting, as a minimum, the requirements of FMVSS No. 111 (49 CFR 571.111) in force at the time the vehicle was manufactured.

(2) Only one outside mirror shall be required, which shall be on the driver's side, on trucks which are so constructed that the driver has a view to the rear by means of an interior mirror.

(3) In driveway towaway operations, the driven vehicle shall have at least one mirror furnishing a clear view to the rear. (49 U.S.C. 3102; 49 CFR 1.48.)

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.81. Horn.

Every truck, truck tractor, and every driven motor vehicle in driveway towaway operations shall be equipped with a horn and actuating elements which shall be in such condition as to give an adequate and reliable warning signal.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.82. Speedometer.

Every truck and truck tractor, manufactured after January 1, 1996, shall be equipped with a speedometer indicating vehicle speed in miles per hour, which shall be operative with reasonable accuracy; however, this requirement shall not apply to any driven vehicle which is part of a shipment being delivered in a driveway towaway operation if such driven vehicle is equipped with an effective means of limiting its maximum speed to 45 miles per hour, nor to any towed vehicle.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.83. Exhaust systems.

(a) Every motor vehicle having a device (other than as part of its cargo) capable of expelling harmful combustion fumes shall have a system to direct the discharge of such fumes. No part shall be located where its location would likely result in burning, charring, or damaging the electrical wiring, the fuel supply, or any combustible part of the motor vehicle.

(b) No exhaust system shall discharge to the atmosphere at a location immediately below the fuel tank or the fuel tank filler pipe.

(c) [Reserved]

(d) [Reserved]

(e) The exhaust system of every truck and truck tractor shall discharge to the atmosphere at a location to the rear of the cab or, if the exhaust projects above the cab, at a location near the rear of the cab.

(f) No part of the exhaust system shall be temporarily repaired with wrap or patches.

(g) No part of the exhaust system shall leak or discharge at a point forward of or directly below the driver/sleeper compartment. The exhaust outlet may discharge above the cab/sleeper roofline.

(h) The exhaust system must be securely fastened to the vehicle.

(i) Exhaust systems may use hangers which permit required movement due to expansion and contraction caused by heat of the exhaust and relative motion between engine and chassis of a vehicle.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.84. Floors.

The flooring in all motor vehicles shall be substantially constructed, free of unnecessary holes and openings, and shall be maintained so as to minimize the entrance of fumes, exhaust gases, or fire. Floors shall not be permeated with oil or other substances likely to cause injury to persons using the floor as a traction surface.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–393.86. Rear end protection.

(a)(1) General requirements for trailers and semitrailers manufactured on or after January 26, 1998. Each trailer and semitrailer with a gross vehicle weight rating of 4,536 kg (10,000 lbs) or more, and manufactured on or after January 26, 1998, must be equipped with a rear impact guard that meets the requirements of Federal Motor Vehicle Safety Standard No. 223 (49 CFR 571.223) in effect at the time the vehicle was manufactured. When the rear impact guard is installed on the trailer or semitrailer, the vehicle must, at a minimum, meet the requirements of FMVSS No. 224 (49 CFR 571.224) in effect at the time the vehicle was manufactured. The requirements of paragraph (a) do not apply to pole trailers (as defined in Regulation 38–390.5 of this chapter); pulpwood trailers, low chassis vehicles, special purpose vehicles, wheels back vehicles (as defined in Regulation 38–393.5); and trailers towed in driveaway-towaway operations (as defined in Regulation 38–390.5).

(2) Impact guard width. The outermost surfaces of the horizontal member of the guard must extend to within 100 mm (4 inches) of the side extremities of the vehicle. The outermost surface of the horizontal member shall not extend beyond the side extremity of the vehicle.

(3) Guard height. The vertical distance between the bottom edge of the horizontal member of the guard and the ground shall not exceed 560 mm (22 inches) at any point across the full width of the member. Guards with rounded corners may curve upward within 255 mm (10) of the longitudinal vertical planes that are tangent to the side extremities of the vehicle.

(4) Guard rear surface. At any height 520 mm (22 inches) or more above the ground, the rearmost surface of the horizontal member of the guard must be within 305 mm (12 inches) of the rear extremity of the vehicle. This paragraph shall not be construed to prohibit the rear surface of the guard from extending beyond the rear extremity of the vehicle. Guards with rounded corners may curve forward with 255 mm (10 inches) of the side extremity.

(5) Cross-sectional vertical height. The horizontal member of each guard must have a cross sectional vertical height of at least 100 mm (3.94 inches) at any point across the guard width.

(6) Certification and labeling requirements for rear impact protection guards. Each rear impact guard used to satisfy the requirements of paragraph (a)(1) must be permanently marked or labeled as required by FMVSS No. 223 (49) CFR 571.223, S5.3). The label must be on the forward-facing surface of the horizontal member of the guard, 305 mm (12 inches) inboard of the right end of the guard. The certification label must contain the following information:

- (i) The impact guard manufacturer's name and address;
- (ii) The statement "Manufactured in ____" (inserting the month and year that the guard was manufactured); and,
- (iii) The letters "DOT", constituting a certification by the guard manufacturer that the guard conforms to all requirements of FMVSS No. 223.

(b)(1) Requirements for motor vehicles manufactured after December 31, 1952 (except trailers or semitrailers manufactured on or after January 26, 1998). Each motor vehicle manufactured after December 31, 1952, (except truck tractors, pole trailers, pulpwood trailers, or vehicles in driveaway-towaway operations) in which the vertical distance between the rear bottom edge of the body (or the chassis assembly if the chassis is the rearmost part of the vehicle) and the ground is greater than 76.2 cm (30 inches) when the motor vehicle is empty, shall be equipped with a rear impact guard(s). The rear impact guard(s) must be installed and maintained in such a manner that:

- (i) The vertical distance between the bottom of the guard(s) and the ground does not exceed 76.2 cm (30 inches) when the motor vehicle is empty;
- (ii) The maximum lateral distance between the closest points between guards, if more than one is used, does not exceed 61 cm (24 inches);
- (iii) The outermost surfaces of the horizontal member of the guard are no more than 45.7 cm (18 inches) from each side extremity of the motor vehicle;
- (iv) The impact guard(s) is no more than 61 cm (24 inches) forward to the rear extremity of the motor vehicle.

(2) Construction and attachment. The rear impact guard(s) must be substantially constructed and attached by means of bolts, welding, or other comparable means.

(3) Vehicle components and structures that may be used to satisfy the requirements of paragraph (b). Low chassis, or other parts of the vehicle provide the rear end protection comparable to impact guard(s) conforming to the requirements of paragraph (b)(1) shall be considered to be in compliance with those requirements.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.87. Flags on projecting loads.

Any motor vehicle having a load or vehicle component which extends beyond the sides more than 4 inches or more than 4 feet beyond the rear shall have the extremities of the load marked with a red flag, not less than 12 inches square.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.88. Television receivers.

Any motor vehicle equipped with a television viewer, screen or other means of visually receiving a television broadcast shall have the viewer or screen located in the motor vehicle at a point to the rear of the back of the driver's seat if such viewer or screen is in the same compartment as the driver and the viewer or screen shall be so located as not to be visible to the driver, while he/she is driving the motor vehicle. The operating controls for the television receiver shall be so located that the driver cannot operate them without leaving the driver's seat.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.93. Seats, seat belt assemblies, and seat belt assembly anchorages.

(a) [Reserved]

(b) Trucks and truck tractors

(1) Trucks and truck tractors manufactured on and after January 1, 1965, and before July 1, 1971. Except as provided in paragraph (d), after June 30, 1972, every truck and truck tractor manufactured on or after January 1, 1965, and before July 1, 1971, must be equipped with a Type 1 or Type 2 seat belt assembly that conforms to Federal Motor Vehicle Safety Standard No. 209 (Section 571.209) installed at the driver's seat and at the right front outboard seat, if the vehicle has one, and seat belt assembly anchorages that conform to the location and geometric requirements of Federal Motor Vehicle Safety Standard No. 210 (Section 571.210) for each seat belt assembly that is required by this subparagraph.

(2) Trucks and truck tractors manufactured on or after July 1, 1971. Every truck and truck tractor manufactured on or after July 1, 1971, except a truck or truck tractor being transported in driveaway towaway operation and having an incomplete vehicle seating and cab configuration, must conform to the requirements of Federal Motor Vehicle Safety Standard No. 208\1\ (Section 571.208) (relating to installation of seat belt assemblies) and Federal Motor Vehicle Safety Standard No. 210\1\ (Section 571.210) (relating to installation of seat belt assembly anchorages).\1\See footnote to Regulation 38-393.93(a).

(3) Trucks and truck tractors manufactured on or after January 1, 1972. Every truck and truck tractor manufactured on or after January 1, 1972, except a truck or truck tractor being transported in driveaway towaway operation and having an incomplete vehicle seating and cab configuration, must conform to the requirements of Federal Motor Vehicle Safety Standard No. 207\1\ (Section 571.207) (relating to seating systems).

(c) Effective date of standards. Whenever paragraph (a) or (b) requires conformity to a Federal Motor Vehicle Safety Standard, the vehicle or equipment must conform to the version of the Standard that is in effect on the date the vehicle is manufactured or on the date the vehicle is modified to conform to the requirements of paragraph (a) or (b), whichever is later.

(d) Trucks and truck tractors manufactured on or after January 1, 1965, and before July 1, 1971, and operated in the State of Hawaii, must comply with the provisions of paragraph (b) on and after January 1, 1976.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART H
Emergency Equipment

38–393.95. Emergency equipment on all power units.

Except for a lightweight vehicle, every truck, truck tractor, and every driven vehicle in driveway towaway operation must be equipped as follows:

(a) Fire extinguisher.

(1) Except as provided in paragraph (a)(4), every power unit must be equipped with a fire extinguisher that is properly filled and located so that it is readily accessible for use. The fire extinguisher must be securely mounted on the vehicle. The fire extinguisher must be designed, constructed, and maintained to permit visual determination of whether it is fully charged. The fire extinguisher must have an extinguishing agent that does not need protection from freezing. The fire extinguisher must not use a vaporizing liquid that gives off vapors more toxic than those produced by the substances shown as having a toxicity rating of 5 or 6 in the Underwriters' Laboratories "Classification of Comparative Life Hazard of Gases and Vapors."¹

(2)(i) On or after July 1, 1971, a power unit that is used to transport hazardous materials must be equipped with a fire extinguisher having an Underwriters' Laboratories rating of 10 B:C or more.

(ii) On and after January 1, 1973, a power unit that is not used to transport hazardous materials must be equipped with either

(A) A fire extinguisher having an Underwriters' Laboratories rating of 5 B:C or more; or

(B) Two fire extinguishers, each of which has an Underwriters' Laboratories rating of 4 B:C or more.

(iii) Each fire extinguisher required by this subparagraph must be labeled or marked with its Underwriters' Laboratories rating and must meet the requirements of paragraph (a)(1).

(3) For purposes of this paragraph, a power unit is used to transport hazardous materials only if the power unit or a motor vehicle towed by the power unit must be marked or placarded in accordance with Section 177.823 of the Federal Motor Carrier Safety Administration's hazardous materials regulations.

(4) This paragraph does not apply to the driven unit in a driveway towaway operation.

(b) [Reserved]

(c) Spare fuses. At least one spare fuse or other overload protective device, if the devices used are not of a reset type, for each kind and size used. In driveway towaway operations, spares located on any one of the vehicles will be deemed adequate.

(d), (e) [Reserved]

(f) Warning devices for stopped vehicles. Except as provided in paragraph (g), one of the following combinations of warning devices:

(1) *

(2) Vehicles equipped with warning devices on and after January 1, 1974.

(i) Three bidirectional emergency reflective triangles that conform to the requirements of Federal Motor Vehicle Safety Standard No. 125, Section 571.125; or

(ii) At least 6 fusees or 3 liquid burning flares. The vehicle must have as many additional fusees or liquid burning flares as are necessary to satisfy the requirements of Regulation 38–392.22.

(3) Supplemental warning devices. Other warning devices may be used in addition to, but not in lieu of, the required warning devices, provided those warning devices do not decrease the effectiveness of the required warning devices.

(g) Restrictions on the use of flame producing devices. Liquid burning flares, fusees, oil lanterns, or any signal produced by a flame shall not be carried on any commercial motor vehicle transporting Division 1.1, 1.2, 1.3 (explosives) hazardous materials; any cargo tank motor vehicle used for the

* So in original. No paragraph (f)(1) was promulgated by State Register Volume 30, Issue No. 4, eff April 28, 2006.

transportation of Division 2.1 (flammable gas) or Class 3 (flammable liquid) hazardous materials whether loaded or empty; or any commercial motor vehicle using compressed gas as a motor fuel.

(h) Requirements for emergency reflective triangles manufactured before January 1, 1974.

(1) Each reflector shall be a collapsible equilateral triangle, with legs not less than 17 inches long and not less than 2 inches wide. The front and back of the exposed leg surfaces shall be covered with red reflective material not less than one half inch in width. The reflective surface, front and back, shall be approximately parallel. When placed in position, one point of the triangle shall be upward. The area within the sides of the triangle shall be open.

(2) Reflective material: The reflecting material covering the leg of the equilateral triangle shall comply either with:

(i) The requirements for reflex reflector elements made of red methyl methacrylate plastic material, meeting the color, sealing, minimum candle power, wind test, vibration test, and corrosion resistance test of section 3 and 4 of Federal Specification RR R 1185, dated November 17, 1966, or

(ii) The requirements for red reflective sheeting of Federal Specification L S 300, dated September 7, 1965, except that the aggregate candlepower of the assembled triangle, in one direction, shall be not less than eight when measured at 0.2 deg. divergence angle and 4 deg. incidence angle, and not less than 80 percent of the candlepower specified for 1 square foot of material at all other angles shown in Table II, Reflective Intensity Values, of L S 300.

(3) Reflective surfaces alignment: Every reflective triangle shall be so constructed that, when the triangle is properly placed, the reflective surfaces shall be in a plane perpendicular to the plane of the roadway surface with a permissible tolerance of plus minus 10 deg. Reflective triangles which are collapsible shall be provided with means for holding the reflective surfaces within the required tolerance. Such holding means shall be readily capable of adjustment without the use of tools or special equipment.

(4) Reflectors mechanical adequacy: Every reflective triangle shall be of such weight and dimensions as to remain stationary when subjected to a 40 mile per hour wind when properly placed on any clean, dry paved road surface. The reflective triangle shall be so constructed as to withstand reasonable shocks without breakage.

(5) Reflectors, incorporation in holding device: Each set of reflective triangles shall be adequately protected by enclosure in a box, rack, or other adequate container specially designed and constructed so that the reflectors may be readily extracted for use.

(6) Certification: Every red emergency reflective triangle designed and constructed to comply with these requirements shall be plainly marked with the certification of the manufacturer that it complies therewith.

(i) Requirements for red emergency reflectors. Each red emergency reflector shall conform in all respects to the following requirements:

(1) Reflecting elements required. Each reflector shall be composed of at least two reflecting elements or surfaces on each side, front and back. The reflecting elements, front and back, shall be approximately parallel.

(2) Reflecting elements to be Class A. Each reflecting element or surface shall meet the requirement for a red Class A reflector contained in the SAE Recommended Practice\1\ "Reflex Reflectors." The aggregate candlepower output of all the reflecting elements or surface in one direction shall not be less than 12 when tested in a perpendicular position with observation at one third degree as specified in the Photometric Test contained in the above mentioned Recommended Practice.

(3) Reflecting surfaces, protection. If the reflector or the reflecting elements are so designed or constructed that the reflecting surfaces would be adversely affected by dust, soot, or other foreign matter or contacts with other parts of the reflector or its container, then such reflecting surfaces shall be adequately sealed within the body of the reflector.

(4) Reflecting surfaces to be perpendicular. Every reflector shall be so constructed that, when the reflector is properly placed, every reflecting element or surface is in a plane perpendicular to the plane of the roadway surface. Reflectors which are collapsible shall be provided with

means for locking the reflector elements or surfaces in the required position; such locking means shall be readily capable of adjustment without the use of tools or special equipment.

(5) Reflectors, mechanical adequacy. Every reflector shall be of such weight and dimensions as to remain stationary when subjected to a 40 mile per hour wind when properly placed on any clean, dry, paved road surface. The reflector shall be so constructed as to withstand reasonable shocks without breakage.

(6) Reflectors, incorporation on holding device. Each set of reflectors and the reflecting elements or surfaces incorporated therein shall be adequately protected by enclosure in a box, rack, or other adequate container specially designed and constructed so that the reflectors may be readily extracted for use.

(7) Certification. Every red emergency reflector designed and constructed to comply with these requirements shall be plainly marked with the certification of the manufacturer that it complies therewith.

(j) Requirements for fusees and liquid burning flares. Each fusee shall be capable of burning for 30 minutes, and each liquid burning flare shall contain enough fuel to burn continuously for at least 60 minutes. Fusees and liquid burning flares shall conform to the requirements of Underwriters Laboratories, Inc., UL No. 912, Highway Emergency Signals, Fourth Edition, July 30, 1979, (with an amendment dated November 9, 1981). (See Regulation 38-393.7(b) for information on the incorporation by reference and availability of this document.) Each fusee and liquid burning flare shall be marked with the UL symbol in accordance with the requirements of UL 912.

(k) Requirements for red flags. Red flags shall be not less than 12 inches square, with standards adequate to maintain the flags in an upright position.

SUBPART I

Protection Against Shifting or Falling Cargo

38-393.100. Which types of commercial motor vehicles are subject to the cargo securement standards of this subpart, and what general requirements apply?

(a) Applicability. The rules in this subpart are applicable to trucks, truck tractors, semitrailers, full trailers, and pole trailers.

(b) Prevention against loss of load. Each commercial motor vehicle must, when transporting cargo on public roads, be loaded and equipped, and the cargo secured, in accordance with this subpart to prevent the cargo from leaking, spilling, blowing or falling from the motor vehicle.

(c) Prevention against shifting of load. Cargo must be contained, immobilized or secured in accordance with this subpart to prevent shifting upon or within the vehicle to such an extent that the vehicle's stability or maneuverability is adversely affected.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.102. What are the minimum performance criteria for cargo securement devices and systems?

(a) Performance criteria. Cargo securement devices and systems must be capable of withstanding the following three forces, applied separately:

- (1) 0.8 g deceleration in the forward direction;
- (2) 0.5 g acceleration in the rearward direction; and
- (3) 0.5 acceleration in a lateral direction.

(b) Performance criteria for devices to prevent vertical movement of loads that are not contained within the structure of the vehicle. Securement systems must provide a downward force equivalent to at least 20 percent of the weight of the article of cargo if the article is not fully contained within the structure of the vehicle. If the article is fully contained within the structure of the vehicle, it may be secured in accordance with Regulation 38-393.106(b).

(c) Prohibition on exceeding working load limits. Cargo securement devices and systems must be designed, installed, and maintained to ensure that the maximum forces acting on the devices or

systems do not exceed the working load limit for the devices under the conditions listed in paragraphs (a) and (b).

(d) Equivalent means of securement. Cargo that is immobilized, or secured in accordance with the applicable requirements of Regulations 38–393.104 through 38–393.136, is considered as meeting the performance criteria of 38–393.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–393.104. What standards must cargo securement devices and systems meet in order to satisfy the requirements of this subpart?

(a) General. All devices and systems used to secure cargo to or within a vehicle must be capable of meeting the requirements of Regulation 38–393.102.

(b) Prohibition on the use of damaged securement devices. All vehicle structures, systems, parts, and components used to secure cargo must be in proper working order when used to perform that function with no damaged or weakened components that will adversely effect their performance for cargo securement purposes, including reducing the working load limit, and must not have any cracks or cuts.

(c) Vehicle structures and anchor points. Vehicle structures, floors, walls, decks, tiedown anchor points, headerboards, bulkheads, stakes, posts and associated mounting pockets used to contain or secure articles of cargo must be strong enough to meet the performance criteria of Regulation 38–393.102, with no damaged or weakened components that will adversely effect their performance for cargo securement purposes, including reducing the working load limit, and must not have any cracks or cuts.

(d) Material for dunnage, chocks, cradles, shoring bars, blocking and bracing. Material used as dunnage or dunnage bags, chocks, cradles, shoring bars, or used for blocking and bracing, must not have damage or defects which would compromise the effectiveness of the securement system.

(e) Manufacturing standards for tiedown assemblies. Tiedown assemblies (including chains, wire rope, steel strapping, synthetic webbing, and cordage) and other attachment or fastening devices used to secure articles of cargo to, or in, commercial motor vehicles must conform to the following applicable standards:

An assembly component of . . .	Must conform to . . .
(1) Steel strapping ^{1,2}	Standard Specification for Strapping, Flat Steel and Seals, American Society for Testing and Materials (ASTM) D3953-97, February 1998; ⁴
(2) Chain	National Association of Chain Manufacturers' Welded Steel Chain Specifications, November 15, 1999; ⁴
(3) Webbing	Web Sling and Tiedown Association's Recommended Standard Specifications for Synthetic Web Tiedowns, WSTDA-T1, 1998; ⁴
(4) Wire rope ³	Wire Rope Technical Board's Wire Rope Users Manual, 2 nd Edition, November 1985; ⁴
(5) Cordage	Cordage Institute rope standard: PETERS-2, Polyester Fiber Rope, three-Strand and eight-Strand Constructions, January 1993; ⁴ PPRS-2 Polypropylene Fiber Rope, three-Strand and eight-Strand Constructions, August 1992; ⁴ CRS-1, Polyester/Polypropylene Composite Rope Specifications, three-Strand and eight-Strand Standard Construction, May 1979; ⁴ NRS-1, Nylon Rope Specifications, three-Strand and eight-Strand Standard Construction, May 1979; ⁴ C-1, Double Braided Nylon Rope Specifications DBN, January 1984. ⁴

¹ Steel strapping not marked by the manufacturer with a working load limit will be considered to have a working load limit equal to one-fourth of the breaking strength listed in SATM D3953–97.

² Steel strapping 25.4 mm (1 inch) or wider must have at least two pairs of crimps in each seal and, when an end-over-end lap joint is formed, must be sealed with at least two seals.

³ Wire rope which is not marked by the manufacturer with a working load limit shall be considered to have a working load limit equal to one-fourth of the nominal strength listed in the manual.

⁴ See Regulation 38–393.7 for information on the incorporation by reference and availability of this document.

(f) Use of tiedowns.

(1) Tiedowns and securing devices must not contain knots.

(2) If a tiedown is required, it must be repaired in accordance with the applicable standards in paragraph (e), or the manufacturer's instruction.

(3) Each tiedown must be attached and secured in a manner that prevents it from becoming loose, unfastening, opening or releasing while the vehicle is in transit.

(4) All tiedowns and other components of a cargo securement system used to secure loads on a trailer equipped with rub rails, must be located inboard of the rub rails whenever practicable.

(5) Edge protection must be used whenever a tiedown would be subject to abrasion or cutting at the point where it touches an article of cargo. The edge protection must resist abrasion, cutting and crushing.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.106. What are the general requirements for securing articles of cargo?

(a) Applicability. The rules are applicable to the transportation of all types of articles of cargo, except commodities in bulk that lack structure or fixed shape (e.g., liquids, gases, grain, liquid concrete, sand, gravel, aggregates) and are transported in a tank, hopper, box or similar device that forms part of the structure of a commercial motor vehicle. The rules apply to the cargo types covered by the commodity-specific rules of Regulations 38-393.116 through 38-393.118, 38-393.128 and 38-393.130.

(b) General. Cargo must be firmly immobilized or secured on or within a vehicle by structures of adequate strength, dunnage or dunnage bags, shoring bars, tiedowns or a combination of these.

(c) Cargo placement and restraint.

(1) Articles of cargo that are likely to roll must be restrained by chocks, wedges, a cradle or other equivalent means to prevent rolling. The means of preventing rolling must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit.

(2) Articles or cargo placed beside each other and secured by transverse tiedowns must either:

(i) Be placed in direct contact with each other, or

(ii) Be prevented from shifting towards each other while in transit.

(d) Minimum strength of cargo securement devices and systems. The aggregate working load limit of any securement system used to secure an article or group of articles against movement must be at least one-half times the weight of the article or group of articles. The aggregate working load limit is the sum of:

(1) One-half of the working load limit of each associated connector or attachment mechanism used to secure a part of the article of cargo to the vehicle; and

(2) One-half of the working load limit for each end section of a tiedown that is attached to an anchor point.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.108. How is the working load limit of a tiedown determined?

(a) The working load limit (WLL) of a tiedown, associated connector or attachment mechanism is the lowest working load limit of any of its components (including tensioner), or the working load limit of the anchor points to which it is attached, whichever is less.

(b) The working load limits of tiedowns may be determined by using either the tiedown manufacturer's markings or by using the tables. The working load limits listed in the tables are to be used when the tiedown material is not marked by the manufacturer with the working load limit. Tiedown materials which are marked by the manufacturer with working load limits that differ from the tables, shall be considered to have a working load limit equal to the value for which they are marked.

(c) Synthetic cordage (e.g., nylon, polypropylene, polyester) which is not marked or labeled to enable identification of its composition or working load limit shall be considered to have a working load limit equal to that for polypropylene fiber rope.

(d) Welded steel chain which is not marked or labeled to enable identification of its grade or working load limit shall be considered to have a working load limit equal to that for grade 30 proof coil chain.

(e)(1) Wire rope which is not marked by the manufacturer with a working load limit shall be considered to have a working load limit equal to one-fourth of the nominal strength listed in the Wire Rope Users Manual.

(2) *

(3) Wire which is not marked or labeled to enable identification of its construction type shall be considered to have a working load limit equal to that for 6x37, fiber core wire rope.

(f) Manila rope which is not marked by the manufacturer with a working load limit shall be considered to have a working load limit based on its diameter as provided in the tables or working load limits.

(g) Friction mats which are not marked or rated by the manufacturer shall be considered to provide resistance to horizontal movement equal to 50 percent of the weight placed on the mat.

Tables to Sec. 38-393.108
[Working Load Limits (WLL), Chain]

Size mm (inches)	WLL in kg (pounds)				
	Grade 30 proof coil	Grade 43 high test	Grade 70 transport	Grade 80 alloy	Grade 100 alloy
1.7 (1/4)	580 (1,300)	1,180 (2,600)	1,430 (3,150)	1,570	1,950 (4,300)
2.8 (5/16)	860 (1,900)	1,770 (3,900)	2,130 (4,700)	2,000	2,600 (5,700)
3.10 (3/8)	1,200 (2,650)	2,450 (5,400)	2,990 (6,600)	3,200	4,000 (8,800)
4.11 (7/16)	1,680 (3,700)	3,270 (7,200)	3,970 (8,750)		
5.13 (1/2)	2,030 (4,500)	4,170 (9,200)	5,130 (11,300)	5,400	6,800
6.16 (5/8)	3,130 (6,900)	5,910 (13,000)	7,170 (15,800)	8,200	10,300
Chain Mark Examples:					
Example 1	3	4	7	8	10
Example 2	30	43	70	80	100
Example 3	300	430	700	800	1000

Synthetic Webbing

Width mm (inches)	WLL kg (pounds)
45 (1 3/4)	790 (1,750)
50 (2)	910 (2,000)
75 (3)	1,360 (3,000)
100 (4)	1,810 (4,000)

Wire Rope (6 x 37, Fiber Core)

Diameter mm (inches)	WLL kg (pounds)
7 (1/4)	640 (1,400)
8 (5/16)	950 (2,100)
10 (3/8)	1,360 (3,000)
11 (7/16)	1,860 (4,100)
13 (1/2)	2,400 (5,300)
16 (5/8)	3,770 (8,300)
20 (3/4)	4,940 (10,900)
22 (7/8)	7,300 (16,100)
25 (1)	9,480 (20,900)

Manila Rope

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	90 (205)

* So in original. No paragraph (e)(2) was promulgated by State Register Volume 30, Issue No. 4, eff April 28, 2006.

Diameter mm (inches)	WLL kg (pounds)
11 (7/16)	120 (265)
13 (1/2)	150 (315)
16 (5/8)	210 (465)
20 (3/4)	290 (640)
25 (1)	480 (1,050)

Polypropylene Fiber Rope WWL (3-Strand and 8-Strand Constructions)

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	180 (400)
11 (7/16)	240 (525)
13 (1/2)	280 (625)
16 (5/8)	420 (925)
20 (3/4)	580 (1,275)
25 (1)	950 (2,100)

Polyester Fiber Rope WWL (3-Strand and 8-Strand Constructions)

10 (3/8)	250 (555)
11 (7/16)	340 (750)
13 (1/2)	440 (960)
16 (5/8)	680 (1,500)
20 (3/4)	850 (1,880)
25 (1)	1,500 (3,300)

Nylon Rope

10 (3/8)	130 (278)
11 (7/16)	190 (410)
13 (1/2)	240 (525)
16 (5/8)	420 (935)
20 (3/4)	640 (1,420)
25 (1)	1,140 (2,520)

Double Braided Nylon Rope

10 (3/8)	150 (336)
11 (7/16)	230 (502)
13 (1/2)	300 (655)
16 (5/8)	510 (1,130)
20 (3/4)	830 (1,840)
25 (1)	1,470 (3,250)

Steel Strapping

31.7 x .74 (1 1/4 x 0.029)	540 (1,190)
31.7 x .79 (1 1/4 x 0.031)	540 (1,190)
31.7 x .89 (1 1/4 x 0.035)	540 (1,190)
31.7 x 1.12 (1 1/4 x 0.044)	770 (1,690)
31.7 x 1.27 (1 1/4 x 0.05)	770 (1,690)
31.7 x 1.5 (1 1/4 x 0.057)	870 (1,925)
31.7 x 1.12 (2 x 0.044)	1,200 (2,650)
31.7 x 1.27 (2 x 0.05)	1,200 (2,650)

38–393.110. What else do I have to do to determine the minimum number of tiedowns?

(a) In addition to the requirements of Regulation 38–393.106, the minimum number of tiedowns required to secure an article or group of articles against movement depends on the length of the article(s) being secured, and the requirements of paragraphs (b) and (c).

(b) When an article is not blocked or positioned to prevent movement in the forward direction by a headerboard, bulkhead, other cargo that is positioned to prevent movement, or other appropriate blocking devices, it must be secured by at least:

(1) One tiedown for articles 5 feet (1.52 meters) or less in length, and 1,100 pounds (500 kg) or less in weight;

(2) Two tiedowns if the article is:

(i) 5 feet (1.52 meters) or less in length and more than 1,100 pounds (500 kg) in weight; or

(ii) Longer than 5 feet (1.52 meters) but less than or equal to 10 feet (3.04 meters) in length, irrespective of the weight.

(3) Two tiedowns if the article is longer than 10 feet (3.04 meters), and one additional tiedown for every 10 feet (3.04 meters) of article length, or fraction thereof, beyond the first 10 feet (3.04 meters) of length.

(c) If an individual article is required to be blocked, braced or immobilized to prevent movement in the forward direction by a headerboard, bulkhead, other articles which are adequately secured or by an appropriate blocking or immobilization method, it must be secured by at least one tiedown for every .04 meters (10feet) or article length, or fraction thereof.

(d) Special rule for special purpose vehicles. The rules do not apply to a vehicle transporting one or more articles of cargo such as, but not limited to, machinery or fabricated structural items (e.g., steel or concrete beams, crane booms, girders, and trusses, etc.) which, because of their design, size, and shape, or weight, must be fastened by special methods. However, any article of cargo carried on that vehicle must be securely and adequately fastened to the vehicle.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–393.112. Must a tiedown be adjustable?

Each tiedown, or its associated connectors, or its attachment mechanisms must be designed, constructed, and maintained so the driver of an in-transit commercial motor vehicle can tighten them. However, this requirement does not apply to the use of steel strapping.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–393.116. What are the rules for securing logs?

(a) Applicability. The rules are applicable to the transportation of logs with the following exceptions:

(1) Logs that are unitized by banding or other comparable means may be transported in accordance with the general cargo securement rules of Regulation 38–393.100 through 38–393.114.

(2) Loads that consist of no more than four processed logs may be transported in accordance with the general cargo securement rules of Regulation 38–393.100 through 38–393.114.

(3) Firewood, stumps, log debris and other such short logs must be transported in a vehicle or container enclosed on both sides, front, and rear and of adequate strength to contain them. Longer logs may also be so loaded.

(b) Components of a securement system.

(1) Logs must be transported on a vehicle designed and built, or adapted, for the transportation of logs. Any such vehicle must be fitted with bunks, bolsters, stakes or standards, or other equivalent means, that cradle the logs and prevent them from rolling.

(2) All vehicle components involved in securement of logs must be designed and built to withstand all anticipated operational forces without failure, accidental release or permanent deformation. Stakes or standards that are not permanently attached to the vehicle must be secured in a manner that prevents unintentional separation from the vehicle in transit.

(3) Tiedowns must be used in combination with the stabilization provided by bunks, stakes and bolsters to secure the load.

(c) Use of securement system.

(1) Logs must be solidly packed, and the outer bottom logs must be in contact with and resting solidly against the bunks, bolsters, stakes or standards.

(2) Each outside log on the side of a stack of logs must touch at least two stakes, bunks, bolsters, or standards. If one end does not actually touch a stake, it must rest on other logs in a stable manner and must extend beyond the stake, bunk, bolster or standard.

(3) The center of the highest outside log on each side or end must be below the top of each stake, bunk or standard.

(4) Each log that is not held in place by contact with other logs or the stakes, bunks, or standards must be held in place by a tiedown. Additional tiedowns or securement devices must be used when the condition of the wood results in such low friction between logs that they are likely to slip upon each other.

(d) Securement of shortwood logs loaded crosswise on frame, rail or flatbed vehicles. In addition to the requirements of paragraphs (b) and (c), each stack of logs loaded crosswise must meet the following rules:

(1) In no case may the end of a log in the lower tier extend more than one-third of the log's total length beyond the nearest supporting structure on the vehicle.

(2) When only one stack of shortwood is loaded crosswise, it must be secured with at least two tiedowns. The tiedowns must attach to the vehicle frame at the front and rear of the load, and must cross the load in this direction.

(3) When two tiedowns are used, they must be positioned at approximately one-third and two-thirds of the length of the logs.

(4) A vehicle that is more than 10 meters (33 feet) long must be equipped with center stakes, or comparable devices, to divide it into sections approximately equal in length. Where a vehicle is so divided, each tiedown must secure the highest log on each side of the center stake, and must be fastened below these logs. It may be fixed at each end and tensioned from the middle, or fixed in the middle and tensioned from each end, or it may pass through a pulley or equivalent device in the middle and be tensioned from one end.

(5) Any structure or stake that is subjected to an upward force when the tiedowns are tensioned must be anchored to resist that force.

(6) If two stacks of shortwood are loaded side-by-side, in addition to meeting the requirements of paragraphs (d)(1) through (d)(5), they must be loaded so that:

(i) There is no space between the two stacks of logs;

(ii) The outside of each stack is raised at least 2.5 cm (1 in) within 10 cm (4 in) of the end of the logs or the side of the vehicle;

(iii) The highest log is no more than 2.44 m (8 ft) above the deck; and

(iv) At least one tiedown is used lengthwise across each stack of logs.

(e) Securement of logs loaded lengthwise on flatbed and frame vehicles. In addition to meeting the requirements of paragraphs (b) and (c), each stack of shortwood loaded lengthwise on a frame vehicle or on a flatbed must be secured to the vehicle by at least two tiedowns.

(f) Securement of logs transported on pole trailers.

(1) The load must be secured by at least one tiedown at each bunk, or alternatively, by at least two tiedowns used as wrappers that encircle the entire load at locations along the load that provide effective securement.

(2) The front and rear wrappers must be at least 3.04 meters (10 feet) apart.

(3) Large diameter single and double log loads must be immobilized with chock blocks or other equivalent means to prevent shifting.

(4) Large diameter logs that rise above bunks must be secured to the underlying load with at least two additional wrappers.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

Specific Securement Requirements by Commodity Type

38–393.114. What are the requirements for front end structures used as part of a cargo securement system?

(a) Applicability. The rules are applicable to commercial motor vehicles transporting articles of cargo that are in contact with the front end structure of the vehicle. The front end structure on these cargo-carrying vehicles must meet the performance requirements.

(b) Height and width.

(1) The front end structure must extend either to a height of 4 feet above the floor of the vehicle or to a height at which it blocks forward movement of any item of article of cargo being carried on the vehicle, whichever is lower.

(2) The front end structure must have a width which is at least equal to the width of the vehicle or which blocks forward movement of any article of cargo being transported on the vehicle, whichever is narrower.

(c) Strength. The front end structure must be capable of withstanding the following horizontal forward static load:

(1) For a front end structure less than 6 feet in height, a horizontal forward static load equal to one-half (0.5) of the weight of the articles of cargo being transported on the vehicle uniformly distributed over the entire portion of the front end structure that is within 4 feet above the vehicle's floor or that is at or below a height above the vehicle's floor at which it blocks forward movement of any article of the vehicle's cargo, whichever is less; or

(2) For a front end structure 6 feet in height or higher, a horizontal forward static load equal to four-tenths (0.4) of the weight of the articles of cargo being transported on the vehicle uniformly distributed over the entire front end structure.

(d) Penetration resistance. The front end structure must be designed, constructed, and maintained so that it is capable of resisting penetration by any article of cargo that contacts it when the vehicle decelerates at a rate of 20 feet per second, per second. The front end structure must have no aperture large enough to permit any article of cargo in contact with the structure to pass through it.

(e) Substitute devices. The requirements may be met by the use of devices performing the same functions as a front end structure, if the devices are at least as strong as, and provide protection against shifting articles of cargo at least equal to, a front end structure which conforms to those requirements.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–393.118. What are the rules for securing dressed lumber or similar building products?

(a) Applicability. The rules apply to the transportation of bundles of dressed lumber, packaged lumber, building products such as plywood, gypsum board or other materials of similar shape. Lumber or building products which are not bundled or packaged must be treated as loose items and transported in accordance with Regulation 38–393.100 through 38–393.114 of this subpart. For the purpose of section 118, "bundle" refers to packages of lumber, building materials or similar products which are unitized for securement as a single article of cargo.

(b) Positioning of bundles. Bundles must be placed side by side in direct contact with each other, or a means must be provided to prevent bundles from shifting towards each other.

(c) Securement of bundles transported using no more than one tier. Bundles carried on one tier must be secured in accordance with the general provisions of Regulation 38–393.100 through 38–393.114.

(d) Securement of bundles transported using more than one tier. Bundles carried in more than one tier must be either:

(1) Blocked against lateral movement by stakes on the sides of the vehicle and secured by tiedowns laid out over the top tier, as outlined in the general provisions of Regulation 38–393.100 through 38–393.114; or

(2) Restrained from lateral movement by blocking or high friction devices between tiers and secured by tiedowns laid out over the top tier, as outlined in the general provisions of Regulation 38–393.100 through 38–393.114; or

(3) Placed directly on top of other bundles or on spacers and secured in accordance with the following:

(i) The length of spacers between bundles must provide support to all pieces in the bottom row of the bundle.

(ii) The width of individual spacers must be equal to or greater than the height.

(iii) If spacers are comprised of layers of material, the layers must be unitized or fastened together in a manner which ensures that the spacer performs as a single piece of material.

(iv) The arrangement of the tiedowns for the bundles must be:

(A) Secured by tiedowns over the top tier of bundles, in accordance with the general provisions of Regulation 38–393.100 through 38–393.114 with a minimum of two tiedowns for bundles longer than 1.52 meters (5 ft); and

(B) Secured by tiedowns in accordance with the general provisions of Regulation 38–393.100 through 38–393.114 over the second tier or over a middle tier of a maximum height of 1.85 meters (6 ft) above the trailer deck, whichever is greater, for each stack of bundles composed of more than two tiers; or

(4) Secured by tiedowns over each tier of bundles, in accordance with Regulation 38–393.100 through 38–393.114 using a minimum of two tiedowns over each of the top bundles longer than 1.52 meters (5 ft), in all circumstances.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–393.128. What are the rules for securing automobiles, light trucks and vans?

(a) Applicability. The rules apply to the transportation of automobiles, light trucks, and vans which individually weigh 4,536 kg. (10,000 lb) or less. Vehicles which individually are heavier than 4,536 kg (10,000 lb) must be secured in accordance with the provisions of Regulation 38–393.130 of 38–382.

(b) Securement of automobiles, light trucks, and vans.

(1) Automobiles, light trucks, and vans must be restrained at both the front and rear to prevent lateral, forward, rear-ward, and vertical movement using a minimum of two tiedowns.

(2) Tiedowns that are designed to be affixed to the structure of the automobile, light truck, or van must use the mounting points on those vehicles that have been specifically designed for that purpose.

(3) Tiedowns that are designed to fit over or around the wheels of an automobile, light truck, or van must provide restraint in the lateral, longitudinal and vertical directions.

(4) Edge protectors are not required for synthetic webbing at points where the webbing comes in contact with the tires.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–393.130. What are the rules for securing heavy vehicles, equipment and machinery?

(a) Applicability. The rules apply to the transportation of heavy vehicles, equipment and machinery which operate on wheels or tracks, such as front end loaders, bulldozers, tractors, and power shovels and which individuals weigh 4,536 kg (10,000 lb.) or more. Vehicles, equipment and machinery which are lighter than 4,536 kg (10,000 lb.) may also be secured in accordance with the provisions, with Regulation 38–393.128, or in accordance with the provisions of Regulations 38–393.100 through 38–393.114.

(b) Preparation of equipment being transported.

(1) Accessory equipment, such as hydraulic shovels, must be completely lowered and secured to the vehicle.

(2) Articulated vehicles shall be restrained in a manner that prevents articulation while in transit.

(c) Securement of heavy vehicles, equipment, or machinery with crawler tracks or wheels.

(1) In addition to the requirements of paragraph (b), heavy equipment or machinery with crawler tracks or wheels must be restrained against movement in the lateral, forward, rearward, and vertical direction using a minimum of four tiedowns.

(2) Each of the tiedowns must be affixed as close as practicable to the front and rear of the vehicle, or mounting points on the vehicle that have been specifically designed for that purpose.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBPART J

Frames, Cab and Body Components, Wheels, Steering, and Suspension Systems

38-393.201. Frames.

(a) The frame of every truck and truck tractor shall not be cracked, loose, sagging or broken.

(b) Bolts or brackets securing the cab or the body of the vehicle to the frame must not be loose, broken, or missing.

(c) The frame rail flanges between the axles shall not be bent, cut or notched, except as specified by the manufacturer.

(d) All accessories mounted to the truck tractor frame must be bolted or riveted.

(e) No holes shall be drilled in the top or bottom rail flanges, except as specified by the manufacturer.

(f) Field repairs are allowed.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.203. Cab and body components.

(a) The cab compartment doors or door parts used as an entrance or exit shall not be missing or broken. Doors shall not sag so that they cannot be properly opened or closed. No door shall be wired shut or otherwise secured in the closed position so that it cannot be readily opened. EXCEPTION: When the vehicle is loaded with pipe or bar stock that blocks the door and the cab has a roof exit.

(b) Bolts or brackets securing the cab or the body of the vehicle to the frame shall not be loose, broken, or missing.

(c) The hood must be securely fastened.

(d) All seats must be securely mounted.

(e) The front bumper must not be missing, loosely attached, or protruding beyond the confines of the vehicle so as to create a hazard.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.205. Wheels.

(a) Wheels and rims shall not be cracked or broken.

(b) Stud or bolt holes on the wheels shall not be elongated (out of round).

(c) Nuts or bolts shall not be missing or loose.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.207. Suspension systems.

(a) Axles. No axle positioning part shall be cracked, broken, loose or missing. All axles must be in proper alignment.

(b) Adjustable axles. Adjustable axle assemblies shall not have locking pins missing or disengaged.

(c) Leaf springs. No leaf spring shall be cracked, broken, or missing nor shifted out of position.

(d) Coil springs. No coil spring shall be cracked or broken.

(e) Torsion bar. No torsion bar or torsion bar suspension shall be cracked or broken.

(f) Air suspensions. The air pressure regulator valve shall not allow air into the suspension system until at least 55 psi is in the braking system. The vehicle shall be level (not tilting to the left or right). Air leakage shall not be greater than 3 psi in a 5 minute time period when the vehicle's air pressure gauge shows normal operating pressure.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-393.209. Steering wheel systems.

- (a) The steering wheel shall be secured and must not have any spokes cracked through or missing.
- (b) The steering wheel lash shall not exceed the following parameters:

Steering wheel diameter	Manual steering system	Power steering system
16" or less	2" +	41/2" +
18"	2 1/4" +	43/4" +
20"	2 1/2" +	51/4" +
22"	2 3/4" +	53/4" +

- (c) Steering column. The steering column must be securely fastened.
- (d) Steering system. Universal joints shall not be worn, faulty or repaired by welding. The steering gear box shall not have loose or missing mounting bolts or cracks in the gear box or mounting brackets. The pitman arm on the steering gear output shaft shall not be loose. Steering wheels shall turn freely through the limit of travel in both directions.
- (e) Power steering systems. All components of the power system must be in operating condition. No parts shall be loose or broken. Belts shall not be frayed, cracked or slipping. The system shall not leak. The power steering system shall have sufficient fluid in the reservoir.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-396. INSPECTION, REPAIR, AND MAINTENANCE.

Editor's Note

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998. Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

Table of Contents

- 38-396.1. Scope.
- 38-396.3. Inspection, repair, and maintenance.
- 38-396.5. Lubrication.
- 38-396.7. Unsafe operations forbidden.
- 38-396.9. Inspection of motor vehicles in operation.
- 38-396.17. Periodic inspection.
- 38-396.19. Inspector qualifications.
- 38-396.21. Periodic inspection recordkeeping requirements.
- 38-396.23. Equivalent to periodic inspection.

38-396.1. Scope.

General. Every motor carrier, its officers, drivers, agents, representatives, and employees directly concerned with the inspection or maintenance of motor vehicles shall comply and be conversant with the rules of 38-382.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38-396.3. Inspection, repair, and maintenance.

(a) General. Every motor carrier shall systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles subject to its control.

(1) Parts and accessories shall be in safe and proper operating condition at all times. These include those specified in part 38-393 of this regulation and any additional parts and accessories which may affect safety of operation, including but not limited to, frame and frame assemblies, suspension systems, axles and attaching parts, wheels and rims, and steering systems.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–396.5. Lubrication.

Every motor carrier shall ensure that each motor vehicle subject to its control is

- (a) Properly lubricated; and
- (b) Free of oil and grease leaks.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–396.7. Unsafe operations forbidden.

(a) General. A motor vehicle shall not be operated in such a condition as to likely cause an accident or a breakdown of the vehicle.

(b) Exemption. Any motor vehicle discovered to be in an unsafe condition while being operated on the highway may be continued in operation only to the nearest place where repairs can safely be effected. Such operation shall be conducted only if it is less hazardous to the public than to permit the vehicle to remain on the highway.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–396.9. Inspection of motor vehicles in operation.

(a) Personnel authorized to perform inspections. Every special agent of the FHWA (as defined in appendix B to this regulation) is authorized to enter upon and perform inspections of motor carrier's vehicles in operation.

(b) Prescribed inspection report. The Driver Vehicle Examination Report shall be used to record results of motor vehicle inspections conducted by authorized FHWA personnel.

(c) Motor vehicles declared "out of service".

(1) Authorized personnel shall declare and mark "out of service" any motor vehicle which by reason of its mechanical condition or loading would likely cause an accident or a breakdown. An "Out of Service Vehicle" sticker shall be used to mark vehicles "out of service."

(2) No motor carrier shall require or permit any person to operate nor shall any person operate any motor vehicle declared and marked "out of service" until all repairs required by the "out of service notice" have been satisfactorily completed. The term "operate" as used in section 9 shall include towing the vehicle, except that vehicles marked "out of service" may be towed away by means of a vehicle using a crane or hoist. A vehicle combination consisting of an emergency towing vehicle and an "out of service" vehicle shall not be operated unless such combination meets the performance requirements of this regulation except for those conditions noted on the Driver Vehicle Examination Report.

(3) No person shall remove the "Out of Service Vehicle" sticker from any motor vehicle prior to completion of all repairs required by the "out of service notice".

(d) Motor carrier disposition.

(1) The driver of any motor vehicle receiving an inspection report shall deliver it to the motor carrier operating the vehicle upon his/her arrival at the next terminal or facility. If the driver is not scheduled to arrive at a terminal or facility of the motor carrier operating the vehicle within 24 hours, the driver shall immediately mail the report to the motor carrier.

(2) Motor carriers shall examine the report. Violations or defects noted thereon shall be corrected.

(3) Within 15 days following the date of the inspection, the motor carrier shall

(i) Certify that all violations noted have been corrected by completing the "Signature of Carrier Official, Title, and Date Signed" portions of the form; and

(ii) Return the completed roadside inspection form to the issuing agency at the address indicated on the form and retain a copy at the motor carrier's principal place of business or where the vehicle is housed for 12 months from the date of the inspection.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–396.17. Periodic inspection.

(a) Every commercial motor vehicle shall be inspected as required. The inspection shall include, at a minimum, the parts and accessories set forth in appendix G of this regulation.

Note: The term commercial motor vehicle includes each vehicle in a combination vehicle. For example, for a tractor semitrailer, fulltrailer combination, the tractor, semitrailer, and the fulltrailer (including the converter dolly if so equipped) shall each be inspected.

(b) Except as provided in Regulation 38–396.23, a motor carrier shall inspect or cause to be inspected all motor vehicles subject to its control.

(c) A motor carrier shall not use a commercial motor vehicle unless each component identified in appendix G has passed an inspection in accordance with the terms of section 17 at least once during the preceding 12 months and documentation of such inspection is on the vehicle. The documentation may be:

- (1) The inspection report prepared in accordance with paragraph 38-396.21(a), or
- (2) Other forms of documentation, based on the inspection report (e.g., sticker or decal), which contains the following information:
 - (i) The date of inspection;
 - (ii) Name and address of the motor carrier or other entity where the inspection report is maintained;
 - (iii) Information uniquely identifying the vehicle inspected if not clearly marked on the motor vehicle; and
 - (iv) A certification that the vehicle has passed an inspection in accordance with Regulation 38–396.17.

(d) A motor carrier may perform the required annual inspection for vehicles under the carrier's control which are not subject to an inspection under Regulation 38-396.23(b)(1).

(e) In lieu of the self inspection provided for in paragraph (d), a motor carrier may choose to have a commercial garage, fleet leasing company, truck stop, or other similar commercial business perform the inspection as its agent, provided that business operates and maintains facilities appropriate for commercial vehicle inspections and it employs qualified inspectors, as required by Regulation 38–396.19.

(f) Vehicles passing roadside or periodic inspections performed under the auspices of any State government or equivalent jurisdiction or the FHWA, meeting the minimum standards contained in appendix G of this regulation, will be considered to have met the requirements of an annual inspection for a period of 12 months commencing from the last day of the month in which the inspection was performed, except as provided in Regulation 38–396.23(b)(1).

(g) It shall be the responsibility of the motor carrier to ensure that all parts and accessories not meeting the minimum standards set forth in appendix G to this regulation are repaired promptly.

(h) Failure to perform properly the annual inspection shall cause the motor carrier to be subject to the penalty provisions provided by 49 U.S.C. 521(b).

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–396.19. Inspector qualifications.

(a) It shall be the motor carrier's responsibility to ensure that the individual(s) performing an annual inspection under Regulation 38–396.17 (d) or (e) is qualified as follows:

- (1) Understands the inspection criteria set forth in 49 CFR part 38–393 and appendix G of this regulation and can identify defective components;
- (2) Is knowledgeable of and has mastered the methods, procedures, tools and equipment used when performing an inspection; and
- (3) Is capable of performing an inspection by reason of experience, training, or both as follows:
 - (i) Successfully completed a State or Federal sponsored training program or has a certificate from a State or Canadian Province which qualifies the person to perform commercial motor vehicle safety inspections, or

(ii) Have a combination of training and/or experience totaling at least 1 year. Such training and/or experience may consist of:

- (A) Participation in a truck manufacturer sponsored training program or similar commercial training program designed to train students in truck operation and maintenance;
- (B) Experience as a mechanic or inspector in a motor carrier maintenance program;
- (C) Experience as a mechanic or inspector in truck maintenance at a commercial garage, fleet leasing company, or similar facility; or
- (D) Experience as a commercial vehicle inspector for a State, Provincial or Federal Government.

(b) Evidence of that individual's qualifications shall be retained by the motor carrier for the period during which that individual is performing annual motor vehicle inspections for the motor carrier, and for one year thereafter. However, motor carriers do not have to maintain documentation of inspector qualifications for those inspections performed either as part of a State periodic inspection program or at the roadside as part of a random roadside inspection program.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–396.21. Periodic inspection recordkeeping requirements.

(a) The qualified inspector performing the inspection shall prepare a report which:

- (1) Identifies the individual performing the inspection;
- (2) Identifies the motor carrier operating the vehicle;
- (3) Identifies the date of the inspection;
- (4) Identifies the vehicle inspected;
- (5) Identifies the vehicle components inspected and describes the results of the inspection, including the identification of those components not meeting the minimum standards set forth in appendix G to this regulation; and
- (6) Certifies the accuracy and completeness of the inspection as complying with all the requirements.

(b)(1) The original or a copy of the inspection report shall be retained by the motor carrier or other entity who is responsible for the inspection for a period of fourteen months from the date of the inspection report. The original or a copy of the inspection report shall be retained where the vehicle is either housed or maintained.

(2) The original or a copy of the inspection report shall be available for inspection upon demand of an authorized Federal, State or local official.

(3) Exception. Where the motor carrier operating the commercial motor vehicles did not perform the commercial motor vehicle's last annual inspection, the motor carrier shall be responsible for obtaining the original or a copy of the last annual inspection report upon demand of an authorized Federal, State, or local official.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

38–396.23. Equivalent to periodic inspection.

(a) The motor carrier may meet the requirements of Regulation 38–396.17 through a State or other jurisdiction's roadside inspection program. The inspection must have been performed during the preceding 12 months. In using the roadside inspection, the motor carrier would need to retain a copy of an annual inspection report showing that the inspection was performed in accordance with the minimum periodic inspection standards set forth in appendix G to this regulation. When accepting such an inspection report, the motor carrier must ensure that the report complies with the requirements of Regulation 38–396.21(a).

(b)(1) If a commercial motor vehicle is subject to a mandatory State inspection program which is determined by the Administrator to be as effective as Regulation 38–396.17, the motor carrier shall meet the requirement of Regulation 38–396.17 through that State's inspection program. Commercial

motor vehicle inspections may be conducted by State personnel, at State authorized commercial facilities, or by the motor carrier under the auspices of a State authorized self inspection program.

(2) Should the FHWA determine that a State inspection program, in whole or in part, is not as effective as Regulation 38-396.17, the motor carrier must ensure that the periodic inspection required by Regulation 38-396.17 is performed on all commercial motor vehicles under its control in a manner specified in Regulation 38-396.17.

HISTORY: Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

APPENDIX A. NORTH AMERICAN STANDARD

OUT-OF-SERVICE CRITERIA

JANUARY 1, 2004

COMMERCIAL VEHICLE SAFETY ALLIANCE

Part I – North American Standard Driver Out-of-Service Criteria

Part II – North American Standard Vehicle Out-of-Service Criteria

THIS DOCUMENT REPLACES AND SUPERSEDES ALL

PREVIOUS OUT-OF-SERVICE CRITERIA

APPENDIX A

PART I

SOUTH CAROLINA DRIVER

OUT-OF-SERVICE CRITERIA

FOR

UNMANUFACTURED FOREST PRODUCTS

POLICY STATEMENT

The purpose of 38-382 is to identify driver violations that render the commercial motor vehicle operator unqualified to drive or out-of-service. The necessity for all enforcement personnel to implement and adhere to these standards is: (1) a matter of law; (2) perceived as necessary by the society we are charged with protecting; and (3) a professional obligation if substantial enhancement in the safety of commercial motor vehicle operators is to be achieved.

Except where state, provincial, or federal laws preclude enforcement of a named item, motor carrier safety enforcement personnel and their jurisdictions shall comply with these driver out-of-service violation standards.

OUT-OF-SERVICE VIOLATION: Violation under this category preclude further operation of a commercial motor vehicle by its driver for a specified period of time or for some violations until a required condition is met.

1. Driver Age

Is not at least 18 years of age (38-391.11(b)(1). Place driver Out-of-Service

2. Operator's/Chauffeur's License or Permit (Non-CDL)

a. Vehicle 26,000 lbs. Or less GVWR not designed to transport 16 or more passengers or placarded loads of hazardous materials.

Is not licensed for the type of vehicle being operated. (Out-of-Service action to be initiated only upon home jurisdiction verification.) (38-391.11(b)(5)) Place driver Out-of-Service

3. CDL

a. License

Does not possess a valid CDL issued by his/her state or jurisdiction of domicile. (Out-of-Service action to be initiated only upon home jurisdiction license verification.). (38-383.23(a)(2)) Place driver Out-of-Service

b. Learner's Permit

Is not accompanied by the holder of a valid CDL (38-383.23(c)) Place driver Out-of-Service

c. Endorsements and Restrictions

Operating a commercial vehicle without proper endorsement or in violation of restrictions. (38-383.23(a)(2)), (38-391.11(b)(5)) Place driver Out-of-Service

d. Classification

Does not possess proper class of license for vehicle being operated. (38-383.91(a)) Place driver Out-of-Service

4. Sickness or Fatigue

When so impaired that the driver should not continue the trip. (38-392.3) Place driver Out-of-Service until no longer impaired

5. Driver Disqualification

Driver disqualification under the provisions of (38-383.51(a) or (38-391.15(a)) Place driver Out-of-Service until re-qualification is established

6. Drugs and Other Substances; As Identified Under Regulation 38-392.4(a)

a. Shall not be in possession

Is in possession. (38-392.4(a)) Place driver Out-of-Service for twenty-four (24) consecutive hours

b. Shall not be under the influence

Is under the influence, with probable cause. (38-392.4(a)) Place driver Out-of-Service for twenty-four (24) consecutive hours.

7. Intoxicating Beverages

Under the influence of intoxicating beverages, consumes an intoxicating beverage regardless of its alcohol content, or have any measured alcohol concentration or any detected presence of alcohol while on duty, or operating, or in physical control of a motor vehicle. (38-392.5(a)) Place driver Out-of-Service for twenty-four (24) consecutive hours.

APPENDIX A

PART II

SOUTH CAROLINA VEHICLE

OUT-OF-SERVICE CRITERIA

FOR

UNMANUFACTURED FOREST PRODUCTS

POLICY STATEMENT

The purpose of 38-382 is to identify critical vehicle inspection items and provide criteria for placing vehicle(s) out-of-service subsequent to a safety inspection.

Except where state, provincial, or federal laws preclude enforcement of a named item, motor carrier safety enforcement personnel and their jurisdictions shall comply with these vehicle Out-of-Service violation standards.

NOTE: Decal Qualification: Each vehicle (truck, truck tractor, semitrailer, trailer, etc.) must “pass” inspection to qualify for a decal. “Pass Inspection” means that no violations/defects are found of the vehicle inspection items contained in the definitions of Level I and Level V inspections. For the purpose of decal issuance, if no violation is detected during a Level I or Level V inspection due to a hidden part, which includes the vehicle inspection items listed in the definitions, a decal shall be applied.

The decal criteria apply only to the condition of the vehicle, not the driver. It is possible for a driver to be Out-of-Service and still have vehicle(s) qualify for a decal. If each vehicle, whether used singly or in a combination, passes inspection, a current CVSA decal shall be affixed and no other CVSA decals shall be visible.

OUT-OF-SERVICE: Authorized personnel shall declare and mark “out of service” any motor vehicle which by reason of its mechanical condition or loading would likely cause an accident or breakdown. An “Out of Service Vehicle” sticker shall be used to mark vehicles “out of service”. No motor carrier shall require nor shall any person operate any commercial motor vehicle declared and marked “out of service” until all repairs by the “out of service notice” have been satisfactorily completed.

No person shall remove the “Out of Service Vehicle” sticker from any motor vehicle prior to completion of all repairs required by the “out of service notice”.

Violations other than out of service conditions detected during the inspection process will not preclude the completion of the current trip or dispatch. However, such violations must be corrected or repaired prior to re-dispatch.

These criteria are neither suited nor intended to serve as vehicle maintenance or performance standards.

1. Brake System.

a. Defective Brakes.

The number of defective brakes is equal to or greater than 20 percent of brakes on the vehicle or combination. A defective brake includes any brake that meets one of the following criteria: (NOTE: Steering axle brakes under 1.b are to be included in 20 percent criterion.)

(1) Absence of effective braking action upon application of the service brakes (such as brake linings failing to move or contact braking surface upon application). (38-393.48(a))

(2) Missing or broken mechanical components including: shoes, linings, pads, springs, anchor pins, spiders, cam rollers, push-rods, and air chamber mounting bolts. (38-393.48(a))

(3) Loose brake components including air chambers, spiders, and cam shaft support brackets. (38-393.48(a))

(4) Audible air leak at brake chamber, (Example - ruptured diaphragm, loose chamber clamp, etc.) NOTE: Also check under 1.h. -Air Loss Rate. (38-396.3(a)(1))

(5) Brake adjustment limits. Bring reservoir pressure between 90 to 100 psi, turn engine off and then fully apply the brakes.

(a) One brake at ¼ inch or more beyond the readjustment limit. (Example: Type 30 clamp type brake chamber pushrod measured at 2-1/4 inches would be one defective brake.) (38-396.3(a)(1))

(b) Two brakes less than 1/4 inch beyond the readjustment limit also equal one defective brake. (Examples: Clamp type 30 pushrods measure - Two at 2-1/8 inches. This example would equal one defective brake. (38-396.3(a)(1))

(c) Any wedge brake where the combined brake lining movement of both top and bottom shoes exceeds 1/8 inch. (38-396.3(a)(1))

Brake Adjustment. Shall not meet or exceed those specifications contained hereunder relating to “Maximum stroke at which Brakes Must Be Readjusted.” (Dimensions are in inches.)

COMMERCIAL VEHICLE SAFETY ALLIANCE

OUT-OF-SERVICE CRITERIA

REFERENCE CHARTS

CLAMP TYPE BRAKE CHAMBER DATA

<u>TYPE</u>	<u>OUTSIDE DIAMETER</u>	<u>BRAKE ADJUSTMENT LIMIT</u>
6	4-1/2	1-1/4
9	5-1/4	1-3/8
12	5-11/16	1-3/8
16	6-3/8	1-3/4
20	6-25/32	1-3/4
24	7-7/32	1-3/4
30	8-3/32	2
36	9	2-1/4

'LONG STROKE' CLAMP TYPE BRAKE CHAMBER DATA

<u>TYPE</u>	<u>OUTSIDE DIAMETER</u>	<u>BRAKE ADJUSTMENT LIMIT</u>
12	5-11/16	1-3/4
16	6-3/8	2.0
20	6-25/32	2.0
24	7-7/32	2.0
24*	7-7/32	2.5
30	8-3/32	2.5

* For 3" maximum stroke type 24 chambers

BOLT TYPE BRAKE CHAMBER DATA

<u>TYPE</u>	<u>OUTSIDE DIAMETER</u>	<u>BRAKE ADJUSTMENT LIMIT</u>
A	6-15/16	1-3/8
B	9-3/16	1-3/4
C	8-1/16	1-3/4
D	5-1/4	1-1/4
E	6-3/16	1-3/8
F	11	2-1/4
G	9-7/8	2

ROTOCHAMBER DATA

<u>TYPE</u>	<u>OUTSIDE DIAMETER</u>	<u>BRAKE ADJUSTMENT LIMIT</u>
9	4-9/32	1-1/2
12	4-13/16	1-1/2
16	5-13/32	2
20	5-15/16	2
24	6-13/32	2
30	7-1/16	2-1/4
36	7-5/8	2-3/4
50	8-7/8	3

DD-3 BRAKE CHAMBER DATA

<u>TYPE</u>	<u>OUTSIDE DIAMETER</u>	<u>BRAKE ADJUSTMENT LIMIT</u>
30	8-1/8	2-1/4

NOTE: This chamber has three air lines and is found on motor coaches.

WEDGE BRAKE DATA

The combined movement of both brake shoe lining scribe marks shall not exceed 1/8 inch (3.18mm)

a. Defective Brakes (cont'd)

(6) Brake linings or pads. (Except on power unit steering axles)

(a) Cracked, loose, or missing lining.

- i. Lining cracks or voids of 1/16" in width observable on the edge of the lining.
- ii. Portions of a lining segment missing such that a fastening device (rivet or bolt) is exposed when viewing the lining from the edge.
- iii. Cracks that exceed 1-1/2" in length.
- iv. Loose lining segments. (Approximately 1/16" or more movement.)
- v. Complete lining segment missing. (38-393.47)

(b) Evidence of oil seepage into or out of the brake lining/drum interface area. This must include wet contamination of the lining edge accompanied by evidence that further contamination will occur - such as oil running from the drum or a bearing seal.

NOTE: Grease on the lining edge, back of shoe, or drum edge and oil stains with no evidence of fresh oil leakage are not conditions for out-of-service. (38-393.47)

(c) Lining with a thickness less than 3/16 inch for a shoe with a continuous strip of lining or 1/4 inch for a shoe with two pads for drum brakes or to wear indicator if lining is so marked, or less than 1/8 inch for air disc brakes, and 1/16 inch or less for hydraulic, disc, drum and electric brakes. (38-393.47)

(7) Missing brake on any axle required to have brakes. (38-393.42)

b. Steering Axle Brakes

In addition to being included in the 20 percent criterion, the following criteria places a vehicle in an out-of-service condition:

(1) Absence of effective braking action on any steering axle of any vehicle required to have steering axle brakes, including the dolly and front axle of a full trailer. (38-393.48(a))

(2) Mismatch across any power unit steering axles of:

- (a) Air chamber sizes. (38-396.3(a)(1))
- (b) Slack adjuster length. (38-396.3(a)(1))

(3) Brake linings or pads on the steering axle of any power unit:

(a) Cracked, loose, or missing lining.

- i. Lining cracks or voids of 1/16" in width observable on the edge of the lining.
- ii. Portions of a lining segment missing such that a fastening device (rivet or bolt) is exposed when viewing the lining from the edge.
- iii. Cracks that exceed 1-1/2" in length.
- iv. Loose lining segments. (Approximately 1/16" or more movement.)
- v. Complete lining segment missing. (38-393.47)

(b) Evidence of oil seepage into or out of the brake lining/drum interface area. This must include wet contamination of that lining edge accompanied by evidence further contamination will occur — such as oil running from the drum or bearing seal.

NOTE: Grease on the lining edge, back of shoe, or drum edge and oil stains with no evidence of fresh oil leakage are not conditions for out-of-service. (38-393.47)

(c) Lining with a thickness less than 3/16 inch for a shoe with a continuous strip of lining or 1/4 inch for a shoe with two pads for drum brakes or to wear indicator if lining is so marked, or less than 1/8 inch for air disc brakes, and 1/16 inch or less for hydraulic disc, drum and electric brakes. (38-393.47)

c. Parking Brakes

(1) Inoperable breakaway braking system on trailer(s).

(NOTE: No trailer brake application upon actuation of the parking brake control indicates an inoperable breakaway braking system.) (See item (i), page 17) (38-393.43(d))

(2) Any non-manufactured holes or cracks in the spring brake housing section of a parking brake. (38-396.3(A)(1))

d. Brake Drums or Rotors

(1) Drums with any external crack or cracks that open upon brake application.

(NOTE: Do not confuse short hairline heat check cracks with flexural cracks.) (38-396.3(a)(1))

(2) Any portion of the drum or rotor (discs) missing or in danger of failing away. (38-396.3(A)(1))

e. Brake Hose

(1) Hose with any damage extending through the outer reinforcement ply. (Rubber impregnated fabric cover is not a reinforcement ply.) (Thermoplastic nylon may have braid reinforcement or color difference between cover and inner tube. Exposure of second color is out-of-service.) (38-396.3(a)(1))

(2) Bulge/swelling when air pressure is applied. (38-396.3(a)(1))

(3) Hose with audible leak at other than a proper connection. (38-396.3(a)(1))

(4) Two hoses improperly joined such as a splice made by sliding the hose ends over a piece of tubing and clamping the hose to the tube. (38-393.46)

(5) Air hose cracked, broken, or crimped in such a manner as to restrict air flow. (38-393.45(a)(4))

f. Brake Tubing

(1) Tubing with an audible leak at other than a proper connection. (38-396.3(a)(1))

(2) Tubing cracked, damaged by heat, broken, or crimped. (38-396.46(f))

g. Low Pressure Warning Device

Low pressure warning device missing, inoperative, or does not operate at 55 psi and below, or 1/2 the governor cut-out pressure, whichever is less.

NOTE: If either an audible or visual warning device is working, vehicle should not be placed out-of-service. (38-393.51)

h. Air Loss Rate

If an air leak is discovered and the reservoir pressure is not maintained when:

(1) Governor is cut-in;

(2) Reservoir pressure is between 80 & 90 psi;

(3) Engine is at idle; and

(4) Service brakes are fully applied. (38-396.3(a)(1))

i. Tractor-Protection System

Inoperable or missing tractor protection valves on power unit. (38-393.43) (See item (c)(1), page 15.

j. Air Reservoir

Air reservoir security; separated from its original attachment points. (38-393.50)

k. Air Compressor

(Normally to be inspected when readily visible or when conditions indicate compressor problems)

(1) Loose compressor mounting bolts. (38-396.3(a)(1))

(2) Cracked, broken, or loose pulley. (38-396.3(a)(1))

(3) Cracked or broken mounting brackets, braces, or adapters. (38-396.3(a)(1))

l. Electric Brakes

(1) Absence of braking action on 20 percent or more of the braked wheels of a vehicle or combination of vehicles. (38-393.48(a))

(2) Missing or inoperable breakaway braking device. (38-393.48(d))

m. Hydraulic Brakes

Including: Power Assist over Hydraulic and Engine Driven Hydraulic Booster)

(1) No pedal reserve with engine. (38-396.3(a)(1))

(2) Master cylinder less than 1/4 full.

(NOTE: Normally to be inspected when readily visible or problems are apparent.) (38-396.3(a)(1))

(3) Power assist unit fails to operate. (38-396.3(a)(1))

(4) Seeping or swelling brake hose(s) under application of pressure. (38-396.3(a)(1))

(5) Missing or inoperable breakaway braking device. (38-393.43)

(6) Hydraulic hose(s) abraded (chafed) through outer cover-to-fabric layer. (38-393.45)

(7) Fluid lines or connections restricted, crimped, cracked, or broken. (38-396.3(a)(1))

(8) Any visually observed leaking hydraulic fluid in the brake system upon full application. (38-396.3(a)(1))

(9) Hydraulic System: Brake failure light/low fluid warning light on and/or inoperative. (38-393.51)

n. Vacuum System

(1) Insufficient vacuum reserve to permit one full brake application after engine is shut off. (38-393.50)

(2) Vacuum hose(s) or line(s) restricted, abraded (chafed) through outer cover-to-ply, crimped, cracked, broken, or has collapse of vacuum hose(s) when vacuum is applied. (38-396.3(a)(1))

2. Coupling Devices (When in use.)

a. Fifth Wheels (Lower Coupler Assembly)

(1) Mounting to frame.

(a) More than 20 percent of fasteners on either side missing or ineffective. (38-393.70)

(b) Any movement between mounting components. (38-393.70)

(c) Any mounting angle iron cracked or broken.

SPECIAL NOTE: Any repair cracking, well defined (especially open) cracks in stress or load-bearing areas, cracks through 20 percent or more original welds or parent metal. (38-393.70)

(2) Mounting plates & pivot brackets.

(a) More than 20 percent of fasteners on either side missing or ineffective. (38-393.70)

(b) Any welds or parent metal cracked.

SPECIAL NOTE: Any repair weld cracking, well defined (especially open) cracks in stress or load-bearing areas, cracks through 20 percent or more original welds or parent metal. (38-393.70)

(c) More than 3/8 inch horizontal movement between pivot bracket pin and bracket. (38-393.70)

(d) Pivot bracket pin missing or not secured. (38-393.70)

(3) Sliders

(a) More than 25 percent of latching fasteners, per side, ineffective. (38-393.70)

(b) Any fore or aft stop missing or not securely attached. (38-393.70)

(c) Movement of more than 3/8 inch between slider bracket and slider base. (38-393.70)

(4) Operating handle.

Operating handle not in closed or locked position. (38-393.70)

(5) Fifth wheel plate.

Cracks in fifth wheel plate. (38-393.70)

(SPECIAL NOTE:) Any repair weld cracking, well defined (especially open) cracks in stress or load-bearing areas, cracks through 20 percent or more original welds or parent metal.

EXCEPTIONS: (1) Cracks in fifth wheel approach ramps, and (2) casting shrinkage cracks in the ribs of the body of a cast fifth wheel.

(6) Locking mechanism

Locking mechanism parts missing, broken, or deformed to the extent the kingpin is not securely held. (38-393.70)

b. Upper Coupler Assembly (Including kingpin)

(1) Horizontal movement between the upper and lower fifth wheel halves exceeds 1/2 inch. (38-393.70)

(2) Kingpin can be moved by hand in any direction.

NOTE: This item is to be used when uncoupled semitrailers are encountered, such as at a terminal inspection, and it is impossible to check item (1) above. Kingpins in coupled vehicles are to be inspected using items (1) above and items (3) and (4) below. Vehicles are not to be uncoupled. (38-393.70)

(3) Kingpin not properly engaged. (38-393.70)

(4) Any semitrailer with a bolted upper coupler having fewer effective bolts than shown in the following table: MINIMUM TOTAL QUANTITY OF BOLTS (Total minimum quantity of bolts must be equally divided with 1/2 on each side of the coupler.)

BOLT SIZE	
1/2 inch	5/8 inch or larger
10 - (5 each side)	8 - (4 each side)

Note: This bolt size table applies to trailers having a 68,000 lbs. maximum gross vehicle weight rating (GVWR). Such trailers are typically used in tractor-semitrailer combinations with a maximum gross combination weight rating (GCWR) of 80,000 lbs. It is based on Truck Trailer Manufacturers Association Technical Bulletin No. 110 (TB 110) "Upper Coupler Attachment Bolts for Trailers with Repositionable Upper Couplers (4/1/98)". Table 1 in TB 110 also has specifications covering trailers with an 85,000 lbs. and 105,000 lbs. GVWR.

(5) Any welds or parent metal cracked.

SPECIAL NOTE: Any repair weld cracking, well defined (especially open) cracks in stress or load-bearing areas, cracks through 20 percent or more original welds or parent metal. (38-393.70)

c. Pintle Hooks

Mounting and integrity

(1) Loose mounting, missing or ineffective fasteners, or insecure latch. (Trailer - 38-393.70(c), Driveaway -38-393.71)

NOTE: A fastener is not considered missing if there is an empty hole in the device but no corresponding hole in the frame and vice versa.

(2) Cracks anywhere in the pintle hook assembly including mounting surface and frame cross member. (Trailer - 38-393.70(c), Driveaway - 38-393.71)

(3) Any welded repairs to the pintle hook assembly. (Trailer - 38-393.70(c), Driveaway - 38-393.71)

(4) Section reduction visible when coupled.

NOTE: No part of the horn should have any section reduced by more than 20 percent. If wear can be seen when the hook and eye are coupled it is probable that either this condition or that described below in "d.(4)" exists. (Trailer - 38-393.70(c), Driveaway - 38-393.71)

d. Drawbar Eye

Mounting and integrity.

(1) Any cracks in attachment welds or drawbar eye. (trailer - 38-393.70(c), Driveaway - 38-393.71)

(2) Any missing or ineffective fasteners. (Trailer - 38-393.70(c), Driveaway - 38-393.71)

(3) Any welded repairs to the drawbar eye. (Trailer - 38-393.70(c), Driveaway - 38-393.71)

(4) Section reduction visible when coupled.

NOTE: No part of the eye should have any section reduced by more than 20 percent. If wear can be seen when the hook and eye are coupled, it is probable that either this condition or that described above in "c.(4)" exists. (Trailer - 38-393.70(c), Driveaway - 38-393.71)

e. Drawbar/Tongue

- (1) Slider (power/manual).
 - (a) Ineffective latching mechanism. (Trailer - 38-393.70(c), Driveaway - 38-393.71)
 - (b) Missing or ineffective stop. (Trailer-38-393.70(c), Driveaway - 38-393.71)
 - (c) Movement of more than 1/4 inch between slider and housing. (Trailer 3-393.70(c), Driveaway - 38-393.71)
 - (d) Any leaking air or hydraulic cylinders, hoses, or chambers (other than slight oil weeping normal with hydraulic seals). (Trailer - 38-393.70(c), Driveaway - 38-393.71)

- (2) Integrity.
 - (a) Any cracks. (Trailer - 38-393.70(c), Driveaway - 38-393.71)
 - (b) Movement of 1/4 inch between sub frame and drawbar at point of attachment. (Trailer - 38-393.70(c), Driveaway - 38-393.71)

f. Safety Devices

- (1) Missing (38-393.70(c))
- (2) Unattached or incapable of secure attachment. (38-393.70(c))
- (3) Improper repairs to chains and hooks including welding, wire, small bolts, rope & tape. (38-393.70(c))

g. Saddle mounts

- (1) Any missing or ineffective fasteners. (38-393.71)
- (2) Loose mountings. (38-393.71)
- (3) Any cracks or breaks in a stress or load-bearing member. (38-393.71)
- (4) Horizontal movement between upper & lower saddle mount halves exceeds 1/4 inch (6mm). (38-393.71)

h. Full Trailer (Double Ring, Ball-Bearing Turntable)

- (1) Mounting Top and Bottom
 - (a) Top flange has less than 7 effective bolts. (38-393.70(c))
 - (b) Bottom flange has less than 7 effective bolts. (38-393.70(c))
 - (c) Twenty percent or more of original welds (or repaired original welds), or parent metal cracked. (38-393.70(c))
- (2) Wear (See illustration below).
 - (a) Upper flange half touching lower flange half. (38-393.70(c))
 - (b) Cracked flanges. (38-393.70(c))

3. Exhaust System

- (a) Any exhaust system leaking at a point forward of or directly below the driver/sleeper compartment and when the floor pan is in such condition as to permit entry of exhaust fumes. (38-393.83(e))
- (b) Any bus exhaust system leaking or discharging under the chassis more than 6 inches forward of the rear most part of the bus when powered by a gasoline engine, or more than 15 inches forward of the rear most part of the bus when powered by other than a gasoline engine. (38-393.83(d))
- (c) No part of the exhaust system of any motor vehicle shall be so located as to be likely to result in burning, charring, or damaging the electrical wiring, the fuel supply, or any combustible part of the motor vehicle. (38-393.83(a))

4. Frame

a. Frame Members

- (1) Any cracked, loose, sagging, or broken frame member permitting shifting of the body onto moving parts or other condition indicating an imminent collapse of the frame. (Bus, truck, truck tractor - 38-393.201(a), Trailers - 38-396.3(a)(1))
- (2) Any cracked, loose, or broken frame member adversely affecting support of functional components such as steering gear, fifth wheel, engine, transmission, body parts, and suspension. (Bus, truck, truck tractor - 38-393.201(a), Trailers - 38-396.3(a)(1))

(3) One and one-half inches or longer crack in frame web which is directed toward bottom flange. (Bus, truck, truck tractor - 38-393.201(a), Trailers - 38-396.3(a)(1))

(4) Any crack extending from the frame web around the radius and into the bottom flange. (Bus, truck, truck tractor - 38-393.201(a), Trailers - 38-396.3(a)(1))

(5) One inch or longer crack in bottom flange. (Bus, truck, truck tractor - 38-393.201(a), Trailers - 38-396.3(a)(1))

NOTE: Items (1) and (2) above, apply to all buses including those having unitized (Monocoque) construction. Items (3), (4), and (5) apply only to buses having a body-on-chassis design, such as most school buses.

b. Tire and Wheel Clearance

Any condition, including loading that causes the body or frame to be in contact with a tire or any part of the wheel assemblies, at the time of inspection. (38-396.3(a)(1))

c. Adjustable Axle

(1) Adjustable axle assembly (sliding sub frame) with more than one-fourth of the locking pins missing or not engaged. (38-393.207(b))

(2) Locking bar not closed or not in the locked position. (38-393.207(b))

5. Fuel System

a. Liquid Fuels

(1) A fuel system with a dripping leak at any point (including refrigeration or heater fuel systems). (38-393.67)

(2) A fuel tank not securely attached to the vehicle

NOTE: Some fuel tanks use spring or rubber bushings to permit movement. (38-393.65)

6. Headlamps, Tail Lamps, Lamps on Projecting Loads, Stop Lamps and Turn Signals

a. When lights are required

(1) Headlamps - The single vehicle or towing vehicle does not have at least one head lamp operative on low beam. (38-393.24(b)), (38-393.17), (38-393.9-inoperable)

(2) Lamps on Rear - Bus, truck, truck tractor, and towed vehicle (including driveaway/ towaway operation) not having at least one steady burning tail lamp on the rear of the rear most vehicle visible from 500 feet. (38-393.25(b)), (38-393.9-inoperable)

(3) Lamps on Projecting Loads - There is not at least one operative steady burning lamp on the rear of loads projecting more than four feet beyond the vehicle body, visible from 500 feet. (38-393.11), (38-393.17), (38-393.9-inoperable)

b. At Anytime - Day or Night

(1) Does not have at least one operative stop lamp on the rear of a single unit vehicle or the rear of the rear most vehicle of a combination of vehicles visible at 500 feet. (38-393.25(f)), (38-393.17), (38-393.9 - inoperable)

(2) Does not have operative turn signal visible on each side of the rear of a single unit vehicle or the rear of the rear most vehicle of a combination of vehicles. (Truck tractors unless the turn signals on the front are so constructed (double faced) and located as to be visible to passing drivers, two turn signals on the rear of the cab, one at each side.). (38-393.9-inoperable), (38-393.11-missing)

7. Safe Loading/Tie Downs

a. Part(s) of a vehicle or condition of loading such that the spare tire or any part of the load, cargo or dunnage can fall onto the roadway. (38-392.9)

b. When the aggregate working load limit of the securement devices being used is less than half the weight of the cargo being secured. (38-393.106(d))

NOTE: Equivalent means of securement (e.g., vehicle structures, dunnage, dunnage bags, shoring bars, etc.) may be used to comply; not all cargo must be "tied down" with chains, webbing, wire rope, cordage, etc. (38-393.106(b))

c. No edge protection. (38-393.104(f)(5))

NOTE: Out-of-Service only when the required tie down has evidence of damage resulting from an unprotected contact with an article of cargo.

NOTE: See sections 7(h)(1) through 7(h)(5) for tie down defect classification.

d. Articles of cargo that are likely to roll are not restrained by chocks, wedges, a cradle or other equivalent means to prevent rolling. (38-393.106(c)(1)) for all types of cargo including light-weight vehicles, 38-393.130(a) for heavy vehicles, equipment and machinery.)

e. Articles or cargo placed beside each other and secured by transverse tie-downs are not in direct contact with each other and are not prevented from shifting towards each other while in transit. (38-393.106(c)(2))

f. Articles or cargo not blocked or positioned to prevent movement in the forward direction by a headerboard, bulkhead, other cargo that is positioned to prevent movement, or other appropriate blocking devices, is not secured by at least:

(1) One tie-down for articles 5 feet (1.5m) or less in length, and 1,100 pounds (500kg) in weight (38-393.110(b)(1));

(2) Two tie-downs if the article is:

(a) 5 feet (1.5m) or less in length and more than 1,100 pounds in weight (38-393.110(b)(2)(i);or

(b) Longer than 5 feet (1.5m) but less than or equal to 10 feet (3m) in length, irrespective of the weight. (38-393.110(b)(2)(ii))

(3) Two tie-downs if the article is longer than 10 feet (3) and one additional tie-down for every 10 feet (3m) of article length, or fraction thereof, beyond the first 10 feet (3m) of length. (38-393.110(b)(3))

g. Article(s) or cargo that is blocked, braced, or immobilized to prevent movement in the forward position by a headerboard, bulkhead, other articles which are adequately secured or by an appropriate blocking or immobilization method, is not secured by at least one tie-down for every 10 feet (3) of article length, or fraction thereof. (38-393.110)

h. When any of the required type and number of tie-downs are defective or loose. (38-393.104(b) - Defective, 38-393.104(f) - Loose)

(1) Chain Defects

(a) Broken, cracked, twisted, bent, or stretched links. (38-393.104(b))

(b) Containing nicks, gouges, abrasions, excessive wear, or knots. (38-393.104)

(c) Any weld(s) on chain, except the original chain weld in each link. (38-393.104(f)(2))

NOTE: Repairs. Links of the clevis variety, having a strength equal to or greater than the nominal chain are acceptable (See also Tie-Down Guidelines.)

(2) Wire Rope Defects.

(a) Kinks, bird caging, or popped core or knots in the working section of the wire rope. (38-393.104(b), 38-393.104(f)(1))

(b) Discoloration from excessive heat or electric arc in the eye or main body of the wire rope. (38-393.104(b))

(c) Corrosion with pitting of the external or internal wires. (38-393.104(b))

(d) More than 11 broken wires in 6 diameters of length. For example, with 1/2 inch (13mm) wire rope, over 11 broken wires in (6x1/2) 3 inches of length (6x13=78mm). (38-393.104(b))

(e) More than three broken wires in any one strand. (38-393.104(b))

(f) More than two broken wires at the end connection or fitting. (38-393.104(b))

NOTE: Repairs. Wire rope used in tie-down assemblies shall not be repaired or spliced. (Back splices and eye splices are acceptable.)

(3) Cordage (fiber rope) Defects

(a) Burned or melted fibers except on heat-sealed ends. (38-393.104(b))

(b) Evidence of excessive wear in exterior or interior fibers. (38-393.104(b))

(c) Any evidence of loss of strength, such as a marked reduction in diameter. (38-393.104(b))

(d) Ineffective knots formed for the purpose of connecting or repairing binders. (38-393.104(f)(1))

* NOTE: Effective diameter of the cordage reduced by 20 percent is excessive. Repairs: Cordage used in tie-down assemblies shall not be repaired. (Separate lengths of cordage properly spliced together are not considered repairs.)

(4) Synthetic Webbing Defects.

(a) The tie-down contains cut(s), burn(s), and/or hole(s) through the webbing which total more than that shown in the defect classification table. (38-393.104(b))

(b) The tie-down contains separation its load carrying stitch pattern(s) in excess of 1/4 of the total stitch area. (38-393.104(b))

(c) The tie-down contains any fitting, tensioning device, or hardware which is broken, obviously sprung, bent, twisted, or contains visible cracks or significant nicks or gouges. (38-393.104(b))

(d) The tie-down contains knotted webbing splices, repairs, or any other apparent defects (i.e., crushed areas, damaged loop ends, severe abrasion, etc.) (38-393.104(f)(2))

DEFECT CLASSIFICATION TABLE

Total Defect Size

Web Size	Out-of-Service Range
Inches (mm)	Inches (mm)
4(100)	Larger than 3/4(19)
3(75)	Larger than 5/8(16)
2(50)	Larger than 3/8(10)
1.75(45)	Larger than 3/8(10)

All cuts, burns, and/or holes through the webbing are additive across the width of the strap face for its entire effective length. But only one defect is additive for any specific width.

NOTE: Repairs: Webbing used in tiedown assemblies shall not be repaired or spliced.

(5) Fittings or Attachment Defects.

(a) Obvious reduction of section through wear or corrosion. (38-393.104(b))

(b) Obviously distorted or stretched load binders and fittings. (38-393.104(b))

(c) Hooks opened in the throat beyond the original parallel throat opening. (38-393.104(b))

(d) Obvious twisting out of the plane of the fitting. (38-393.104(b))

(e) Welding or discoloration from excessive heat. (38-393.104(b))

NOTE: Some winches are designed to be welded to the truck bed.

(f) Any visible cracks. (38-393.104(b))

(g) Any slippage detectable at a wire rope "cable clamp". (38-393.104(f)(2))

NOTE: End fittings may be replaced with clevis type.

(6) Anchor Point Defects

(a) Broken or cracked side or pocket rails, supports, or welds. (38-393.104(c))

(b) Rails bent or distorted where hooks or fittings attach. (38-393.104(c))

(c) Floor rings nicked, gouged, worn, twisted, bent, stretched, or with broken welds. (38-393.104(c))

(d) Logs not secured per the specific securement requirements for this commodity type. (38-393.116)

(e) Dressed lumber or similar building products not secured per the specific securement of requirements for this commodity type. (38-393.118)

(f) Automobiles, light trucks and vans not secured per the specific securement requirements for this commodity type. (38-393.128)

(g) Heavy vehicles, equipment and machinery not secured per the specific securement requirements for this commodity type. (38-393.130)

8. Steering Mechanism

a. Steering Wheel Free Play.

(See Chart: When any of these values - inch movement or degrees - are met or exceeded, vehicle shall be placed out- of-service.) (38-393.209(b)) (For power steering systems, engine must be running.)

Steering Wheel Diameter	Manual System Movement 30°	Power System Movement 45°
16"(41cm)	4-1/2"(11.5cm)(or more)	6-3/4"(17cm)(or more)
18"(46cm)	4-3/4"(12cm)(or more)	7-1/8"(18cm)(or more)
19"(48cm)	5" (13cm)(or more)	7-1/2"(19cm)(or more)
20"(51cm)	5-1/4"(13cm)(or more)	7-7/8"(20cm)(or more)
21"(53cm)	5-1/2"(14cm)(or more)	8-1/4"(21cm)(or more)
22"(56cm)	5-3/4"(15cm)(or more)	8-5/8"(22cm)(or more)

For power systems, if steering wheel movement exceeds 45 degrees before steering axle tires move, proceed as follows: rock steering wheel left to right between points of power steering valve resistance. If that motion exceeds 30 degrees (or the inch movement values shown for manual steering) vehicle shall be placed out-of-service.

b. Steering Column

- (1) Any absence or looseness of U-bolt(s) or positioning part(s). (38-393.209(c))
- (2) Worn, faulty, or obviously repair-welded universal joint(s). (38-393.209(d))
- (3) Steering wheel not properly secured. (38-393.209(a))

c. Front Axle Beam and All Steering Components other than Steering Column (Including Hub)

- (1) Any crack(s). (38-396.3(a)(1))
- (2) Any obvious welded repair(s). (38-396.3(a)(1))

d. Steering Gear Box

- (1) Any mounting bolt(s) loose or missing. (38-393.209(d))
- (2) Any crack(s) in gear box or mounting brackets. (38-393.209(d))
- (3) Any obvious welded repair(s). (38-393.209(d))
- (4) Any looseness of the pitman arm on the steering gear output shaft. (38-393.209(d))

e. Pitman Arm

- (1) Any looseness of pitman arm on the steering gear output shaft. (38-393.209(d))
- (2) Any obvious welded repair(s). (38-396.3(a)(1))

f. Power Steering

Auxiliary power assist cylinder loose. (38-393.209(e))

g. Ball and Socket

- (1) Any movement under steering load of a stud nut. (38-396.3(a)(1))
- (2) Any motion, other than rotational, between any linkage member and its attachment point of more than 1/8 inch (3mm) measured with hand pressure only. (38-396.3(a)(1))
- (3) Any obvious welded repair(s). (38-396.3(a)(1))

h. Tie Rods and Drag

- (1) Loose clamp(s) or clamp bolt(s) on tie rods or drag links. (38-396.3(a)(1))
- (2) Any looseness in any threaded joint. (38-396.3(a)(1))

i. Nuts

Loose or missing on tie rods, pitman arm, drag link, steering arm, or tie rod arm. (38-396.3(a)(1))

j. Steering System

Any modification or other condition that interferes with free movement of any steering component. (38-393.209(d))

k. C-Dolly

- (1) Missing or inoperable steering locks. (38-396.3(a))
- (2) Steering not centered in the "zero" locked position. (38-396.3(a))

9. Suspension

a. Axle Parts/Members

(1) Any U-bolt(s) or other spring to axle clamp bolt(s) cracked, broken, loose, or missing. (38-393.207(a))

(2) Any spring hanger(s), or other axle positioning part(s) cracked, broken, loose, or missing resulting in shifting of an axle from its normal position. (38-393.207(a))

NOTE: After a turn, lateral axle displacement is normal with some suspensions. Forward or rearward operation in a straight line will cause the axle to return to alignment.

b. Spring Assembly

(1) One-fourth or more of the leaves in any spring assembly broken. (38-393.207(c))

(2) Any leaf or portion of any leaf in any spring assembly is missing or separated. (38-393.207(c))

(3) Any broken main leaf in a leaf spring. (38-393.207(c))

NOTES:

1. Any leaf of a leaf spring assembly is a main leaf if it extends, at both ends, to or beyond:

a. The load bearing surface of a spring hanger or equalizer.

b. The spring end cap or insulator box mounted on the axle.

c. A spring eye, further: Any leaf of a helper spring assembly is a helper main leaf if it extends, at both ends, to or beyond the load bearing surface of its contact pad, hanger, or equalizer.

2. The radius rod leaf, in springs having such a leaf, has the same function as the torque or radius components referenced in item 9.d "Torque, Radius, or Tracking Components" and should be treated as such a component for purposes of out-of-service. (38-393.207(c))

(4) Coil spring broken. (38-393.207(d))

(5) Rubber spring missing. (38-393.207(a))

(6) One or more leaves displaced in a manner that could result in contact with a tire, rim, brake drum, or frame. (38-393.207(c))

(7) Broken torsion bar spring in torsion bar suspension. (38-393.207(e))

(8) Deflated air suspension, (i.e., system failure, leak, etc), (38-393.207(f))

c. Composite Trailer

(1) If a crack extends beyond 3/4 the length of the spring, or if cracks, regardless of length, are visible on either side, and the top or bottom of the spring. (38-393.207(c))

NOTE: A crack is a separation in any axis which passes completely through the spring.

d. Torque, Radius, or Tracking Components

Any part of a torque, radius, or tracking or Tracking Components. component assembly or any part used for attaching same to the vehicle frame or axle that is cracked, loose, broken, or missing (including spring leaves used as a radius or torque rods, missing bushings but not loose bushings in torque or track rods).(38-393.207(a))

10. Tires

a. Any Tire On Any Steering Axle of a Power Unit

(1) With less than 2/32 inch tread when measured in any two adjacent major tread grooves at any location on the tire. (38-393.75(b))

(2) When any part of the breaker strip or casing ply is showing in the tread. (38-393.75(a))

(3) When sidewall is cut, worn, or damaged to the extent the ply cord is exposed. (38-393.75(a))

(4) Labeled "Not For Highway Use" or carrying other markings which would exclude use on steering axles. (38-396.3(a)(1))

NOTE: Tires on implements of husbandry and special off-road equipment may be marked "Not For Highway Use" or "Farm Use Only". Out-of-service is not applicable if used on highway for short distances at restricted speeds.

(5) Visually observable bump, bulge, or knot apparently related to tread or sidewall separation. (38-393.3(a)(1))

EXCEPTION: A bulge due to a section repair is allowed not to exceed 3/8" (1cm) in height. This bulge may sometimes be identified by a blue triangular label in the immediate vicinity.

(6) Tire is flat or has noticeable (e.g., can be heard or felt) leak. (38-393.75(a)(3))

(7) So mounted or inflated that it comes in contact with any part of the vehicle. (38-396.3(a)(1))

(8) Steering Axle: Weight carried exceeds tire load limit. This includes overloaded tire resulting from low air pressure. (38-393.75(f))

b. All tires other than those found on the steering axle of a powered vehicle

(1) Tire is flat or has noticeable (e.g., can be heard or felt) leak. (38-393.75(a)(3))

(2) Bias Ply Tire: When more than one ply is exposed in the tread area or sidewall or when the exposed area of the top ply exceeds 2 square inches. NOTE: For single tire, one tire must meet this condition. On dual wheels, both tires must meet this condition. (38-393.75(a)(1))

(3) Radial Ply Tire: When two or more plies are exposed in the tread area or damaged cords are evident in the sidewall or when the exposed area exceeds 2 square inches (13 sq. cm) in the sidewall. NOTE: For single tire, one tire must meet this condition. On dual wheels, each tire must meet this condition. (38-393.75(a)(1))

(4) Any tire with visually observable bump or than those found knot apparently related to tread or sidewall on the steering separation. (38-396.3(a)(1))

EXCEPTION: A bulge due to a section repair vehicle. is allowed not to exceed 3/8" (1cm) in height. The bulge may sometimes be identified by a blue triangular label in the immediate vicinity.

(5) So mounted or inflated that it comes in contact with any part of the vehicle. (This includes any tire contacting its mate in a dual set). (38-396.3(a)(1))

(6) Weight carried exceeds tire load limit. This includes overloaded tire resulting from low air pressure. (38-393.75(f)(1) and (2))

(7) So worn that less than 1/32 inch tread remains when measured in any two adjacent major tread grooves at 3 separate locations on the tire. EXCEPTION: On dual tires, both tires must have less than 1/32 inch tread. (38-393.75(c))

(8) 75 percent or more of the tread width loose or missing in excess of 12 inches (30 cm) in circumference. (38-396.3(a)(1))

11. Van and Open-Top Trailer Bodies

a. Upper Rail

(1) Broken with complete separation of the flange. (38-396.3(a)(1))

(2) Buckled or cracked when accompanied by missing, working (movement under stress) or loose fasteners at adjacent roof bows and/or side posts. (38-396.3(a)(1))

(3) Buckled or cracked when accompanied by broken, ineffective, or missing adjacent roof bows. (38-396.3(a)(1))

b. Lower Rail

(1) Broken with complete separation in the bay area accompanied by sagging floor, rail, or crossmember; or broken with loose, working (movement under stress) or missing fasteners at side posts adjacent to the crack. (38-396.3(a)(1))

NOTE: The lower rail of a van or open-top trailer can become gouged, chunked, or bent during operation. These are superficial damages only and do little to degrade the rail's strength or integrity.

(2) Drop frame trailers showing twists, bends, or fatigue cracking at the drop frame's elevation changes. (38-396.3(a)(1))

c. Floor Crossmembers

(1) Three or more adjacent broken, and/or completely detached from and sagging below the lower rail in the bay area. (38-396.3(a)(1))

(2) Broken floor accompanied by protruding freight and sagging crossmembers. (38-396.3(a)(1))

d. Side panels on fiberglass reinforced plywood (FRP) trailers

Damage in the bay area that penetrates completely through the fiberglass and plywood resulting in a sagging lower rail. (38-396.3(a)(1))

GENERAL NOTES: These notes apply to every portion (a, b, c, and d) of item 11.

(a) These conditions are only considered out-of-service if the failure is in the bay area (aft of kingpin coupler plate and forward of the axle sub frame rails)

(b) Trailers 30 feet or less in length have a short bay area and are not as susceptible to catastrophic failures; therefore, only rail breaks accompanied by a sagging floor, rail, or cross-member are out-of-service for them.

(c) Rail, post, bow, crossmember, and side/front panel damage in areas outside the bay area are not imminently hazardous and should not be considered out-of-service unless they lead to conditions described in other sections of the out-of-service criteria, (i.e., "10.a(7) Tires.")

12. Wheels and Rims

a. Lock or Side Ring

Bent, broken, cracked, improperly seated, sprung, or mismatched ring(s) (38-393.205(a))

b. Rim Cracks

Any circumferential crack except an intentional manufactured crack at a valve stem hole. (38-393.205(a))

c. Disc Wheel Cracks

(1) Any single crack 3" or more in length.

(2) A crack extending between any two holes including hand holes, stud holes, and center hole.

(3) Two or more cracks any place on the wheel. (38-393.205(a))

(4) Stud holes (disc wheels). 50 percent or more longated stud holes (fasteners tight). (38-393.205(b))

d. Stud Holes (Disc Wheels)

Fifty percent or more elongated stud holes (fasteners tight). (38-393.205(b))

e. Spoke Wheel Cracks

(1) Two or more cracks more than 1 inch long across a spoke or hub section. (38-393.205(a))

(2) Two or more web areas with cracks. 38-393.205(a))

f. Tubeless Demountable Adapter Cracks

Cracks at three or more spokes. (38-393.205(a))

g. Fasteners

Loose, missing, broken, cracked, or stripped (both spoke and disc wheels) ineffective as follows: for 10 fastener positions - 3 anywhere, 2 adjacent; for 8 fastener positions or less (including spoke wheels and hub bolts) - 2 anywhere. (38-393.205(c))

h. Welds

(1) Any cracks in welds attaching disc heel disc to rim. (38-393.205(a))

(2) Any crack in welds attaching tubeless demountable rim to adapter. (38-393.205(a))

(3) Any welded repair on aluminum wheel(s) on a steering axle. (38-396.3(a)(1))

(4) Any welded repair other than disc to rim attachment on steel disc wheel(s) mounted on the steering axle. (38-396.3(a)(1))

13. Windshield Wipers

Any power unit that has an inoperative wiper or missing or damaged parts that render it ineffective on the driver's side. (Applicable only in inclement weather requiring use of windshield wipers. (38-393.78)

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998. Amended by State Register Volume 30, Issue No. 4, eff April 28, 2006.

SUBARTICLE 2
GENERAL

38-400. Authorization of Rules.

1. These rules and regulations are promulgated pursuant to the authority vested in the Department by the General Assembly by its enactments contained in Articles 1 to 11 of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976, effective July 1, 1976. All previous rules, regulations, and standards are hereby revoked, annulled and superseded.

2. The adoption of these rules shall in no way preclude the Department from altering, amending, or revoking them in whole or in part, or from requiring any other or additional service, equipment, facility or standard, either upon complaint or its own motion, or upon the application of any motor carrier. Moreover, these rules shall not relieve in any way either the Department or the motor carriers of any duties under the laws of this State.

3. These rules and regulations are consistent with Section 601, Pre-emption of Intrastate Transportation of Property, of the Federal Aviation Administration Authorization Act of 1994, enacted on August 23, 1994.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-401. Application of Rules.

1. Jurisdiction. These rules are for general application and therefore shall apply to any person, firm, partnership, association, or corporation which is now or may hereafter become engaged as a motor carrier for hire within the State of South Carolina except where specifically exempt by statute.

2. Waiver of Rules. These rules are subject to such exceptions as may be considered just and reasonable by the Director, or his designee, in individual cases when strict compliance with any rule or rules produces unusual difficulty and is not in the public interest. They are considered supplementary to the statutes contained in Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-402. Definitions of Terms.

As used herein, the following terms shall be accorded meaning as indicated:

1. Certificate of Compliance. "Certificate of Compliance" means a certificate representing a motor carrier has complied with the safety requirements of the Department of Public Safety and the insurance requirements of this Department.

2. Certificated Carrier. "Certificated carriers" means a motor carrier operating under a Certificate of Compliance.

3. Corporation. "Corporation" means a corporation, company, association or joint stock association.

4. Department. "Department" means the South Carolina Department of Public Safety whose address is 5400 Broad River Road, Columbia, South Carolina 29210.

5. FHWA: FHWA means the Federal Highway Administration.

6. Interstate Commerce. "Interstate Commerce" means commerce between any place in a state and any place in another state or between places in the same state through another state.

7. Intrastate Commerce. "Intrastate Commerce" means commerce between points and over a route or within a territory wholly within this State, which commerce is not a part of a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce, and includes all transportation within this State for compensation which has been exempted by Congress from federal regulation in interstate or foreign commerce.

8. Motor Carrier. "Motor Carrier" means both a common carrier by motor vehicle and a contract carrier by motor vehicle.

9. Motor Vehicle. "Motor Vehicle" means any vehicle, machine, tractor, semi-trailer, or any combination thereof, which is propelled or drawn by mechanical power and used upon the highways of this State.

10. Person. "Person" means any individual, firm, partnership, corporation, company, association or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

11. Public Highway. "Public Highway" means every improved public highway in this State which is or may hereafter be declared to be a part of the state highway system or any county highway system or a street of any city or town.

12. State. "State" means the State of South Carolina.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-403. Regulated Carriers Must Maintain Copy of Motor Vehicle Carrier Law and Department's Rules and Regulations.

Every motor carrier regulated by the Department shall keep at all times in its principal office in South Carolina a copy of these rules and regulations.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

SUBARTICLE 3 CLASSIFICATION OF MOTOR CARRIERS

38-404. Class "E-LC" Motor Carrier—Certificate of Compliance.

A Class E-LC motor carrier is a carrier by motor vehicle of property which is properly insured to carry any cargo. A Class E-LC motor carrier will be issued a Certificate of Compliance.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-405. Class "E-L" Motor Carrier—Certificate of Compliance.

A Class E-L motor carrier is a carrier by motor vehicle of commodities which are of extremely low value such as sand, gravel, dirt, fill dirt, rocks, hot and cold mix asphalt, borrow and any other commodities as determined by the Department and do not require cargo insurance. A Class E-L motor carrier will be issued a Certificate of Compliance.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-406. Clarification of Sec. 58-23-620.

For the purpose of Section 58-23-620, a holder of any Certificate of Compliance shall be considered a Class E Certificate holder.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

SUBARTICLE 4 EXEMPTIONS FROM REGULATION

38-407. Motor Carriers Exempt from Economic Regulations.

These rules shall not be construed to apply to:

1. United States mail carriers operating star routes while engaged solely in carrying mail;
2. Farmers or dairymen hauling dairy or farm products or to any other person engaged in hauling perishable products of a farm, including hay and straw, or dairy products for hire from the farm to the first market when sold in South Carolina;
3. Persons transporting agricultural livestock and poultry feeds, including ingredients;
4. Lumber haulers engaged in transporting lumber and logs from the forest to the shipping points in this State;
5. Haulers engaged in transporting chips or wood residues;
6. Any vehicle engaged in the business of hauling, towing, or transporting wrecked or damaged vehicles or vehicles used in ride-sharing; or

7. Single-source lessors of vehicles and drivers who lease the motor vehicles and drivers to uncertificated motor vehicle carriers that conduct transportation of property (other than used household goods) in furtherance of and within the scope of their nontransportation primary enterprises, when the period of the lease is for thirty days or more, the lessee maintains insurance coverage for the protection of the public, a copy of the lease is carried in the motor vehicle during the period of the lease, and there is displayed on both sides of the motor vehicle a placard identifying the lessee.

8. Used by a county to transport property. Additionally, the Department does not have jurisdiction over any class of for hire operations which has been or hereafter may be specifically exempted in the Code of Laws of South Carolina, or is required by the Public Service Commission to have a Certificate of Public Convenience and Necessity.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-408. Occasional Trip Defined.

The occasional trip exemption is designed to cover the situation where a person may have a need to have one, non-recurring shipment moved and engages the services of a non-motor carrier to perform such movement. If, however, the engaged carrier is in the business of performing transportation services or of performing such service as an incident to another primary business, the carriage will be deemed to be for hire carriage, and as such, is therefore not exempt under the Motor Vehicle Carrier Law.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

SUBARTICLE 5 APPLICATION PROCEDURES FOR CERTIFICATES

38-409. Applications Required.

Any person desiring to operate in this State as a motor carrier for hire first shall file application for the type of certificate needed (Certificate of Compliance) with the Department on forms to be furnished by the Department. All required information on the application forms must be correctly completed before filing of such application will be accepted.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-410. Responsibility Fixed.

Applications will not be accepted from two or more persons operating under a trade name unless organized in a manner that will definitely fix responsibility. If a corporation, a photocopy of the corporate charter must accompany the application.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-411. Marking or Identification of Vehicles.

1. Marking of Vehicles Required. No carrier shall operate any motor vehicle upon the highways in the transportation of property or passengers for compensation unless the name, or trade name, and place of principal office appear on both sides of such vehicle in letters and figures not less than three (3) inches high.

SAMPLE: Richard Skinner Trucking Company
Mytown, South Carolina

2. Legible Placards or Printing May Be Used. The marking required may be printed on the vehicle or on legible placards securely fastened on both sides of the vehicle. In case of tractor-trailer unit, the markings must appear on the tractor. Every vehicle used by a carrier in his operation whether owned, rented, leased or otherwise obtained must be marked or identified as provided herein.

3. Marked as Required by the FHWA. If the carrier is engaged in both interstate and intrastate commerce and is marked as required by the FHWA, then the carrier will be deemed to be in full compliance with this Department's requirements.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

SUBARTICLE 6
INSURANCE POLICIES AND SURETY BONDS

38-412. Insurance Policy or Surety Bond Required.

1. Before any certificate can be issued and before any motor carrier operations can be conducted thereunder, the motor carrier must file with and have accepted by the Department evidence of insurance policy or surety bond in the amounts hereinafter prescribed, which policy or bond shall be conditioned to pay any final judgment recovered against such motor carrier for bodily injuries to, or death of, any person and/or for loss of, or damage to, property of others resulting from the negligent operation, maintenance, or use of motor vehicles in transportation subject to Title 58 of the South Carolina Code of Laws, and/or other applicable State and Federal motor carrier laws, regardless of whether the policy or bond specifically describes such motor vehicle or not. Upon failure of the insurance or bonding company to pay any such final judgment recovered against the insured, the judgment creditor may maintain an action in any court of competent jurisdiction against the insurance or bonding company to compel such payment. The bankruptcy or insolvency of the insured shall not relieve the insurance or bonding company of any of its obligations hereunder. The liability of the insurance or bonding company shall extend to such losses, damages, injuries, or deaths whether occurring on the route or in the territory authorized to be served by the insured or elsewhere within the boundaries of South Carolina. The liability of the insurance or bonding company on each motor vehicle whether such vehicle is specifically described in the policy or bond or not shall be a continuing one notwithstanding any recovery thereunder. Furthermore, nothing contained in the policy or bond or any endorsement attached thereto, nor the violation of any of the provisions of the policy or bond or of any endorsement attached thereto, shall relieve the insurance or bonding company from liability under the policy or bond or from the payment of any final judgment recovered against the insured.

2. Notwithstanding the language in Regulations 38-412(1), 38-432 and 38-441, the Department shall accept evidence of an insurance policy, surety bond, or other insurance, including self insurance, or any other evidence that the public is protected from bodily injury or property damage, which has been filed with and accepted by the FHWA. The provisions of this regulation shall apply only in the case where the carrier is operating on an interstate basis only and/or holds a Certificate of Compliance from the Department.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-413. Filing Evidence of Bodily Injury and Property Damage Insurance Policy or Surety Bond.

1. Evidence of Insurance Filed on Form E. Filing evidence of bodily injury and property damage insurance will be made on Form E, "Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance." (See Form E in 38-447 Appendix). The policy or a copy thereof will not be accepted for filing in lieu of Form E.

2. Form F must be attached to the Policy. The "Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsement," Form F (See Form F in 38-447 Appendix), must be attached to the bodily injury and property damage insurance policy itself. Form F thereby amends the terms of such policy to conform the policy with requirements not less than those expressed in 38-414 and with other applicable provisions of these rules.

3. Evidence of Surety Bond Filed on Form G. Filing evidence of bodily injury and property damage surety bond will be made on Form G, "Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond" (See Form G in 38-447 Appendix), which insures compliance with limits not less than those in 38-414 and with other applicable provisions of these rules.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-414. Schedule of Minimum Limits.

Insurance policies and surety bonds for bodily injury and property damage will have limits of liability not less than the following:

<u>MOTOR CARRIERS KIND OF EQUIPMENT & CAPACITY</u>	<u>LIABILITY LIMITS</u>
--	-------------------------

FREIGHT (All motor vehicles used in the transportation of property.)

1. 10,000 OR MORE POUNDS GVWR.
 - a. NON-HAZARDOUS \$ 750,000 per incident
 - b. HAZARDOUS \$5,000,000 per incident(Hazardous substances, as defined in 49 CFR 171.8; Class A or B explosives; liquefied compressed gas or compressed gas; or highway route controlled radioactive materials as defined in 49 CFR 171.455.)
 - c. HAZARDOUS \$1,000,000 per incident(Oil listed in 49 CFR 171.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CFR 171.101 but not mentioned in 1.(b) or 2.(b).)
2. LESS THAN 10,000 POUNDS GVWR.
 - a. NON-HAZARDOUS \$ 300,000 per incident
 - b. HAZARDOUS \$5,000,000 per incident(Any quantity of Class A or B explosives; or highway route controlled quantity radioactive materials as defined in 49 CFR 173.455.)

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-415. Cargo Insurance or Surety Bond Required of Motor Carrier.

1. Terms of Insurance or Bond and Minimum Limits. Before any class E-LC certificate can be issued and before any motor carrier operations can be conducted thereunder, the class E-LC motor carrier must procure a cargo insurance policy or cargo surety bond and file with the Department evidence of such insurance or bond on forms prescribed by the Department, such policy or bond being conditioned upon such carrier making compensation to shippers or consignees for loss of or damage to all property belonging to shippers or consignees which comes into the possession of such carrier in connection with its transportation service within South Carolina, regardless of whether the policy or bond specifically describes the motor vehicle or not. Within the limits of liability herein after set forth, it is further required that no condition, provision, stipulation, or limitation contained in the policy or bond or in any endorsement thereon or violation thereof, shall affect in any way the right of any shipper or consignee, or relieve the insurance or bonding company from liability for the payment of any claim for which the insured may be held legally liable to compensate shippers or consignees, irrespective of the financial responsibility or lack thereof or insolvency or bankruptcy of the insured. Moreover, the liability of the insurance or bonding company extends to such losses or damages whether occurring on the route or in the territory authorized to be served by the insured or elsewhere in South Carolina. Furthermore, the liability of the insurance or bonding company for the following minimum limits shall be a continuing one notwithstanding any recovery hereunder:

1. For loss of or damage to property carried on any one motor vehicle. \$2,500.00
2. For loss of or damage to or aggregate of losses or damages of or to property occurring at any one time and place. \$5,000.00

2. Carriers of Extremely Low Valued Commodities Excepted. Motor carriers who possess authority to haul only commodities of extremely low value are not required to comply with the provisions of this rule. For the purposes of this rule the following commodities are deemed to be of extremely low value: sand, gravel, dirt, fill dirt, rocks, hot and cold mix asphalt, manure, wood chips, coal, garbage, debris, charcoal, borrow, coquina shells, and scrap metal, and any other commodities as determined by the Department.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-416. Filing Evidence of Cargo Insurance or Surety Bond.

1. Evidence of Cargo Insurance Filed on Form H. Evidence of cargo insurance will be filed on Form H, "Uniform Motor Carrier Cargo Certificate of Insurance." (See Form H in 38-447 Appendix). The policy or a copy thereof will not be accepted for filing in lieu of Form H.

2. Form I Must Be Attached to Cargo Policy. The "Uniform Motor Carrier Cargo Insurance Endorsement," Form I (See Form I in 38-447 Appendix), must be attached to the cargo insurance policy itself. Form I thereby amends the terms of such policy to conform with requirements not less than those expressed in 38-415 and with other applicable provisions of these rules.

3. Evidence of Surety Bond Filed on Form J. Evidence of cargo surety bond will be filed on Form J, "Uniform Motor Carrier Cargo Surety Bond" (See Form J in 38-447 Appendix), which insures compliance with the terms of 38-415 and with other applicable provisions of these rules.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-417. Revocation of Certificate

Either a failure to file evidence of insurance or surety bond or failure to keep all insurance or bonds in full force and effect shall be just cause for the Department, without further evidence or hearing, to cancel or revoke the certificate issued to the motor carrier.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-418. Cancellation of Insurance or Surety Bond.

1. Thirty (30) Days Notice Required. Any insurance company, surety bond company, or motor carrier which desires to cancel a policy or bond issued to a motor carrier subject to these rules can do so only after giving this Department not less than thirty (30) days notice. The thirty (30) days will begin to run once the notice is received in the Department's offices. However, new filings on behalf of a carrier by a different insurance company will nullify any filings by a previous insurance company and will not require a thirty day notice filing by the previous insurance company.

2. Form K or Form L Used to Give Notice of Cancellation. Notification of cancellation will be made on forms prescribed by the Department. Form K, "Uniform Notice of Cancellation of Motor Carrier Insurance Policies" (See Form K in 38-447 Appendix), will be used to notify the Department of cancellation of an insurance policy, and Form L, "Uniform Notice of Cancellation of Motor Carrier Surety Bonds" (See Form L in 38-447 Appendix), will be used to notify the Department of cancellation of a surety bond.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-419. Name of Insured.

Certificates of insurance and surety bonds shall be issued in the full and correct name, as that name appears on the application or certificate of the motor carrier.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-420. Number of Copies Required.

Certificates of insurance, notices of cancellation, and surety bonds must be filed with the Department in triplicate.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-421. Coverage to Be Continuous.

Surety bonds and certificates of insurance shall specify that coverage thereunder will remain in effect continuously until terminated.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-422. Department to Prescribe Forms.

Endorsements for policies of insurance and surety bonds, certificates of insurance, and notices of cancellation will be in the form prescribed and approved by the Department.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

SUBARTICLE 7 MOTOR CARRIER SAFETY REGULATIONS

38-423. Definition.

As used in this subarticle:

(1) The term "motor carrier" means every corporation or person, their lessees, trustees, or receivers, owning, controlling, operating, or managing any motor propelled vehicle used in transporting persons

or property over any improved public highway in this State, whether or not for compensation as defined by Section 58-23-30, and includes but is not limited to, motor vehicle carriers as defined in Section 58-23-10 and private carriers.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-424. Safety Rules and Regulations.

The rules and regulations adopted by the United States Department of Transportation relating to safety of operation and to equipment (49 CFR Parts 382, 383, 385, 387, and 390-399 and amendments thereto), and the rules and regulations adopted by the United States Department of Transportation relating to hazardous materials (49 CFR Parts 107 and 171-180 and amendments thereto) shall apply to all motor carrier vehicles engaged in interstate commerce and intrastate commerce over the highways within the State of South Carolina, whether common carriers, contract carriers, exempt carriers, or private carriers, except where these aforementioned rules and regulations may conflict with South Carolina Law, provided that any rule or regulation which fixes the minimum age of vehicle drivers at 21 years is hereby changed insofar as South Carolina intrastate carriers are concerned to establish a minimum age of 18 years for vehicle drivers.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998. Amended by SCSR 46-5 Doc. No. 5078, eff May 27, 2022.

38-425. Current Copies of Rules Must Be Maintained.

A current copy of the Motor Carrier Safety Regulations must be maintained by a certificated carrier in its principal office in South Carolina. If the carrier is engaged in the hauling of hazardous materials, 49 CFR Parts 171.180.500 must be maintained as well. Copies of these regulations may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D. C. 20402.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-426. Failure to Meet Safety Standards.

The repeated failure of a for-hire motor carrier to operate equipment or employ drivers who meet minimum safety standards as defined in 49 CFR parts 390-399 and 49 CFR parts 171-180.500, shall be just cause for the Department to revoke any Certificate of Compliance issued to such Motor Carrier.

The Department has authority to place violators out of service in the interest of Public Safety pursuant to 38-424.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-427. Inspection of Records, Vehicles and Equipment.

Auditors, accountants, officers, examiners, and other agents of the Department shall, upon display of proper credentials after demand, be permitted by any motor carrier as defined in S.C. Code Ann. Section 58-23-1110 to examine and copy the books, records, accounts, bills of lading, load sheets, manifests, correspondence, and other records of such motor carrier relating to the transportation of property or passengers and to examine the vehicles, loads thereon, terminals, buildings, and other equipment and facilities used by such motor carrier in such transportation business; and all such motor carriers shall instruct their drivers, agents, and employees in charge of such records, equipment and facilities to cooperate in the event of such examination as necessary to insure compliance with R.38-424.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

SUBARTICLE 8

SINGLE STATE, REGISTRATION SYSTEM FOR INTERSTATE MOTOR CARRIERS OPERATING FOR HIRE

38-428. Definitions.

1. Applicant. The word "applicant" means a person in whose name the uniform application is filed with a registration state for the purpose of complying with the standards promulgated under Public Law 102-240.

2. Audit. The word "audit" means a review of records and source documents supporting fee payments.

3. Cancellation of Registration. The word “cancellation of registration” means the annulment of a registration by the registrant.
4. Department. The word “Department” means the Department of Public Safety.
5. FHWA. “FHWA” means the Federal Highway Administration.
6. Driveaway Operation. The words “driveaway operation” means an operation in which any vehicle or vehicles, operated singly or in lawful combinations, new or used, not owned by the transporting motor carrier, constitute the commodity being transported.
7. Eligible State. The words “eligible State” means each jurisdiction, that as of January 1, 1991, charged or collected a fee for a vehicle identification stamp or number in accordance with Part 1023, Title 49, Code of Federal Regulations.
8. Jurisdiction. The word “jurisdiction” means a State of the United States, the District of Columbia, a Province or Territory of Canada or the Republic of Mexico.
9. Motor Carrier and Carrier. The words “motor carrier and carrier” means a person authorized to engage in the transportation of passengers or property, as a common or contract carrier, in interstate or foreign commerce, under the provisions of 49 U.S.C. 10922, 10923, or 10928.
10. Motor Vehicle. The words “motor vehicle” means a self-propelled or motor-driven vehicle operated by a motor carrier in interstate or foreign commerce under authority issued by the Department.
11. Person. The word “person” means an individual, corporation, partnership, association, trust or other legal entity.
12. Principal Place of Business. The words “principal place of Business” means a single location that serves as the motor carrier’s headquarters and where it maintains or can make available its operational records.
13. Proof of Insurance. The words “proof of insurance” means evidence that the motor carrier is insured to the extent required by federal law which has been filed and approved in the registration state in compliance with these procedures using valid prescribed forms.
14. Registration State. The words “registration state” means the jurisdiction where the registrant maintains its principal place of business. If the applicant’s principal place of business is located in a jurisdiction that is not a participating state, the applicant shall apply for registration in the State in which the applicant will operate the largest number of motor vehicles during the next registration year. If the motor carrier will operate the largest number of vehicles in more than one state, the applicant or registrant shall choose which participating state will be the carrier’s registration state. Once the registration state jurisdiction is determined, this designation shall be effective until the registrant changes its principal place of business.
15. Reinstatement. The word “reinstatement” means to restore the privileges granted to the registrant by the registration state.
16. Registration Period. The words “registration period” means a period of time from August 1 through November 30 of the year preceding the registration year.
17. Registration Receipt. The words “registration receipt” means a receipt issued to the motor carrier that indicates that the required proof of insurance has been filed and fees have been paid. A copy of this receipt must be maintained in the cab of each motor vehicle for inspection.
18. Registration Year. The words “registration year” means a period of time from January 1 through December 31.
19. Registrant. The word “registrant” means a person who holds a valid registration issued by a registration state.
20. Revocation. The word “revocation” means withdrawal of registration and privileges by a registration state.
21. State. The word “state” means a state of the United States or the District of Columbia.
22. Suspension. The word “suspension” means temporary removal of privileges granted to the registrant by a registration state.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38–429. Participation by States.

1. An eligible state may participate in the single state registration system and cease participation only with proper notice. If an eligible state wishes to change its status concerning participation, the eligible state must publish notice of its intentions and give written notice to all other participating states by the 1st day of July of the year preceding the registration year in which it will either begin or cease participation.

a. When an eligible state has notified other participating states that it desires to participate, the participating states will notify all motor carriers whose principal place of business is located in that state of the intention of the eligible state to register motor carriers. The motor carrier may then select the new participating state as its registration state if its principal place of business is located in that state. The motor carrier will notify the prior registration state as required in Section IV.

b. When a participating state ceases its participation in this program and notifies all parties, the motor carrier shall select its new registration state and notify that state in accordance with Section IV.

2. Implementation of SSRS.

a. The single state registration system's regulations and procedures shall govern the registration and identification of motor carriers operating in interstate or foreign commerce under a certificate or permit issued by the Department.

b. Registration states shall comply with the standards set forth herein. Registration in the registration state shall be deemed to satisfy the registration requirements of all participating states.

c. All motor carriers authorized to engage in interstate transportation of passengers or property as a common or contract carrier by the FHWA shall register in the motor carrier's registration state for all states of travel. Registration states will not exempt any motor carrier holding FHWA authority to transport property or passengers from registration under these procedures.

d. All vehicles operated under an FHWA authorized motor carrier's interstate operations (whether owned or leased) shall be registered in the motor carrier's name in accordance with these procedures.

e. Motor carriers receiving emergency temporary authority (ETA) or temporary authority (TA) from the Department for a duration of 120 days or less are required to comply with the all requirements of these procedures except the filing of evidence of authority granted by the Department. After 120 days, the motor carrier must be in compliance with all of the procedures established herein or subject the registration to revocation as set forth in Section X.

f. The motor carrier must register with its registration state before it commences operating. Forms required by federal regulations and prescribed by these procedures shall not be altered by the registration state except to indicate the proper registration state for mailing purposes. The forms attached to these procedures must be completed by the registrant or prepared by the registration state in the manner described herein.

g. The registration year will be a calendar year.

h. Fees collected under this system will not be prorated for partial year operations.

i. Any changes to the authority granted by the FHWA after the initial registration in the registration state will be filed with the registration state. The registration state may waive the filing of any authority granted by the FHWA if that grant of authority certificate or permit is longer than 20 pages in length. When the waiver is granted in writing, the motor carrier shall provide a copy of the portion of the Department order which shows the service date and order section and shall prepare and file a synopsis of the authority granted within the body of the order.

j. A registrant may request in writing that its registration be cancelled. The registration state will immediately cancel such registration and give written notice of cancellation to the registrant. The notice of cancellation will show the effective date of cancellation and shall be mailed to the registrant requesting such cancellation. Each registration state shall transmit information concerning the motor carrier's full name, business address, MC number and DOT number for each carrier requesting cancellation of registration to all affected jurisdictions participating in the program when the next monthly fee accounting transmittal is required to be submitted to each registration state. No fees shall be refunded.

3. Change of Registrant's Principal Place of Business.

a. A motor carrier may not change its registration state unless it changes its principal place of business or its registration state or commences participation in the program.

b. For the purpose of this program, the carrier's principal place of business for registration selection will be the business address the motor carrier indicated on the order issued by the Department or as otherwise noticed to the Department pursuant to an address change.

c. When a registrant changes its principal place of business to another state participating in this program before the annual registration period of August 1 to November 30, the registrant may move its registration to the new registration state at the next registration period or retain registration in the current registration state for no more than one additional year.

d. When a registrant changes its principal place of business to another participating state, the registrant shall notify the new registration state and the current registration state within 30 days after it has made its selection.

e. When the registrant changes its principal place of business and selects a new registration state, the motor carrier shall refile in the new registration state the application, a copy of its interstate operating authority, and a copy of the designation of agent(s) for service of process. Proof of insurance must be filed in the new registration state showing the change of business address of the registrant.

f. When the registrant changes its principal place of business to a state that is not eligible to participate in this program, the registrant shall retain the current registration state designation for registration purposes and file notice of business address change along with a new insurance filing in its registration state.

g. If a registrant changes its principal place of business during a registration period and that principal place of business change affects its reciprocity status to now afford it reciprocity from payment of fees, the registrant shall not be allowed any credit or refund of prior fees paid for that registration period. The new principal place of business shall be used by the current registration state for determination of proper payment of future fees or waiving of those fees for any additional states of travel or additional equipment added.

h. The motor carrier must give notice of its change in registration state to its insurer as soon as practicable.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-430. Registration Process.

1. Application Form.

a. The applicant shall file annually between the 1st day of August and the 30th day of November of the year preceding the registration year an application for registration of all FHWA regulated interstate operations with the registration state only.

b. The application form must be completed in its entirety and signed by an authorized member of the company or its agent, otherwise the registration shall be considered incomplete.

c. The application must contain the full name of the motor carrier. This includes all owner name(s) and any d/b/a (doing business as). This name will be verified with the name shown on the FHWA certificate or permit submitted with the application. If the name on the application differs from the most recent FHWA certificate or permit, the registration will be considered incomplete until the applicant provides a copy of the re-entitlement from the FHWA showing the change of name or amends the application form by providing written notice to the registration state.

d. The business city and business state address on the application will be verified with the FHWA certificate or permit submitted with the application. If the business city and state are not the same, the registration will be considered incomplete until the applicant provides a copy of the request to the FHWA for change of address or amends the application form by providing written notice to the registration state.

e. The business street must be a physical address. The use of a post office box is not acceptable. If the motor carrier lives in a rural area and does not have a physical street address, a rural route with a box number will be accepted.

f. A mailing address may be given for mailing purposes only. A mailing address shall not be used to determine reciprocity.

g. The registrant will indicate the type of registration being filed. A motor carrier receiving FHWA authority for the first time will be "New Carrier Registration". If the motor carrier has previously registered in any of the eligible states for transporting commodities authorized by the FHWA using the old registration system (Public Law 89-170) or using the new Single State Registration System, the application form would indicate an "Annual Registration".

h. If the motor carrier has changed its registration state since its last application filing, the motor carrier must identify the prior registration state.

i. The registrant shall indicate the type of motor carrier whether a sole proprietor, partnership or corporation. This information should not contradict the name of the motor carrier as indicated on the top of the registration form. For example, if the applicant's name is a sole owner and the motor carrier indicates a partnership or corporation operation, the registration will be considered incomplete and the registration state will contact the applicant (and possibly the FHWA) for clarification. If the motor carrier has changed its name or transferred its operating rights without notification to the FHWA, the application will be considered incomplete until a transfer order or reentitlement is issued by the FHWA and filed in the registration state. If the FHWA certificate or permit is correct and the application form is incorrect, the motor carrier will notify the registration state in writing to amend its application form or correct a returned application.

j. The applicant must indicate the type of authority issued by the FHWA. This information will be verified from the FHWA certificate or permit issued to the motor carrier except for registration of emergency temporary authority or temporary authority.

k. The applicant shall file with the application for a new carrier registration or for the first year of this program in the registration state only, a full copy of its interstate certificate(s) of authority or permit(s) issued by the Department. If the FHWA authority is not submitted with the application, the registration will be considered incomplete. The registration state may waive the filing of copies of any authority granted by the FHWA if that grant of authority is longer than 20 pages in length. When the waiver is granted in writing by the registration state, the motor carrier shall provide a copy of the portion of the Department order which shows the service date and order section and shall prepare and file a synopsis of the authority granted within the body of the order. The registration state is not required to review the FHWA certificates or permits for states of travel for which fees are being paid under these procedures.

l. If new operating authority is granted to the registrant during the registration period, the registrant changes its name and/or address, or receives any order or reentitlement by the Department during the registration year, a copy must be filed with the registration state as soon as it is issued. The registrant shall not wait until the next annual registration period to file copies of additional grants with the registration state.

m. The requirement for filing a copy of the applicant's interstate certificate or permit is waived if the registrant holds emergency temporary authority (ETA) or temporary authority (TA) from the Department for 120 days or less. A carrier holding ETA or TA authority from the Department shall comply with all other requirements in these procedures before it commences operation in any state.

n. If the applicant has not filed additional information during the registration period as required above, the applicant will attach to its annual registration application copies of additional authority grants, re-entitlements, transfer orders, letters of change of name or address mailed to the FHWA by the motor carrier or grants of self-insurance orders issued by the FHWA and not previously filed in the registration state. The registration state may waive the filing of copies of any authority granted by the FHWA if that grant of authority is longer than 20 pages in length. When the waiver is granted in writing, the motor carrier shall provide a copy of the portion of the Department order which shows the service date and order section and shall prepare and file a synopsis of the authority granted within the body of the order.

o. The applicant shall indicate on the application that proof of insurance is being filed or has been filed and remains effective. If proof of insurance is not on file when the application is received in the registration state, the registration will be deemed to be incomplete.

p. The applicant shall indicate on the registration form the status of self-insurance approval by the FHWA. The applicant will file a copy of the order of the Department approving a public liability self-insurance or other public liability security or agreement under the provisions of Part 1043. If the applicant indicates that the FHWA has approved self-insurance coverage and a copy of the FHWA order has not been included with the application, the registration will be deemed to be incomplete.

q. The applicant shall indicate if it will be transporting hazardous commodities in interstate commerce. If this section is not completed, the registration will be deemed to be incomplete until the applicant verifies whether hazardous materials will be transported. This section of the application will be verified with the insurance form on file with the registration state. If the motor carrier desires to transport hazardous materials and the proper levels of insurance are not on file, the registration will be deemed to be incomplete until the motor carrier indicates in writing that hazardous materials will not be transported or until a new insurance filing has been received in the registration state for the proper level of coverage.

r. A copy of the designation of agent(s) for service of process shall be submitted with the initial registration form to the registration state using the FHWA Form BOC-3. The motor carrier shall supplement any changes of designation of local process agent with the registration state to ensure that current information is on file. If the BOC-3 form is not attached to the "New Carrier Registration", the registration will be deemed to be incomplete until this form is received in the registration state. If the motor carrier fails to keep the designation of local process agent information current in the registration state, the registration shall be subject to suspension (See Section 38-433).

s. The registration application will be deemed to be incomplete, if the registration form has not been signed with an original signature.

t. When an application is deemed to be incomplete, the registration state may hold the application and all attachments until the application is complete or the registration state may return the application and attachments dependent on each registration state's fiscal requirements and/or procedures.

u. If equipment or states of travel is to be added after the annual registration process, the motor carrier will be required only to complete a Supplemental Form RS-2 and attach the proper fees. The motor carrier may update any information on file with the registration state by attaching the information to the RS-2 form. If no updates are attached, the motor carrier's signature on the RS-2 form will certify that all information filed with the registration state is current.

2. Designation of Process Agent.

a. Designation of process agent shall be filed by the motor carrier in the registration state for each state of travel. Designations shall be made using the BOC-3 form as required by the Department under 49 CFR Part 1044. The motor carrier shall supplement this filing as necessary to ensure that current information is on file in the registration state. Failure to maintain current information shall subject the registration to suspension.

b. An association or corporation may file a list of process agents for each State by making a blanket designation on the BOC-3 form in compliance with 4 CFR 1044.5.

c. A designation may be cancelled or changed only by a new designation except when a motor carrier ceases to operate its authority and a designation is no longer required and may be cancelled without making another designation.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-431. Proof of Insurance.

1. The applicant shall cause to be filed and maintained only in the registration state, proof of public liability insurance in accordance with the forms and procedures specified herein. No other notices or filings shall be required of a motor carrier holding authority granted by the Department with respect to insurance under these procedures other than in the registration state. These procedures do not preclude any state from requiring any other proof of insurance for other authority not covered by this program that may be granted or required to be registered in a state.

2. Proof of public liability or surety bond must be filed for an insurance company that is authorized to do business in any state and is eligible as an excess or surplus lines insurer in any state in which

business is written. States will be able to obtain sufficient information from the Department to verify eligible insurance companies.

3. Insurance Forms Required to be used when applicable for the Single State Registration System are as follows:

- a. Form BMC 91- Uniform Motor Carrier Bodily Injury and Property Damage Certificate of Insurance.
- b. Form BMC 91X - Motor Carrier Automobile Bodily Injury Liability and Property Damage Liability.
- c. Form BMC 91MX - Motor Carrier Surety Bonds.
- d. Form BMC or MCS 90 - Endorsement for Motor Carrier Policies of Insurance for Public Liability (to be attached to the motor carrier's policy).
- e. Form MCS 82 - Motor Carrier Public Liability Surety Bond.
- f. Form BMC 35 - Notice of Cancellation Motor Carrier Policies of Insurance.
- g. Form BMC 36 - Notice of Cancellation Motor Carrier Surety Bonds.

4. The level of insurance coverage required is the same as required by 49 C.F.R. 1043.2. These limits are as follows:

- a. FREIGHT VEHICLES OF GVWR OF 10,000 POUNDS OR MORE:
 - (1) Property (nonhazardous): \$ 750,000
 - (2) Property (hazardous): \$5,000,000
Hazardous substances, as defined in 49 CFR 171.8, transported in cargo tanks, portable tanks or hopper-type vehicles with capacities in excess of 3500 water gallons, or in bulk Class A or B explosives, poison gas (Poison A), liquefied compressed gas or compressed gas, or highway route controlled quantity radioactive materials as defined in 49 CFR 173.455.
 - (3) Property (hazardous): \$1,000,000
Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CFR 171.8.
 - b. FREIGHT VEHICLES OF GVWR LESS THAN 10,000 POUNDS:
 - (1) Property (not specified in 2.(b)): \$ 300,000
 - (2) Property (hazardous): \$5,000,000
Any quantity of Class A or B explosives; any quantity of poison gas (Poison A); or highway route controlled quantity radioactive materials as defined in 49 CFR 173.455.
 - c. PASSENGER CARRIERS:
 - (1) Seating capacity of 16 or more: \$5,000,000
 - (2) Seating capacity of 15 or less: \$1,500,000
- Note: Exceptions to these requirements are not included herein.

5. The insurance company may file proof of insurance with the registration state or the motor carrier may file a copy of the insurance form filed and certified by the FHWA. The registration state will not accept a "copy" of the insurance form when it is filed by the motor carrier and is not an FHWA certified copy. The first year filing of proof of insurance under this program where the motor carrier is renewing its registration, the insurance company will print a new copy of the FHWA form or mail a "copy" of the form that was stamped filed and returned by the FHWA. Since the FHWA does not require changes in the policy number to trigger a new form filing, the policy numbers on the forms printed for the states may not be identical to the current form on file with the FHWA. All other information on that form must be in compliance with the requirements set forth herein.

6. When the insurance company prepares the proper insurance form to be filed with the FHWA for a new carrier, the third copy will be separated from the three part FHWA form and the third copy will be mailed to the motor carrier's registration state. The insurance company may annotate this three part form to indicate the proper registration state.

7. The registration state shall require all motor carriers to show a minimum level of coverage of \$750,000 unless the motor carrier indicates in writing that all equipment operated has a gross vehicle weight rating of 10,000 pounds or less.

8. If an insurance company files duplicate copies of proof of insurance in the registration state, the registration state may stamp the second copy received and return the second copy to the insurance

company. If duplicate copies are not received, the registration state is not required to acknowledge receipt of proof of insurance.

9. When proof of insurance is provided by more than one insurer, a BMC 91X (Certificate of Insurance) or BMC 91MX (Surety Bond) is required of each insurer.

10. The information pertaining to the identification of the registrant on the proof of insurance filed in the registration state shall be verified by the registration state. The registrant's full name including all owner names and any fictitious name or d/b/a and business address must be identical to the applicant name and business address on the uniform application form and the most recent order of the Department. Proof of insurance shall be issued in the full and correct name of the individual, partnership, corporation or other person to whom the certificate or permit is issued. If these items are not in agreement, a "New Carrier Registration" will be deemed to be incomplete and may be held or returned (dependent on each state's procedures) until the motor carrier amends the registration form in writing, the registration state receives a copy of a re-entitlement, transfer order issued by the FHWA, notification of name and/or address change by the motor carrier to the FHWA (copy of letter sent to the FHWA), or new proof of insurance is filed in the registration state.

11. If the registrant's full name (including d/b/a) and/or business address on the proof of insurance filed in the registration state for a replacement filing does not agree with the registration form, the motor carrier will be notified in writing that the insurance form differs from the registration information and the proof of insurance will not be accepted. The motor carrier will be asked to correct the name and/or business address on the uniform registration application in writing to the registration state or correct the proof of insurance filed. If insurance lapses because a proof of insurance has not been filed in the registration state with the correct name and/or business address, the motor carrier's registration will be suspended until proper proof of insurance is filed.

12. When a BMC 91 or 91X is received in the registration state and the name and business address are correct, the effective date as indicated on the form stating the date insurance is in effect is the effective date to be used by the registration state.

13. Each registration state shall receive notification of cancellation caused to be filed by the motor carrier of the registrant's bodily injury and property damage liability insurance (receipt of Form BMC 35 or 36) when similar notice is provided to the Department. The effective date of the cancellation notice shall be computed as 30 days from the date notice is filed with the Department. The registration state should verify this effective date with the information received from the Department (this information should be available via the states bulletin board or other computer access designed for dissemination of information for this program) as to any change in the effective date of cancellation.

14. Certificates of insurance or surety bonds shall be replaced and terminated by more recent certificates of insurance or surety bonds. The liability of the retiring insurer shall be terminated as of the effective date of the replacement certificate of insurance or surety bond provided the replacement is filed in accordance with these procedures.

15. A new BMC 91 will terminate and replace any prior BMC 91. When a new BMC 91X is filed, this filing will only terminate and replace another filing when the limits indicated on the new filing are equal to or greater than the limits on the old filing. A filing received for primary coverage can only terminate and replace another filing for primary coverage. Excess coverage can only terminate and replace excess coverage.

16. If a cancellation notice is received prior to a new filing, this cancellation notice shall terminate the liability with 30-day notice to the Department. A new filing received after receipt of a cancellation notice does not relieve the 30-day liability of the cancellation notice.

17. An interstate motor carrier that has received approval to be self-insured with the Department shall file with the registration state a copy of the FHWA order approving the self-insurance plan. A copy of the FHWA order does not indicate that the motor carrier has fully complied with all requirements within the order. It is suggested that the registration state verify the self-insurance status with the Department to ensure that the carrier has complied with the provisions within the order and is considered by the Department to be self-insured. The registrant shall thereafter immediately notify the registration state if the self-insurance plan is suspended, revoked or modified in any way by order of the Department. Failure to comply shall result in the suspension of the registration.

18. If the motor carrier is transporting hazardous materials, the amount of coverage indicated on the proof of insurance filed in the registration state must be the same as the amount of coverage stated on the uniform application form. If the amount stated on the insurance forms does not agree with the level of coverage indicated on the application form, the "New Carrier Registration" shall be deemed to be incomplete.

19. If proof of insurance is received during the registration period and indicates a level of coverage greater than the amount previously indicated on the uniform application form and the old insurance filing, the new insurance filing will cancel and replace the old filing. The registration state will verify with the motor carrier if its application should be amended.

20. The registration state shall not require the authorized signature of the company representative on the proof of insurance to be verified. If an insurance company notifies the registration state that information is being falsified, the registration state will verify all filings in the registration state issued under that named insurer and verify those filings involved. If the registration state finds that falsified filings have been made, the registration state will notify the registrant(s) immediately and request that the registrants file new proof of insurance. If new insurance is not received, the registration state will initiate a suspension for non-compliance of filing proof of insurance.

21. A fax form of the forms required in these procedures may be accepted by the registration state as compliance of filing proof of insurance.

22. At no time will a "Certificate of Insurance" from an insurance agent be accepted by a registration state in lieu of the forms required in these procedures.

23. All previous Form E filings or other proof of insurance filed in any eligible state shall be cancelled as of January 1, 1994, as they pertain to registration of interstate authority granted by the Department.

24. Proof of cargo insurance shall not be required.

25. The Form BMC 90 or MCS 90 is an endorsement. This endorsement form is an amendment to the motor carrier's insurance policy and shall be attached to that insurance policy and shall form a part of it. When insurance is provided by more than one insurer to aggregate coverage, a separate endorsement is required of each insurer. A true copy of the policy with the endorsements attached shall be maintained at the motor carrier's principal place of business. The endorsement cannot be cancelled without cancellation of the policy or policies and cancellation of the proof of insurance filed in the registration state. The endorsement shall not be filed in the registration state.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-432. Registration Receipts.

1. The registration state shall collect the fee (not to exceed \$10.00 per motor vehicle) that each participating State collected or charged per motor vehicle as of November 15, 1991. These fees shall be for filing and maintaining proof of insurance. No other fee shall be collected or assessed either directly or indirectly. If a participating state charged more than \$10.00 as of that date, the registration state will charge the motor carrier \$10.00 for that state of travel.

a. The applicant shall use prescribed forms to indicate the amount of fees due for each vehicle and each state of travel.

b. The form and content of the registration receipt shall be as specified herein. This form may include only those items that identify the carrier and the states of travel for which fees have been paid as specified in these procedures. No registration state may add any additional items to this form except to add the registration state name and address that issued the receipt. This printed form shall be as uniform as possible to eliminate enforcement problems.

c. No earlier than the first day of August and through the thirtieth day of November of each year, the registrant shall file an application for registration, pay fees and request the registration receipt for the next registration period from its registration state. The registration receipt shall not be valid until January 1 of the following year as indicated on the face of the receipt and when carried in the registrant's motor vehicle.

d. When an applicant files a proper application in the registration state on or before the 30th of November for the next annual registration period, the registration state shall issue a registration

receipt within thirty (30) days. Any registration that contains any misrepresentation, misstatement, or omission of required information shall be deemed to be incomplete until all items have been clarified and/or corrected in accordance with these procedures. The registration state is not obligated to process an incomplete application within any time frame.

e. The registration state shall issue an original registration receipt to the registrant upon receipt of a properly completed registration application and payment of fees. This original receipt must be retained by the motor carrier at its principal place of business for a period of three years. The motor carrier shall make the necessary copies for the number of vehicles for which fees have been paid.

f. If an error is made by the motor carrier in completing the order form and the amount of the check does not agree with the calculated fee amount, each registration state will handle the improper check amount dependent upon the registration state's accounting procedures.

g. The registration receipt shall not be altered by the motor carrier in anyway. Reduction of the size of the receipt after the receipt has been issued by the registration state will be considered alteration. Altering of the receipt shall subject the motor carrier's registration to revocation. Any enforcement officer is authorized to confiscate the altered copy on sight. The confiscated receipt will then be returned to the registration state after any court action is completed by the state in which it was confiscated.

h. The registration receipt shall qualify the registrant to operate under its FHWA certificate or permit in all jurisdictions indicated on the registration receipt without any further registration requirements or identification requirements in any state other than the registration state.

i. The motor carrier shall submit the appropriate amount of fees for each motor vehicle based on the number of motor vehicles by states of travel. Motor vehicles shall be authorized to travel only in those participating states in which the motor carrier has paid the appropriate fees.

j. Upon receipt of a renewal registration application, the registration state shall verify that valid proof of insurance is on file and that the appropriate fees have been paid before the registration receipt is issued.

k. A registrant in good standing (good standing means that active proper insurance, designation of agent for service of process, and copies of interstate authority are on file in the registration state and the motor carrier has not changed its name and/or address) may add equipment and/or states of travel by payment of fees and the filing of the Supplemental Form (RS-2) to the registration state. When a supplemental form is received for additional states of travel or for equipment added, a supplemental registration receipt will be issued showing only those additional states or equipment as requested. Copies of all supplemental registration receipts must be carried in the cab of the motor vehicle with any other copies as needed. A fully acceptable supplemental form shall be processed and the registration receipt issued by the 30th day following the date of filing the supplemental form and appropriate fees.

l. A motor carrier may transfer its registration receipts or copies of the receipt from vehicles taken out-of-service to their replacement vehicles. The motor carrier may not operate more motor vehicles in a participating state than the number with respect to which fees have been paid.

m. A motor carrier conducting a driveaway operation will be required to carry a copy of the registration receipt in the cab of the vehicle in the same manner and meeting all requirements within use procedures as other FHWA regulated motor carriers. The registration receipt may be transferred from vehicle to vehicle in the same manner as the transfer of the registration receipt for a vehicle placed out-of-service.

n. The registration state shall not replace lost or stolen receipts except when the carrier fails to receive the registration receipt(s) mailed by the registration state for delivery of those receipts. An application for replacement without charge must be accompanied by an affidavit detailing the facts supporting it. Within ten (10) days following the receipt of such an application, the registration state must issue replacements.

o. If a motor carrier needs to add states of travel to its operating fleet in one or more of the participating states, the motor carrier may request transmission of a copy of a registration receipt before the receipt is mailed to the registrant. Upon payment of the appropriate fees, a copy of the receipt shall be sent via facsimile. The registration state shall mail the original receipt to the motor carrier.

p. All registration receipts shall expire on the 31st day of December of the registration year for which they were issued.

q. The driver of a motor vehicle must present a copy of a receipt for inspection by any authorized federal or state government personnel on demand.

r. No registration state shall require decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated by a motor carrier under these provisions. Nothing in this program will preclude a state from requiring indicia for other authority required to be registered in a state.

2. Change of Name, Address and/or Ownership of Registrant

a. If the registrant changes its name (not change of ownership, for example a d/b/a is added, a d/b/a is changed or a sole proprietor or partners incorporates and are the stockholders of the new corporation) after the registration receipt has been issued, the registrant shall submit to the registration state a copy of the re-entitlement issued by the Department. The registration state shall require proof of insurance to be resubmitted in the new name before a replacement registration receipt shall be issued by the registration state. States shall inform carriers that old copies of the registration receipt carried in the cab of the motor vehicles must be replaced with the new copies and the old copies shall be destroyed by the motor carrier.

b. If the registrant changes its business address, the registration state will require filing of a copy of the notice (letter from the motor carrier to the FHWA) submitted to the Department for a similar change of address. If the business address change involves a street, route, box number or city only, the registrant shall notify the registration state in writing of that change. When the business address of the registrant has been changed, new proof of insurance must be filed in the registration state accordingly.

c. If the address change causes a new registration state to be selected, the procedures to be followed are as described in R.38-429.

d. A registrant that changes its principal place of business from a state without reciprocity agreements for waiving of vehicle fees to a state with reciprocity agreements during the registration period will not be allowed any credit or refund of fees paid to its registration state.

e. When the interstate authority is transferred to new owners, the current registrant (old owners) must notify the registration state to cancel its registration. New owners shall be required to register in the registration state like all new registrants. The registration receipts of the old owners will not be reissued in the name of the new owners.

f. When the registrant changes its name, address or ownership, the registration states shall forward this information to all affected participating states when the registration state forwards the next monthly transmittal.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-433. Compliance.

Failure by the registrant to comply with these standards shall result in suspension or revocation of the registration by the base jurisdiction.

1. **Suspension of Registration.** On the effective date of cancellation of the proof of insurance or other items in non-compliance, the registration State shall notify the registrant in writing that its registration to operate in all states of travel pursuant to these standards is suspended. The suspension notice shall be mailed to the registrant and show the effective date of such suspension. The suspension notice may be a letter, suspension order, show cause order or any other method of proper notice as determined by the registration state. Notice of non-compliance with the filing of proof of insurance with the Department may be obtained by any registration state by viewing the state bulletin board or other computer access established with reference to these procedures.

2. **Reinstatement of Registration.** When sufficient proof of insurance or other items of non-compliance is filed and in effect after a suspension of the registration, the registration state shall immediately reinstate the motor carrier's registration and notify the registrant that its registration pursuant to these standards is restored. The reinstatement notice shall be mailed to the registrant and show the effective date of such reinstatement. The reinstatement notice may be a letter, reinstatement

order or any other method of proper notice as determined by the registration state. Notice of compliance with the filing of proof of insurance with the Department may be obtained by any registration state by viewing the state bulletin board or other computer access established with reference to these procedures.

3. Revocation of Registration. Each registration state shall revoke registration to operate in any state if the registrant has failed to comply with the insurance filing requirements one-hundred and thirty five (135) days from the effective date of a cancellation of insurance. Notice of revocation of registration shall be mailed to the registrant and show the effective date of such revocation.

a. Each registration state shall transmit information regarding revocation of the registration once a month with the monthly transmittal to any other affected jurisdictions participating in this program. The notice to other participating states shall include the full name and business address of the registrant, the registrant's MC Number, DOT number and the date of revocation.

b. The registration state shall revoke the registration of the motor carrier for unlawful use of the registration receipt issued by the registration state.

c. Unlawful use shall include, but not be limited to, failure to pay sufficient fees for the number of motor vehicles operating under the registration receipt, allowing another motor carrier to use or purchase a registration receipt issued to the registrant, alteration of the receipt or failure to maintain a current listing of designation of process agent.

d. The registration state shall revoke the registration of a motor carrier whose registration of an ETA or TA has expired without permanent authority being granted by the Department or the motor carrier has failed to file a copy of the permanent grant of authority in the registration state before the expiration date.

e. If the registrant believes that the registration state has revoked its registration without good cause, the registrant may petition its registration state for reinstatement. Such petition for reinstatement shall be acted upon in accordance with the administrative rules and procedures of the registration state.

f. After a registration has been revoked or cancelled, a motor carrier wishing to operate pursuant to these standards must again apply for registration in its registration state. If its registration state has copies of its operating authority and the motor carrier indicates that no additional grants have been given by the Department, the new filing of copies of its authority shall be waived. The motor carrier shall submit new proof of insurance. If the motor carrier has paid its annual per vehicle fee for the current calendar year, the registration state shall not require new fees to be paid.

g. If the motor carrier has paid its annual per vehicle fee for the current calendar year, the registration state shall be required to forward the registration information to all affected participating states when the registration state forwards the next monthly transmittal.

h. Nothing in these procedures prevents a State from imposing criminal or civil penalties upon any person or organization violating any provision herein.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-434. Accounting.

1. Participating states shall maintain all documents required under these standards for a minimum of three years.

a. Each participating state shall maintain records of funds received from and remitted to other member jurisdictions. Such records shall identify registrants and remittances from each registrant.

b. These records, which may be kept on microfilm, microfiche or other similar type of documentation, shall be made available to any participating state upon request.

c. Each participating state shall forward to other participating states the amount of funds for the number of vehicles indicated on receipts issued by that state. Each state will be forwarded the full amounts. It will be the responsibility of each registration state to collect the proper fee amounts if a registration state accepts a check that fails to clear the bank. No amounts will be carried forward to other states for bad checks. These funds shall be transmitted only once each month. All funds received by the last day of the month shall be forwarded by the last day of the following month. Reports of no activity are required when no funds are collected.

d. The accounting transmittal shall include a remittance statement for that jurisdiction and identify the following:

1. Registration state submitting the transmittal;
2. Period the transmittal is for;
3. Number of motor vehicles for which fees have been paid; and
4. Total amount of fees received for each participating state.

e. This information is to be forwarded to other participating states on forms prescribed therefore.

f. The supplemental information attached to the transmittal form shall be forwarded to each state for which fees were collected by the registration state. During the months of August through December, each registration state will prepare two reports (whether paper reports or exchange of computer data). One report will indicate only those receipts issued and monies collected for the current registration period. The second report will indicate only those receipts issued and monies collected for the next registration period. If a registration state had no activity during a month from August through December for one of the registration periods, the registration state must prepare a report or send a separate accounting transmittal indicating "No Activity" and reference the registration period. The supplemental information to be sent to the registration state with the transmittal will include the following information:

1. Full name of registrant including all owners and fictitious name (d/b/a);
2. Full business and mailing address of registrant;
3. Number of vehicles for which fees have been paid;
4. Fees collected from each participant;
5. Date registration receipt issued; and
6. FHWA MC number, US DOT number and FEIN number.

g. When an error in overpayment or underpayment for a reporting period has been detected by a registration state, the registration state that has made the error must notify the affected states in writing within two (2) weeks of the discovery of the error. The documentation to the affected state must contain the date of original payment, amount of over/under payment and the motor carrier involved. The registration state in error may simply produce a copy of the original data report highlighting the transaction in error and indicate to the affected states the proper charges. The affected states and the state in error will determine how the over/under payment will be handled in accordance with each state's statutory requirements.

h. When a jurisdiction has not received the monthly report within 45 days after the close of the reporting month, that jurisdiction shall contact the delinquent jurisdiction and request compliance with the standards set forth. If the delinquent jurisdiction has failed to transmit a monthly report and funds by the next reporting period, the participating state shall file its monthly report, but withhold transmission of funds, to the delinquent jurisdiction until the delinquent jurisdiction complies fully with the established accounting procedures.

i. Monies may be transmitted between participating states electronically, by check or any other method of payment accepted by another participating state.

2. Auditing. Any registration state may audit any motor carrier to ensure correct payment of fees or to detect alteration of the registration receipt. If within reasonable time, the registrant fails to respond and pay the required per motor vehicle fees after notice of audit findings and/or written notice of amount due, the registration state shall revoke a motor carrier's registration.

a. The motor carrier shall maintain records and source documents supporting fee payments and the original receipt issued by the registration state for a period of three years.

b. Audits may be conducted at the principal place of business of the carrier. The registration state may also require the carrier to submit documentation for audit to the state agency. Participating states will cooperate as much as possible as to the determination of the proper amount of fees to be collected from the registrants for states of travel.

3. Reciprocity. Reciprocity agreement(s) in effect as of November 15, 1991 must be considered when determining fees to be charged under this program.

A motor carrier whose principal place of business is located in a state not eligible to participate in this program shall not use its designation of a registration state for this program to afford itself any benefits of reciprocity agreements of that registration state.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-435. Acquisition of FHWA Authority After Holding Exempt Authority.

1. If a motor carrier transporting interstate commodities exempt from registration with the FHWA received authority from the FHWA to transport regulated commodities in interstate commerce, the motor carrier must select its registration state and complete the registration process as required under these procedures and as follows:

2. If FHWA authority is received and the motor carrier intends to operate prior to January 1, 1994, the motor carrier will be required to comply (including payment of renewal fees) in the exact manner as all other FHWA authorized carriers for the registration period beginning January 1, 1994, in accordance with these procedures.

3. If FHWA authority is received after January 1, 1994, the fees for this program will be waived if those fees were previously paid to the states in the calendar year 1994 for each vehicle. The motor carrier shall include a statement with the registration form that the number of vehicles and the amount of fees paid as indicated on the fee listing attached to the registration form were the amounts paid to the states under the bingo stamp program. A registration receipt will be issued for those vehicles and those states of travel.

4. If the motor carrier desires to add additional states of travel or additional equipment, a supplemental registration form shall be completed. A supplemental registration receipt will be issued in accordance with the requirements set forth in Section VIII, L.

5. The registration state will at the monthly reporting period, indicate to other states the no-fee issuance of the receipt. If it has been determined that the motor carrier indicated on its fee schedule a number of vehicles and fees paid at a level greater than fees previously paid to the state, the state will notify the registration state of the deficiency and the need for the registration state to collect additional fees.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-436. Violations.

1. Failure to carry RS-3 Receipt. Any person who or corporation which operates a motor vehicle in interstate commerce on any highway in South Carolina and fails to carry the RS-3 Receipt as required by this subarticle, is guilty of a misdemeanor under Sections 58-23-80 and 58-23-1120 of the Code of Laws of South Carolina, 1976, and upon conviction thereof, is punishable as provided therein.

2. Failure to comply with other rules. Any person who or corporation which operates a motor vehicle in interstate commerce on any highway of South Carolina subject to this subarticle and fails to comply with these rules and regulations, or commits any other offense punishable by the Department, shall be subject to suspension or revocation of operating authority within this State, as well as the provisions of Regulation 38-436(1).

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

SUBARTICLE 9

REGISTRATION OF OPERATIONS BY FOR-HIRE INTERSTATE MOTOR CARRIERS OF PROPERTY EXEMPT FROM ECONOMIC REGULATION BY THE FEDERAL HIGHWAY ADMINISTRATION

38-437. Definitions.

The following letters and words, when used in these regulations, shall have the following meanings:

1. Driveaway Operations. The words "driveaway operations" shall mean an operation in which any vehicle or vehicles, operated singly or in lawful combinations, new or used, not owned by the transporting motor carrier, constitute the commodity being transported.

2. FHWA. The letters "FHWA" shall mean the Federal Highway Administration.
3. Motor Carrier. The words "motor carrier" shall mean a motor carrier of property or passengers for compensation engaged in interstate or foreign commerce when its operation is exempt from economic regulations by the Federal Highway Administration under the Interstate Commerce Act, as amended.
4. NARUC. The letters "NARUC" shall mean the National Association of Regulatory Utility Commissioners, whose address is P. O. Box 684, Washington, D.C. 20044.
5. State. The word "State" shall mean the South Carolina Department of Public Safety.
6. Vehicle. The word "vehicle" shall mean a self-propelled or motor driven vehicle operated by a motor carrier used for transportation of property.
7. Within the Borders. The words "within the borders" shall mean such operations shall be deemed to include interstate or foreign operations to, from, within or traversing the State of South Carolina.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-438. Registration of Motor Carrier Operations Exempt from Economic Regulation of FHWA.

A motor carrier shall not operate within the borders of South Carolina until there shall have been filed with and approved by the Department an application for the registration of such operation as prescribed by the provisions of this subarticle, and there shall have been a compliance with all other requirements of this subarticle. A change of operation shall be reported by the filing of a supplemental application.

1. Form and Execution of Application. The application for the registration of such operation, and any supplemental application to report any change in operation, shall be in the form set forth in Form A-1. (See Form A-1 in 38-447 Appendix.) The application shall be duly completed and executed by an official of the motor carrier.
2. Initial Registration. The application shall be filed in duplicate with the Department. The original shall be retained by the Department, and the duplicate shall be returned to the motor carrier when the application is approved. The application shall be accompanied by a fee in the amount of \$25.00. Such fee shall be in the form of certified check, cashier's check, or money order and shall be made payable to the South Carolina Department of Public Safety.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-439. Designation of Process Agent.

1. Designation Required Before Operating. A motor carrier shall not operate within the borders of South Carolina until there shall have been filed with and accepted by the Department a currently effective designation of a local agent for service of process.
2. Filing Designation. The motor carrier shall file such designation of a local agent for service of process with the Department by showing the name and address of such agent on Form A-1, or by furnishing the Department with a true copy of the designation of such agent filed with the FHWA.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-440. Registration and Identification of Vehicles.

1. When Registration and Identification Required. A motor carrier shall not operate a vehicle or engage in driveaway operations within the borders of South Carolina until the vehicle or driveaway operations shall have been registered and identified with the Department in accordance with the provisions of this rule, and there shall have been a compliance with all other requirements of this subarticle.
2. Registration and Identification. At the time of filing Form A-1, and on or before the thirty-first day of January each calendar year, but not earlier than the preceding first day of November, such motor carrier shall apply to the Department for the issuance of an identification stamp or stamps for the registration and identification of the vehicle or vehicles which it intends to operate, or driveaway operations which it intends to conduct, within the borders of South Carolina. The motor carrier may

apply for such number of stamps as is sufficient to cover its vehicles or driveaway operations which it anticipates will be placed in operation or conducted during the period the stamps are effective. The motor carrier may thereafter file one or more supplemental applications for additional stamps if the need therefor arises or is anticipated.

3. Identification Stamps.

a. The application for the issuance of such identification stamps shall be in the form set forth in Form B-1. (See Form B-1 in 38-447 Appendix.) The application shall be duly completed and executed by an official of the motor carrier, and shall be accompanied by a fee of \$5.00 for each identification stamp requested.

b. If the Department determines that the motor carrier has complied with all applicable provisions of these regulations, the Department will issue to the motor carrier the number of identification stamps requested.

c. The identification stamp issued under the provisions of this rule by the Department shall bear its initials, and an expiration date of the first day of February in the succeeding calendar year. It shall be in the shape of a square, one inch wide and one inch in height.

d. An identification stamp issued under the provisions of this rule shall be used for the purpose of identifying a vehicle or driveaway operations as being operated or conducted by a motor carrier, and shall not be used for the purpose of distinguishing between the vehicles operated by the same motor carrier. A motor carrier receiving an identification stamp under the provisions of this subarticle shall not knowingly permit the use of same by any other person or organization.

4. Uniform Identification Cab Card.

a. Motor carriers shall apply to the NARUC (See Form C in 38-447 Appendix for proper application form) for the issuance of a sufficient supply of Uniform Identification Cab Cards For Vehicle Or Driveaway Operations Exempt From FHWA Regulation (See Form D-1 in 38-447 Appendix for example of Cab Card) for use in connection with the identification of the vehicle or vehicles which it intends to operate, or driveaway operations which it intends to conduct, within the borders of South Carolina during the ensuing year.

b. The NARUC will issue to the motor carrier the number of cab cards requested. A motor carrier receiving a cab card under the provisions of this rule shall not knowingly permit the use of same by any other person or organization. Prior to operating a vehicle, or conducting a driveaway operation, within the borders of South Carolina during the ensuing year, the motor carrier shall place one of such identification stamps on the back of a cab card in the square bearing the name of South Carolina in such a manner that the same cannot be removed without defacing it. The motor carrier shall thereupon duly complete and execute the form of certificate printed on the front of the cab card so as to identify itself and such vehicle or driveaway operation, and shall enter the appropriate expiration date in the space provided below the certificate. Such expiration date shall be within a period of 15 months from the date the cab card is executed and shall not be later in time than the expiration date of any identification stamp placed on the back thereof.

5. Where Cab Card Maintained.

a. In the case of a vehicle not used in a driveaway operation, the cab card shall be maintained in the cab of such vehicle for which prepared whenever the vehicle is operated by the carrier identified on the cab card. Such cab card shall not be used for any vehicle except the vehicle for which it was originally prepared. A motor carrier shall not prepare two or more cab cards which are effective for the same vehicle at the same time.

b. In the case of a driveaway operation, the cab card shall be maintained in the cab of the vehicle furnishing the motive power for the driveaway operation whenever such an operation is conducted by the carrier identified on the cab card.

6. Replacement or Substitute Vehicles. If a motor carrier permanently discontinues the use of a vehicle because of destruction, loss, or transfer of ownership of a vehicle owned by a carrier or because of destruction or loss of a vehicle operated by the carrier under a lease of 30 consecutive days duration or more, the carrier may transfer the cab card prepared for such vehicle to a newly acquired vehicle purchased within 30 days of the date of such discontinuance or to a substitute or replacement vehicle furnished by the same lessor by complying with the following procedures:

- a. Such motor carrier shall duly complete and execute the form of certificate printed on the front of a new cab card, so as to identify itself and the substitute vehicle and shall enter the appropriate expiration date in the space provided below such certificate;
 - b. Such motor carrier shall indicate the date it terminated use of the discontinued vehicle by entering same in the space provided for an early expiration date which appears below the certificate of the cab card prepared for such vehicle; and
 - c. Such motor carrier shall affix the cab card prepared for the substitute vehicle to the front of the cab card prepared for the discontinued vehicle, by permanently attaching the upper left hand corners of both cards together in such a manner as to permit inspection of the contents of both cards and, thereupon, each identification stamp or number appearing on the back of the card prepared for the discontinued vehicle shall be deemed to apply to the operation of the substitute vehicle.
7. Must Present Cab Card for Inspection Upon Demand. A cab card shall, upon demand, be presented by the driver to any authorized government personnel for inspection.
8. When Identification Becomes Void.
- a. The identification of a vehicle or driveaway operation under the provisions of this rule and the identification stamp evidencing same and the cab card prepared therefor shall become void on the first day of February in the succeeding calendar year.
 - b. Any erasure, improper alteration, or unauthorized use of cab card shall render it void.
 - c. Each motor carrier shall destroy a cab card upon its expiration.
9. Replacing Cab Cards. If a cab card is lost, destroyed, mutilated, or becomes illegible, a new cab card must be prepared and a new identification stamp may be issued therefor upon application by the motor carrier and upon payment of the fee prescribed.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-441. Evidence of Liability Security.

1. When Liability Security Required. A motor carrier shall not operate within the borders of South Carolina until there shall have been filed with and accepted by the Department a currently effective certificate of insurance or surety bond evidencing bodily injury and property damage liability security with limits not less than those provided for in 38-414, and there shall have been a compliance with all other requirements of this subarticle.
2. Form and Execution of Certificate and Endorsement. The certificate of insurance shall state that the insurer has issued to such motor carrier a policy of insurance which by endorsement provides automobile bodily injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the law of this State and the rules and regulations of the Department. The certificate shall be in the form set forth in Form E. (See Form E in 38-447 Appendix.) The certificate shall be duly completed and executed by such insurer.
3. Evidence of Surety Bond. Motor carriers who post bond in lieu of insurance shall not engage in interstate commerce within the borders of this State unless and until such carriers have filed with and had accepted by this Department a surety bond in the form set forth in Form G. (See Form G in 38-447 Appendix.) The bond shall be duly completed and executed by the surety and principal.
4. Cargo Insurance Not Required. Motor carriers operating in South Carolina pursuant to this subarticle are not required to file evidence of cargo insurance.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-442. Notice of Security Cancellation.

1. Form and Execution of Notice of Insurance Cancellation. Notice of cancellation of insurance shall be accomplished by filing with the Department the form of notice set forth in Form K (See Form K in 38-447, Appendix). Insurance shall not be cancelled on less than thirty (30) days notice to the Department, said thirty (30) days to begin from the date Form K is received by the Department. The notice shall be duly completed and executed by the insurer or motor carrier.
2. Form and Execution of Notice of Surety Bond Cancellation. Notice of cancellation of a surety bond shall be accomplished by filing with the Department the form of notice set forth in Form L. (See Form L in 38-447, Appendix). The surety bond shall not be cancelled on less than thirty (30) days

notice to the Department, said thirty (30) days to begin from the date Form L is received by the Department. The notice shall be duly completed and executed by the surety or motor carrier.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-443. Miscellaneous.

1. NARUC to Supply Cab Card. In order to achieve complete uniformity in the reproduction of the Uniform Identification Cab Card, NARUC will reproduce and supply an adequate quantity of such form for use under the provisions of these regulations. No person or organization, other than NARUC, shall reproduce such form for use under the provisions of these regulations, and any such form reproduced by such an unauthorized person or organization is hereby declared null and void.

2. Manner of Preparing Forms. A typewriter or indelible ink shall be used in entering information in the blank spaces appearing on the forms prepared under the provisions of these regulations.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-444. Violations.

1. Failure to Carry Stamp or Cab Card. Any person or corporation who or which operates a motor vehicle in interstate commerce on any highway in South Carolina and fails to carry the identification stamp and cab card as required by this subarticle, is guilty of a misdemeanor under Sections 58-23-80 and 58-23-1120 of the Code of Laws of South Carolina, 1976, and, upon conviction thereof, is punishable as provided therein.

2. Failure to Comply with Other Rules. Any person or corporation who or which operates a motor vehicle in interstate commerce on any highway of South Carolina subject to this subarticle and fails to comply with these rules and regulations, or commits any other offense punishable by the Department, shall be subject to suspension or revocation of operating authority within this State, as well as the provisions of Regulation 38-444(1).

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-445. Officers.

The Department, through officers duly appointed, will investigate and report violations of the provisions of the Motor Vehicle Carrier Law and the Department's Rules and Regulations.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-446. Grounds for Revocation of Certificate.

The Department may at any time, after notice and opportunity to be heard, suspend, revoke, alter, or amend any certificate, if it shall be made to appear that the holder has willfully violated or refused to observe orders, rules, or regulations prescribed by the Department, provisions of the Motor Carrier Law, or any other law of this State regulating motor carriers for hire and applicable to the holder of such certificate.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

**SUBARTICLE 10
APPENDIX**

38-447. Appendix of Forms.

FORM A-1
UNIFORM APPLICATION FOR REGISTRATION OF INTERSTATE MOTOR
CARRIER OPERATIONS EXEMPT FROM FHWA REGULATION

To: _____ Date _____

(Name of State Department)

Applicant: _____

Street: _____

City: _____ State: _____ Zip Code _____

The vehicle or vehicles which the applicant intends to operate, or drive-away operations which it intends to conduct, within the borders of the State of _____, are exempt

from regulation by the Federal Highway Administration under the Interstate Commerce Act, as amended, pursuant to the authority checked below:

- Sec. 202(c)(1) (Terminal Area Exemption)
- Sec. 202(c)(2) (Terminal Area Exemption)
- Sec. 203(a)(11) (Foreign Commerce Exemption)
- Sec. 203(b)(1) (School Bus Exemption)
- Sec. 203(b)(2) (Taxicab Exemption)
- Sec. 203(b)(3) (Hotel Exemption)
- Sec. 203(b)(5) (Farm Cooperative Exemption)
- Sec. 203(b)(6) (Commodities Exemption)
- Sec. 203(b)(7) (Newspaper Exemption)
- Sec. 203(b)(8) (Municipal Exemption)
- Sec. 203(b)(9) (Occasional Exemption)
- Sec. 203(b)(10) (Emergency Tow Exemption)

Type of carrier:

- Property Passenger Common Contract

Give Principal Office Address, if different than above:

Street: _____ City: _____ State: _____

If individual, give name and address:

If Corporation, give State in which incorporated: _____

Name of President: _____ name of Secretary _____

If Partnership, give names and addresses of partners:

PROCESS AGENT FOR STATE: (MUST BE A SOUTH CAROLINA RESIDENT)

Name _____ Street _____

City _____ State _____

I, the undersigned, under penalty for false statement, do hereby certify that the above information is true and correct and that I am authorized to execute and file this document on behalf of the above applicant.

(State penalties as prescribed by Law).

Signature _____ Title _____

INSTRUCTIONS: FILE THIS APPLICATION IN DUPLICATE. WHEN APPLICATION IS APPROVED, THE COPY WILL BE RETURNED TO THE APPLICANT.

FORM B-1

UNIFORM APPLICATION FOR REGISTRATION AND IDENTIFICATION OF VEHICLES OR DRIVEAWAY OPERATIONS EXEMPT FROM FHWA REGULATION

To: _____ Date: _____

(Name of State Department)

Applicant: _____

Street: _____

City: _____ State: _____ Zip Code: _____

The above described applicant hereby applies for the issuance of (Number) identification stamp(s), or for the assignment of an identification number (as elected by the laws of the State), for the registration and identification of the vehicle or vehicles which the applicant intends to operate or driveaway operations which it intends to conduct, within the borders of the state during the period for which such identification stamp(s) or number is effective. The operation of such vehicle or vehicles, or the conduct of such driveaway operations, shall be in accordance with the laws of the State. The vehicle or vehicles which the applicant intends to operate or driveaway operations which it intends to conduct, within the borders of the State, are exempt from regulation by the Federal Highway Administration under the Interstate Commerce Act as amended, pursuant to:

- Sec. 202(c) (1) (Terminal Area Exemption)
- Sec. 202(c) (2) (Terminal Area Exemption)
- Sec. 203(a) (11) (Foreign Commerce Exemption)
- Sec. 203(b) (1) (School Bus Exemption)
- Sec. 203(b) (2) (Taxicab Exemption)

- Sec. 203(b) (3) (Hotel Exemption)
- Sec. 203(b) (4) (National Park Exemption)
- Sec. 203(b) (4a) (Farm Exemption)
- Sec. 203(b) (5) (Farm Cooperative Exemption)
- Sec. 203(b) (6) (Commodities Exemption)
- Sec. 203(b) (7) (Newspaper Exemption)
- Sec. 203(b) (7a) (Air Transport Exemption)
- Sec. 203(b) (8) (Municipal Exemption)
- Sec. 203(b) (9) (Occasional Exemption)
- Sec. 203(b) (10) (Emergency Tow Exemption)
- _____ (Specify Other Exemption)

The applicant shall not knowingly permit any other person or organization to use the identification stamp(s) or number issued or assigned pursuant to this application.

I, the undersigned, under penalty for false statement, do hereby certify that the above information is true and correct and that I am authorized to execute and file this document on behalf of the above applicant.
(State penalties as prescribed by Law).

(Signature)

(Title)

FORM D-1
UNIFORM IDENTIFICATION CAB CARD FOR VEHICLE OR DRIVEAWAY
OPERATION EXEMPT FROM FHWA REGULATION
OPERATING MOTOR CARRIER

Name of Carrier _____
Street _____
City _____ State _____
VEHICLE
Type _____ * Make _____
(Tractor-Truck-Bus-Driveaway)
* Year _____ * Serial No. _____
** State of Vehicle Registration _____
* Name of Owner of Vehicle _____

The operation of the vehicle or conduct of the driveaway operation, described above, is exempt from regulation by the Federal Highway Administration under the Interstate Commerce Act, as amended, pursuant to:

- Sec. 202 (c) (1) (Terminal Area Exemption)
- Sec. 202 (c) (2) (Terminal Area Exemption)
- Sec. 203 (a) (11) (Foreign Commerce Exemption)
- Sec. 203 (b) (1) (School Bus Exemption)
- Sec. 203 (b) (2) (Taxicab Exemption)
- Sec. 203 (b) (3) (Hotel Exemption)
- Sec. 203 (b) (4) (National Park Exemption)
- Sec. 203 (b) (4a) (Farm Exemption)
- Sec. 203 (b) (5) (Farm Cooperative Exemption)
- Sec. 203 (b) (6) (Commodities Exemption)
- Sec. 203 (b) (7) (Newspaper Exemption)
- Sec. 203 (b) (7a) (Air Transport Exemption)
- Sec. 203 (b) (8) (Municipal Exemption)
- Sec. 203 (b) (9) (Occasional Exemption)
- Sec. 203 (b) (10) (Emergency Tow Exemption)
- _____ (Specify Other Exemption)

Such vehicle or driveaway operation has been registered in accordance with the laws of each State whose current identification stamp or number is placed on the reverse side of this card.

I, the undersigned, under penalty for false statement, do hereby certify that the above information is true and correct and that I am authorized to execute this document on behalf of the above carrier. (State penalties as prescribed by law.)

Signature _____
 Title _____
 Date Executed _____

This card expires at 12:01 A.M., February 1, 19__ or _____ 19__, whichever is earlier.

* Not applicable to driveaway operations.

** If the State of vehicle registration changes during the period this cab card is effective, the motor carrier shall immediately indicate the change above by marking out the name of the State listed and inserting the name of the new State of vehicle registration in lieu thereof. This change shall be initiated by an official of the motor carrier.

Alabama	Alaska	Arkansas	Arizona	California	Colorado
Connecticut	Delaware	District of Columbia	Florida	Georgia	Hawaii
Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky
Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota
Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire
New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio
Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	South Dakota
Tennessee	Texas	Utah	Vermont	Virginia	Washington
West Virginia	Wisconsin	Wyoming			

FORM E
 UNIFORM MOTOR CARRIER BODILY INJURY AND
 PROPERTY DAMAGE LIABILITY CERTIFICATE
 OF INSURANCE
 (Executed in triplicate)

Filed with _____ (hereinafter called Department)
 (Name of Department)

This is to certify, that the _____
 (Name of Company)

(hereinafter called Company) of _____
 (Home Office Address of Company)

has issued to _____
 (Name of Motor Carrier)

of _____ a policy or policies of
 (Address of Motor Carrier)

insurance effective from _____ 12:01 a.m. standard time at the address of the insured stated in said policy or policies and continuing until cancelled as provided herein, which, by attachment of the uniform motor carrier bodily injury and property damage liability insurance endorsement, has or have been amended to provide automobile bodily injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law of the State in which the Department has jurisdiction or regulations promulgated in accordance therewith.

Whenever requested, the company agrees to furnish the Department a duplicate original of said policy or policies and all endorsements thereon.

This certificate and the endorsement described herein may not be cancelled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days' notice in writing to the Department, such thirty (30) days' notice to commence to run from the date notice is actually received in the office of said Department.

Countersigned at _____

(Street Address)

(City) (State) (Zip Code)
this _____ day of _____, 19____

(Authorized Company Representative)

Insurance Company File No. _____

(Policy No.) _____

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Federal Highway Administration pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act. (49 U.S.C., Sec. 302(b)(2)).

FORM F
UNIFORM MOTOR CARRIER BODILY INJURY AND
PROPERTY DAMAGE LIABILITY INSURANCE ENDORSEMENT

It is agreed that:

1. The certification of the policy, as proof of financial responsibility under the provisions of any State motor carrier law or regulations promulgated by any State Commission having jurisdiction with respect thereto, amends the policy to provide insurance for automobile bodily injury and property damage liability in accordance with the provisions of such law or regulations to the extent of the coverage and limits of liability required thereby; provided only that the insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except by reason of the obligation assumed in making such certification.

2. The uniform motor carrier bodily injury and property damage liability certificate of insurance has been filed with the State Commissions indicated on the reverse side hereof.

3. This endorsement may not be cancelled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days' notice in writing to the State Commission with which such certificate has been filed, such thirty (30) days' notice to commence to run from the date the notice is actually received in the office of such department.

Attached to and forming part of Policy No. _____ issued by _____,
herein called Company, of _____ to _____ of _____

Dated at _____ this _____ day of _____, 19____.

Countersigned by _____

Authorized Company Representative

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Federal Highway Administration pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act. (49 U.S.C., Sec. 302(b)(2)).

Indicates Departments with whom uniform motor
carrier bodily injury and property damage liability
certificate of insurance has been filed

Alabama	Illinois	Montana	Rhode Island
Alaska	Indiana	Nebraska	South Carolina
Arizona	Iowa	Nevada	South Dakota
Arkansas	Kansas	New Hampshire	Tennessee
California	Kentucky	New Jersey	Texas
Colorado	Louisiana	New Mexico	Utah

Connecticut	Maine	New York	Vermont
Delaware	Maryland	North Carolina	Virginia
District of Columbia	Massachusetts	North Dakota	Washington
Florida	Michigan	Ohio	West Virginia
Georgia	Minnesota	Oklahoma	Wisconsin
Hawaii	Mississippi	Oregon	Wyoming
Idaho	Missouri	Pennsylvania	

FORM G
UNIFORM MOTOR CARRIER BODILY INJURY AND
PROPERTY DAMAGE LIABILITY SURETY BOND
(Executed in triplicate)

Know all men by these presents, that we, (Name of Motor Carrier Principal) _____ of _____ (City) _____, (State) as principal (hereinafter called principal), and _____, (Name of Surety) a corporation created and existing under the laws of the State of _____, with principal office at _____ (City) _____, (State) as Surety (hereinafter called surety), are held and firmly bound unto the State of _____ in the sum or sums hereinafter provided for which payment, well and truly to be made, the principal and surety hereby bind themselves, their successors and assigns, firmly by these presents.

The condition of this obligation is such that:

Whereas, the principal is or intends to become a motor carrier subject to the laws of such State and the rules and regulations of _____ (Name of Department) (hereinafter called Department), relating to insurance or other security for the protection of the public, and has elected to file with the Department a surety bond conditioned as hereinafter set forth; and

Whereas, this bond is written to assure compliance by the principal a motor carrier of passengers or property with the laws of such State and the rules and regulations of the Department relating to insurance or other security for the protection of the public, and shall inure to the benefit of any person or persons who shall recover a final judgment or judgments against the principal for any of the damages herein described.

Now, therefore, if every final judgment recovered against the principal for bodily injury to or the death of any person or loss of or damage to the property of others, sustained while this bond is in effect, and resulting from the negligent operation, maintenance or use of motor vehicles in transportation (but excluding injury to or death of the principal's employees while engaged in the course of their employment, and loss of or damage to property of the principal and property transported by the principal designated as cargo), shall be paid, then this obligation shall be void, otherwise to remain in full force and effect.

Within the limits hereinafter provided, the liability of the surety extends to such losses, damages, injuries, or deaths regardless of whether such motor vehicles are specifically described herein and whether occurring on the route or in the territory authorized to be served by the Principal or elsewhere.

This bond is effective from _____ (12:01 a.m., standard time, at the address of the principal as stated herein) and shall continue in force until terminated as hereinafter provided. The principal or the surety may at any time terminate this bond by written notice to the Department, such termination to become effective not less than thirty (30) days after actual receipt of said notice by the Department. The surety shall not be liable hereunder for the payment of any judgment or judgments against the principal for bodily injury to or the death of any person or persons or loss of or damage to property resulting from accidents which occur after the termination of this bond as herein provided, but such termination shall not affect the liability of the surety hereunder for the payment of any such judgment or judgments resulting from accidents which occur during the time the bond is in effect.

The liability of the surety on each motor vehicle shall be the limits prescribed in the laws of such State and the rules and regulations of the Department governing the filing of surety bonds, which were in effect at the time this bond was executed, and will be a continuing one

notwithstanding any recovery hereunder. In witness whereof, the said principal and surety have executed this instrument on the _____ day of _____, 19____.

(Principal)
By _____
(AFFIX CORPORATE SEAL)

(Surety)
_____, _____
(City) (State)
By _____
Countersigned at _____ this ____ day of _____, 19____.
Bond No. _____
(Registered Resident Agent)

This form determined by the National Association of Regulatory Utility commissioners and promulgated by the Federal Highway Administration pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act. (49 U.S.C., Sec. 302(b)(2)).

FORM H
UNIFORM MOTOR CARRIER CARGO
CERTIFICATE OF INSURANCE
(Executed in triplicate)

Filed with _____ (hereinafter called Department)
(Name of Department)
This is to certify, that the _____ (hereinafter called
Company) of _____
(Home Office Address of Company)
has issued to _____
(Name of Motor Carrier)

of _____ (Address of Motor Carrier) a policy or
policies of insurance effective from _____ 12:01 A.M., standard time at the address of
the insured stated in said policy or policies and continuing until canceled as provided herein,
which by attachment of the Uniform Motor Carrier Cargo Insurance Endorsement, has or
have been amended to provide cargo insurance covering the obligations imposed upon such
motor carrier by the provisions of the motor carrier law of the State in which the department
has jurisdiction or regulations promulgated in accordance therewith.

Whenever requested, the Company agrees to furnish the Department a duplicate original of
said policy or policies and all endorsements thereon.

This certificate and the endorsement described herein may not be canceled without cancella-
tion of the policy to which it is attached. Such cancellation may be effected by the Company
or the insured giving thirty (30) days' notice in writing to the Department, such thirty (30)
days' notice to commence to run from the date notice is actually received in the office of the
Department. Countersigned at _____

Countersigned at _____
(Street Address) (City) (State)
this _____ day of _____ 19____ (Zip Code)

(Authorized Company Representative)
Insurance Company File No. _____
(Policy Number)

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Federal Highway Administration pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act (49 U.S.C. Sec. 302(b)(2)).

FORM I
UNIFORM MOTOR CARRIER CARGO
INSURANCE ENDORSEMENT

It is agreed that:

1. The certification of the policy as proof of responsibility under the provisions of any State motor carrier law or regulations promulgated by any State Commission having jurisdiction with respect thereto, amends the policy to provide insurance for motor carrier cargo liability in accordance with the provisions of such law or regulations to the extent of the coverage and limits of liability required thereby; provided only that the insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except by reason of the obligation assumed in making such certification.
2. The Uniform Motor Carrier Cargo Certificate of Insurance has been filed with the State Commissions indicated on the reverse side hereof.
3. This endorsement may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days notice in writing to the State Commission with which such certificate has been filed, such thirty (30) days notice to commence to run from the date the notice is actually received in the office of such Commission.

Attached to and forming part of Policy No. _____
issued by _____, herein called Company, of _____
to _____ of _____ Dated at
_____ this _____ day of _____ 19____
Countersigned by _____
Authorized Company Representative

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Federal Highway Administration pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., Sec. 302(b)(2)).

X—Indicates Departments With Whom Uniform Motor Carrier
Cargo Certificate of Insurance Has Been Filed

Alabama	Illinois	Montana	Rhode Island
Alaska	Indiana	Nebraska	South Carolina
Arizona	Iowa	Nevada	South Dakota
Arkansas	Kansas	New Hampshire	Tennessee
California	Kentucky	New Jersey	Texas
Colorado	Louisiana	New Mexico	Utah
Connecticut	Maine	New York	Vermont
Delaware	Maryland	North Carolina	Virginia
District of Columbia	Massachusetts	North Dakota	Washington
Florida	Michigan	Ohio	West Virginia
Georgia	Minnesota	Oklahoma	Wisconsin
Hawaii	Mississippi	Oregon	Wyoming
Idaho	Missouri	Pennsylvania	

FORM J
UNIFORM MOTOR CARRIER CARGO SURETY BOND
(Executed in Triplicate)

KNOW ALL MEN BY THESE PRESENTS, That we, _____(Name of Motor Carrier)
_____ of _____,
(Principal) (City) (State) as
Principal (hereinafter called Principal), and _____
(Name of Surety)
_____, a corporation created and existing under the laws of the State of
_____, with principal office at _____(City) _____, (State) as Surety

(hereinafter called Surety), are held and firmly bound unto the State of _____ in the sum or sums hereinafter provided for which payment, well and truly to be made, the Principal and Surety hereby bind themselves, their successors and assigns, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Principal is or intends to become a motor carrier subject the laws of such State and the rules and regulations of the _____ (Name of Department)(herein called Department), relating to insurance or other security for the protection of shippers and consignees, and has elected to file with the Department a bond conditioned as hereinafter set forth, and

WHEREAS, this bond is written to assure compliance by the Principal a motor carrier with the laws of such State and the rules and regulations of the Department relating to insurance or other security for the protection of shippers and consignees, and shall inure to the benefit of any and all shippers or consignees to whom the Principal may be held liable for any of the damages herein described.

NOW, THEREFORE, if the Principal shall make compensation to shippers and consignees for all losses of or damages to property belonging to them which shall, while this bond is in effect, come into the possession of the Principal in connection with its transportation service, regardless of whether such losses or damages occur while said property is in a motor vehicle, terminal, warehouse or other place, for which losses or damages the Principal may be held legally liable, then this obligation shall be void, otherwise it shall remain in full force and effect.

The liability of the Surety for the limits hereinafter provided shall be a continuing one notwithstanding any recovery hereunder, and extends to such losses or damages regardless of whether the motor vehicles, terminals, warehouses, and other facilities used in connection with the transportation service of the Principal are specifically described herein or not, and whether occurring on the route or in the territory authorized to be served by the Principal or elsewhere.

The liability of the Surety for any such loss or damage shall be the limits prescribed in the laws of such State and the rules and regulations of the Department governing the filing of surety bonds, which were in effect at the time this bond was executed, and will be a continuing one notwithstanding any recovery hereunder.

This bond is effective from _____(12:01 A.M., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice to the Department, such termination to become effective not less than thirty (30) days after actual receipt of said notice by the Department.

The Surety shall not be liable hereunder for the payment of any of the losses damages hereinbefore described which arise on property coming into the possession of the Principal in connection with its transportation service after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such losses or damages arising on property coming into the possession of the Principal in connection with its transportation service prior to the date such termination becomes effective.

IN WITNESS WHEREOF, the said Principal and Surety have executed this instrument on the _____ day of _____, 19____.

(Principal)
BY _____
(Affix Corporate Seal) _____
(Surety)

(City) _____ (State)
By _____
Countersigned at _____ this _____ day of _____ 19____
Bond No. _____
(Registered Resident Agent)

This form determined by the National Association of Regulatory Utility Commissioners, and promulgated by the Federal Highway Administration pursuant to the provisions of Section 202(b)(2) of the interstate Commerce Act (49 U.S.C., Sec. 302(b)(2)).

FORM K
UNIFORM NOTICE OF CANCELLATION OF MOTOR
CARRIER INSURANCE POLICIES
(Executed in triplicate)

Check type cancelled: BI and PD _____ Cargo _____
Filed with _____ (hereinafter called Department)
(Name of Department)

This is to advise that under the terms of a policy or policies issued to:

(Name of Motor Carrier)
of _____
(Address of Motor Carrier)
by _____
(Name of Company)
of _____
(Address)

said policy or policies, including any and all endorsements forming a part thereof or certificates issued in connection therewith, is (are) hereby cancelled effective as of the day of , 19 , 12:01 A.M., standard time at the address of the insured as stated in said policy or policies provided such date is not less than thirty (30) days after the actual receipt of this notice by the Department.

(Signature of Insurer)

Insurance Company File No. _____
(Policy No.)

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Federal Highway Administration pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., Sec. 302(b)(2)).

FORM L
UNIFORM NOTICE OF CANCELLATION OF MOTOR
CARRIER SURETY BONDS
(Executed in Triplicate)

Check type cancelled: BI and PD _____ Cargo _____
Filed with _____ (hereinafter called Department)
(Name of Department)

This is to advise that, under the terms of surety bond(s) executed in behalf of:

(Name of Principal)
of _____
(Address)
by _____
(Name of Surety)
of _____
(Address)

said bond(s) including any and all riders or certificates attached thereto or issued in connection therewith, is(are) hereby cancelled effective as of the _____ day of _____, 19____, 12:01 A.M. standard time at the address of the Principal as stated in said bond(s) provided such date is not less than thirty (30) days after the actual receipt of this notice by the department.

(Signature of Principal or surety)

Insurance Company File No. _____
(Policy No.)

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Federal Highway Administration pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act. (49 U.S.C., Sec. 302(b)(2)).

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

SUBARTICLE 11
INTERNATIONAL FUEL TAX AGREEMENT (IFTA) REGULATIONS

38-480. Trip Permits.

The Department shall issue trip permits to motor carriers who operate IFTA qualified motor vehicles but opt to operate without an IFTA license or decal. This permit must be maintained in the vehicle to which it is issued. The trip permit shall be effective for a ten (10) day period and cost fifteen (\$15.00) fifteen dollars per permit.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-481. Reciprocal Agreements with Foreign Jurisdictions.

The Department may enter reciprocal agreements with foreign jurisdictions who are not members of the International Fuel Tax Agreement.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-482. Posting of Bond When Tax Payment Past Due.

The Department may require IFTA licensees post a bond when tax returns and payments are not submitted in a timely manner. This bond shall be determined by the Department on an individual carrier basis and shall be in proportion to the taxes owed to the Department.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

SUBARTICLE 12
INTERNATIONAL REGISTRATION PLAN (IRP) REGULATIONS

38-500. Seventy-Two Hour Trip Permits.

The Department shall issue a seventy-two (72) hour trip permit at a cost of fifteen (\$15.00) dollars to out-of-state carriers who are not registered under IRP, but wish to operate IRP qualified motor vehicles intrastate and/or interstate in South Carolina.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-501. Late Fine Charges.

The Department shall charge a fine of twenty (\$20.00) dollars per vehicle to carriers who opt for partial payment and fail to pay their final installment in a timely manner.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-502. Temporary Authorities or Permits.

Temporary authorities or temporary operating permits shall be issued in order for motor carriers to begin operations without delay. Temporary authorities shall be issued for new accounts, added vehicles, added jurisdictions, increases in weight, duplicate cab cards and replacement license plates. No temporary authority shall be issued to a motor carrier with outstanding fees due to the Department.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

38-503. Renewal Applications.

All renewal applications must be submitted by mail for invoicing. Carriers who have received an invoice may obtain license plates by mail or over the counter at the Motor Carrier Services office.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998.

ARTICLE 7
HIGHWAY PATROL
SUBARTICLE 1
WRECKER REGULATIONS

(Statutory Authority: 1976 Code §§ 23-6-20 and 23-6-400 et seq.)

38-600. Regulation of Wrecker Services.

The following regulations shall be followed by all wrecker services utilized by the South Carolina Department of Public Safety.

A. GENERAL

1. No commissioned South Carolina Department of Public Safety employee will hold any financial interest of any form in any wrecker service.

2. No commissioned South Carolina Department of Public Safety employee will recommend any wrecker service to the owner or driver of a wrecked or disabled vehicle during the performance of their duties.

B. QUALIFICATION CRITERIA

1. All wreckers shall have appropriate safety equipment, fire extinguishers, warning devices, flash lights and all other equipment necessary to protect the motoring public and be equipped with amber flashing lights visible in all directions for a distance of 500 feet in normal sunlight. Such equipment shall be maintained in good working order. All authorized amber flashing lights shall be activated and wrecker operators shall wear reflective traffic safety vests while performing recovery operations or when circumstances are such that the vehicle(s) being transported create a potentially hazardous condition for other motorists.

2. Each wrecker service on the rotation list must place a sign on the driver and front passenger door of each of its wreckers indicating the company name, address, and telephone number of the zone to which it is assigned. This sign shall be painted on the doors of the wrecker or otherwise permanently affixed to the doors. The letters of the sign must be no less than two inches high. If the wrecker is registered in a name other than that of the wrecker service, the owner's name must also appear on the doors in letters no less than one inch high. All lettering on wreckers shall be plainly visible and shall be in a color that contrasts to that of the wrecker.

3. Each wrecker service on the rotation list must place a sign on the exterior of its business location clearly visible indication the company name, telephone number, and business hours.

4. Each wrecker service on the rotation list shall carry liability insurance on its wreckers and its premises in an amount not less than Three Hundred Thousand and no/100 (\$300,000.00) Dollars for a class A wrecker, Five Hundred Thousand and no/100 (\$500,000.00) Dollars for a class B wrecker and Seven Hundred Fifty Thousand and no/100 (\$750,000.00) Dollars for a class C wrecker.

5. Each wrecker service on the rotation list shall carry insurance that covers vehicles, cargo, and other property in or on the vehicle during transit in an amount of not less than Seventy Five Thousand and no/100 (\$75,000.00) for a class A wrecker, One Hundred and Fifty Thousand and no/100 (\$150,000.00) for a class B wrecker and Two Hundred Fifty Thousand and no/100 (\$250,000) for a class C wrecker.

6. Each wrecker service on the rotation list shall carry garage keeper's liability insurance covering customer's vehicles in an amount not less than One Hundred Thousand and no/100 (\$100,000.00) for a class A wrecker, Two Hundred Thousand and no/100 (\$200,000.00) for a class B wrecker and Two Hundred Thousand and no/100 (\$200,000.00) for a class C wrecker.

7. Each wrecker owned by any wrecker service on a rotation list shall be equipped with a towing log. The towing log shall be maintained by the wrecker service and shall accurately reflect all towing done by the wrecker service at the request of the South Carolina Department of Public Safety. The

South Carolina Department of Public Safety shall design the wrecker log format. Each wrecker service owner shall be responsible for producing this towing log upon request by a Department of Public Safety Inspector.

8. Wrecker operators must display professional behavior when conducting business at the request of the South Carolina Department of Public Safety.

9. Wrecker services and operators shall be familiar with and shall comply with the laws regarding solicitation from the highway. (Section 56-5-3180 of the South Carolina Code of Laws)

10. A new rotation list will be created each calendar year. A wrecker service desiring to be on the rotation list in the next year must apply in writing by October 1st and be inspected and qualified prior to December 31st. On December 31st of each year the Department of Public Safety will publish the wrecker rotation list to be effective January 1st of the following year.

11. A wrecker service not currently on the South Carolina Department of Public Safety wrecker rotation list and desiring to be added may apply in writing at any time but must first be inspected and qualified.

12. A wrecker service that fails to pass inspection and qualification as prescribed by regulation will be notified of the deficiencies. When the wrecker service corrects the deficiencies, it may request a new inspection.

C. WRECKER SERVICE ROTATION LIST/RESPONSIBILITIES

1. Each Highway Patrol Troop will establish zones for towing, and a wrecker rotation list will be prepared for each zone. A wrecker service requesting to be on the rotation list for a particular zone must physically have a business within that zone. The wrecker to be used for that zone must be housed at that location during normal business hours... "Normal business hours" or "business hours" as used in this regulation means at least from 8:30 a.m. to 5:00 p.m., Monday through Friday and additional hours designated and posted by the company. The vehicle towed must be towed to the same business location where the wrecker is housed during normal business hours, unless the vehicle owner or operator requests that the vehicle be towed to another location. Normal business hours must be clearly posted. Storage lots are not considered as a separate business. A wrecker service or owner can only be on the list one time in any zone. There will only be one telephone number for one wrecker service at any one address on rotation. Pagers and cellular phones are not acceptable. A wrecker service must immediately notify the Highway Patrol upon change of address or telephone number.

2. Separate rotation lists will be maintained for each category of wreckers. When the services of a categorized wrecker are needed and when the owner or driver of the vehicle to be towed has no preference as to which wrecker service he/she desires, a wrecker will be called from the appropriate wrecker rotation list. The investigating officer will use his/her discretionary authority to deny request for specific wrecker service whenever the request will delay the timely restoration of safe traffic movement.

3. The wrecker service must have a wrecker of sufficient size and strength to handle the job. The South Carolina Department of Public Safety will have the right not to call a wrecker service that, in its opinion, fails to meet this qualification for a specific job. Under these conditions, the wrecker service not called will remain on the top of the rotation list.

4. Wreckers shall respond only upon the request of the Department of Public Safety.

5. Wrecker services will be called from the rotation lists in the order in which they appear on the lists. If a particular wrecker service is unavailable when called, it will be passed over and the next wrecker service on the list will be called to the scene.

6. Wrecker services shall be located within the established wrecker zone available to the South Carolina Department of Public Safety to respond to rotation calls as well as request by the Department for the immediate release of personal property on a twenty-four hour, seven day a week basis. The wrecker service location shall have an agent present during business hours and at the request of the owner of the towed vehicle or his designee, the wrecker service must immediately release personal items such as medicines, medical equipment, keys, clothing, and tools of the trade, child restraint systems and perishable items. The wrecker service shall also be available for the release of the towed vehicle to the vehicle owner or vehicle owner's designee on a reasonable after-hours basis, including weekends. Should there be a dispute between the vehicle owner or the vehicle owner's designee and

the wrecker service regarding any storage fees or charges, the vehicle owner or the vehicle owner's designee must provide the wrecker service written notification of the dispute. If the dispute is settled in favor of the wrecker service then the owner of the towed vehicle is liable for all charges which accrued pending the resolution. The wrecker service must cease any storage charges that would otherwise accrue from the time the wrecker service receives written notification of the dispute until the dispute is settled. Upon release of the vehicle, the wrecker service shall provide an itemized statement of all charges. If the vehicle owner is not available to sign a release, the wrecker service must release the vehicle to the owner's insurer or to the owner's designee.

7. The wrecker service must be willing to accept collect calls from the South Carolina Department of Public Safety. If a call is refused or unanswered, the wrecker service will lose that rotation call.

8. When a wrecker service or wrecker driver is unable to answer a call, the Patrol shall be promptly notified of the reason for the unavailability. A wrecker service or driver cannot refuse a call without prior notification of unavailability or without just cause.

9. Unless the owner or driver of a vehicle is incapacitated or unavailable, the investigating officer at the scene will make a determination of the owner or driver's preference of a wrecker service. The investigating officer will use his/her discretionary authority to deny request for a specific wrecker service whenever the request will impair the timely restoration of safe traffic movement. In the event the owner or driver of the vehicle does not have a preference or preference cannot be determined, the investigating officer will utilize a wrecker from the rotation list. The wrecker service responding to such call shall provide the vehicle operator with a card containing the wrecker service name, address, telephone number and business hours.

10. A wrecker service shall respond, under normal conditions, in a timely manner not to exceed 45 minutes. Failure to respond in a timely manner may result in a second rotation wrecker being requested. If the second wrecker is requested before the arrival of the first rotation wrecker, the initially requested wrecker will forfeit the call and will immediately leave the collision/incident scene.

11. A wrecker service may respond with a wrecker of a higher class than requested. However, wrecker service is limited to the rates of the requested classification.

12. It shall be the responsibility of the wrecker service to perform a general clean-up of the accident area before leaving the scene of any accident. This responsibility requires the wrecker service to remove all debris such as broken glass, liquids, and materials from an accident area by sweeping up such debris and removing this material from the scene in a garbage can-type container on each wrecker. All wreckers shall be equipped with brooms, shovels, commercial absorbent and all other equipment necessary to fulfill this responsibility.

13. Each wrecker service shall be responsible for securing personal property in a vehicle at an accident scene. The wrecker service shall be responsible for preserving personal property in a vehicle towed from an accident scene.

14. The wrecker service shall maintain the towed vehicle in a safe storage area in a manner that would prohibit further damage and ensure protection of personal property. This may be a locked building or a secured fenced-in area where the stored vehicles and other property will not be accessible to the public. Wrecker services may charge a daily storage fee, commencing 12 hours after the vehicle is towed to the storage area and terminating when the vehicle owner or vehicle owner's designee offers or attempts to pick up the vehicle and offers to pay the wrecker service's legitimate accrued charges.

a. Outside storage facilities must be sufficiently lighted, fenced, and locked for protection of vehicles and property.

b. Fencing around storage facilities must be of adequate size to discourage theft of vehicles and property stored within, and may not be less than six feet in height.

c. Inside storage, covers, tarpaulins, or other devices must be available for protection of vehicles or personal property.

15. A wrecker service may secure assistance from another wrecker service when necessary to complete the recovery; however, this does not supersede paragraph 3 of this section nor does it permit wrecker services to accept a rotation call and dispatch the call to secondary wrecker services. Only one bill is to be submitted to the owner or operator for the work performed.

16. Motorist utilizing the South Carolina Department of Public Safety Wrecker Rotation List will have the option of paying by major credit card. The wrecker service may request, prior to dispatching, if the motorist intends to pay by major credit card. If the wrecker service does not accept major credit cards, the next wrecker or towing service that does accept credit cards will be utilized. Any wrecker or towing service called that does not accept credit cards will remain on the top of the rotation list.

D. COMPLAINTS/DISCIPLINARY PROCEDURES

1. Complaints from or about wrecker services regarding an incident involving the Highway Patrol or its operation of the wrecker lists must be received within thirty days of the alleged incident. Complaints should be directed to the Captain of the Troop where the incident occurred. Complaints will be forwarded along with a report to the Colonel, or his designee, at Patrol headquarters. An appeal from the decision of the Troop commander should be made to the Colonel of the Highway Patrol.

2. The Department will enact a Wrecker Rotation Disciplinary Policy setting out the procedures for enforcing this regulation.

3. Failure of any wrecker service to comply with this regulation will result in disciplinary action in accordance with the South Carolina Department of Public Safety Wrecker Rotation Disciplinary Policy.

4. If the Department has reason to believe that a wrecker service has failed to remain in compliance with qualification criteria set out in Section B, that the non-compliance continues, and that the non-compliance will be detrimental to the public, the Department may initiate immediate suspension procedures in accordance with the South Carolina Administrative Procedures Act.

5. An advisory committee, consisting of experts in the towing and towing related industries, will be created to review, upon request by the Department, complaints specific to the terms and conditions of this regulation. The advisory committee will be limited to reviewing specific issues raised in a complaint or appeal and making recommendations regarding the validity of the complaint as well as a fair and reasonable resolution. Advisory committee recommendations will not supercede Department of Public Safety policy nor will the committee make recommendations regarding disciplinary action for Department of Public Safety employees.

6. The advisory committee will be comprised of the following members:

- a. A Highway Patrol Major who will act as chairman.
- b. A Captain or higher-ranking member of the South Carolina State Transport Police (STP) appointed by the STP Colonel.
- c. A member of the South Carolina Trucking Association appointed by the association.
- d. A member of the South Carolina Towing and Recovery Association appointed by the association.
- e. Insurance.
- f. A representative from the SCDPS Office of General Counsel will act as a non-voting advisor.

7. All members of the advisory committee will serve for a period of one year beginning January 1st and ending December 31st. Members may serve consecutive terms. A quorum will be a majority of the voting members present.

E. WRECKER CLASSIFICATION

1. Class A: Light Duty Wrecker

Class A Wreckers, for towing vehicles weighing seven thousand (7,000) pounds or less, (passenger cars, pickup trucks, motorcycles, small trailers, and similar vehicles) shall meet the following minimum requirements:

- a. Conventional Wrecker
 - (1) Minimum gross vehicle weight rating (GVWR) of not less than ten thousand (10,000) pounds.
 - (2) Individual boom capacity of not less than eight thousand (8,000) pounds as rated by the manufacturer.

(3) Individual PTO or hydraulic power winch capacity of not less than eight thousand (8,000) pounds as rated by the manufacturer with at least one hundred (100) feet of three-eighths (3/8) inch cable drum.

(4) A manufactured wheel-lift with a retracting lifting capacity of not less than three thousand five hundred (3,500) pounds as rated by the manufacturer, with safety chains.

(5) Come-A-Longs, chains, or other similar devices shall not be used as substitutes for winch and cable.

(6) Dual rear wheels.

(7) Additional safety equipment as specified by the regulations.

b. Rollback Wrecker

(1) Minimum gross vehicle weight rating (GVWR) of not less than eleven thousand (11,000) pounds.

(2) Must have at least an eight thousand (8,000) pound winch as rated by the manufacturer with at least fifty (50) feet of three-eighths (3/8) inch cable or larger.

(3) Come-A-Longs, chains, or other similar devices shall not be used as substitutes for winch and cable.

(4) Additional safety equipment as specified by the regulations.

2. Class B: Medium Duty Wrecker

Class B Wreckers, for towing vehicles weighing between seven thousand one (7,001) and seventeen thousand (17,000) pounds or multiple vehicles weighing seven (7,000) pounds respectively (medium-sized trucks, road tractors/trailers and similar vehicles), shall meet the following requirements:

a. The tow truck chassis shall have a minimum gross vehicle weight rating (GVWR) of not less than twenty two thousand (22,000) pounds.

b. Must have at least a twelve-ton boom assembly as rated by the manufacturer.

c. Two winches, each of ten thousand pound capacity or more as rated by the manufacturer.

d. A manufactured wheel-lift with a retracting lifting capacity of not less than six thousand five hundred pounds as rated by the manufacturer, with safety chains.

e. Come-A-Longs, chains, or other similar devices shall not be used as substitutes for winch and cable.

f. Additional safety equipment as specified by the regulations.

3. Class C: Heavy Duty Wrecker

Class C Wreckers, for towing vehicles in excess of seventeen thousand pounds (large trucks, road tractor/trailers and similar vehicles), shall meet the following minimum requirements:

a. Truck chassis having a minimum gross vehicle weight rating (GVWR) of not less than forty six thousand pounds.

b. Tandem axles or cab to axle length of not less than one hundred two inches.

c. A single or double boom with a capacity of not less than fifty thousand pounds as rated by the manufacturer.

d. A single winch with a capacity of fifty thousand pounds as rated by the manufacturer or an individual power winch capacity of not less than twenty-five thousand pounds as rated by the manufacturer and a total rating with both winches of fifty thousand pounds.

e. A manufactured wheel-lift with a retracting lifting capacity of not less than twelve thousand pounds as rated by the manufacturer, with safety chains.

f. One hundred fifty feet of five-eighths inch cable or larger, plus fifty feet of five-eighths inch drop cable.

g. Airbrakes constructed so as to lock wheels automatically upon failure.

h. Light and air brake hookups.

i. Come-A-Longs, chains, or other similar devices shall not be used as substitutes for winch and cable.

- j. Additional safety equipment as specified by the regulations.

F. RATES

1. Only wrecker services on the South Carolina Department of Public Safety wrecker rotation list shall be subject to these regulations governing fees.

2. Fees charged for rotation list calls shall be reasonable and not in excess of those rates charged for similar services provided in response to requests initiated by any other public agency or private person. The reasonableness of the fees charged will be determined in the following manner:

a. A wrecker service shall submit proposed fees along with its annual application. Separate fee schedules shall be submitted for each class of wrecker, and, for each class, the fee for standard towing, heavy-duty towing, storage, and special operations.

(1) A standard tow is defined as responding to the scene, hooking up the vehicle, performing a general clean up if the call involves responding to a collision scene and providing responsible assistance to the owner to get to a safe location.

(2) Special operations are operations involving the process of uprighting an overturned vehicle or returning a vehicle to a normal position on the roadway which requires the use of auxiliary equipment due to the size or location of the vehicle and/or the recovery of a load which has spilled, or the off-loading and reloading of a load from an overturned vehicle performed to right the vehicle.

b. The Troop commander will determine the reasonableness of the fees based upon the average of the proposed fees submitted and a comparison of that Highway Patrol Troop's industry standards, by wrecker zone, for similar operations.

c. A copy of the approved fees will be kept in the wrecker at all times. It will be presented upon request to the person for whom the tow services were provided, their agent, any Department of public Safety officer at the scene, or any Department of Public Safety supervisor who is inspecting the wrecker or wrecker service.

d. A wrecker service shall submit proposed fees with the annual application.

e. Failure to submit proposed fees with the annual application will result in utilizing the last proposed fees submitted.

f. Wrecker services that submit fees that are determined to be excessive or unreasonable will be notified and allowed to resubmit fees within five business days of notification. A wrecker service will be allowed to resubmit fees once. Failure to resubmit reasonable fees will disqualify the wrecker service from the Highway Patrol rotation list until January 1st of the following year.

3. The Troop commander will complete a review of the fees for Highway Patrol rotation wrecker services for the Troop during inspection and qualification to determine its validity and reasonableness.

Validity will be based upon telephone quotes, posted rates, charges to retail customers, etc. Reasonableness will be determined as compared to other rates.

4. Wrecker services may lower rates at any time and may raise rates for non-Department of Public Safety calls at any time.

HISTORY: Added by State Register Volume 22, Issue No. 3, eff March 27, 1998. Amended by State Register Volume 28, Issue No. 4, eff April 23, 2004.

Editor's Note

See Executive Order 2022-28 (SCSR 46-10 EO 2022-28), effective September 28, 2022, relating to the declaration of a state of emergency due to Hurricane Ian, authorizing and directing the South Carolina Department of Public Safety (DPS), including the South Carolina Highway Patrol, as needed, to waive or suspend, in whole or in part, operation of the requisite rules and regulations, including Regulation 38-600, pertaining to the use of the South Carolina Highway Patrol Wrecker Rotation List.

**SUBARTICLE 3
WINDOW TINTING**

(Statutory Authority: South Carolina Code of Laws § 23-6-10, et seq.)

38-621. Installer to Apply Non-Transferrable Approval Certificate.

The installer of suncreening film (whether a consumer or professional window tinter) must apply a certificate of compliance (not to exceed 2" square) between the film and the glazing (glass) on the lower left corner of each glazing surface as viewed from the outside of the vehicle. This sticker must be furnished by the professional window tinter or the retail store selling to a consumer who will install the product himself or have the product installed by someone other than a professional window tinter. This certificate must contain the percentage of light transmittance allowed by the material and must identify the installer or retailer by name, address and telephone number, and the date of installation.

HISTORY: Added by State Register Volume 22, Issue No. 5, eff May 22, 1998.

**ARTICLE 9
IN-CAR CAMERA VIDEOTAPING EQUIPMENT**

(Statutory Authority: 1976 Code § 56-5-2953)

38-900. Definitions.

For this Article only, the following terms as hereby defined:

- A. "Agency" means a state agency, sheriff's office, police department, or other law enforcement entity that has law enforcement vehicles used for traffic enforcement.
- B. "Department" means the South Carolina Department of Public Safety.
- C. "Videotaping equipment" means the visual and audio equipment and related hardware purchased pursuant to the provisions of S.C. Code Ann. 56-5-2953 and these regulations.

HISTORY: Added by State Register Volume 27, Issue No. 2, eff February 28, 2003.

38-901. Installation and Maintenance of Videotaping Equipment in Traffic Enforcement Vehicles.

A. Regulations in this Article apply to videotaping equipment installed pursuant to S.C. Code Ann. 56-5-2953 and to videotaping equipment purchased with funds collected under S.C. Code Ann. 56-1-286 and S.C. Code Ann. 56-5-2951 for the purpose of supplying and maintaining vehicle videotaping equipment to the Department, as well as all grant funds received by the Department for the purchase and maintenance of such equipment.

B. Videotaping equipment purchased with the funds identified in State Regulation 38-901(A) will be installed in law enforcement vehicles used for traffic enforcement in a manner determined solely by the Department. The Department will prioritize distribution of videotaping equipment based on a county's DUI activity, and must distribute the equipment in a manner designed to ensure that the equipment goes first to those law enforcement agencies that have the highest volume of DUI enforcement activity. The Department must recommend to individual law enforcement agencies that officers who have the highest number of DUI arrests be given priority for receipt of the videotaping equipment.

C. The Department will establish procedures for use in designated service centers to install, maintain, or modify the videotaping equipment. These designated service centers, specified by the Department, will solely be responsible to the actual work of installing, maintaining, and modifying the videotaping equipment. Each agency receiving videotaping equipment under this Article is responsible for insuring that required maintenance of the videotaping equipment is conducted in a prompt and timely fashion.

D. At the time of installation, the Department will provide one case of videotapes with each camera to the agency receiving the videotaping equipment. No other tapes will be provided to the agency under this Article.

E. Each designated service center must maintain records required by the Department detailing the history of the service and/or repair of each piece of videotaping equipment.

HISTORY: Added by State Register Volume 27, Issue No. 2, eff February 28, 2003.

38-902. Inventory of Videotaping Equipment.

A. All videotaping equipment installed pursuant to these regulations and S.C. Code Ann. 56-5-2953 shall remain the property of the Department to insure proper inventory of equipment. Each agency is required to take reasonable care of the videotaping equipment while it is in the agency's possession.

B. When videotaping equipment is installed, it will be marked for inventory purposes.

C. Each agency receiving videotaping equipment pursuant to these regulations and S.C. Code Ann. 56-5-2953 must, at a reasonable time and place and as deemed necessary by the Department, make available to the Department for inventory purposes every law enforcement vehicle that has had videotaping equipment installed.

HISTORY: Added by State Register Volume 27, Issue No. 2, eff February 28, 2003.

ARTICLE 11

CONTACT INFORMATION FROM TRAFFIC STOPS

(Statutory Authority: 1976 Code § 56-5-6560)

38-1000. Contact Information from Traffic Stops.

A. Definitions.

For purposes of this regulation:

1. "Department" means the South Carolina Department of Public Safety.
2. "Agency" means a law enforcement agency required to report contact information pursuant to the provisions of Section 56-5-6560.

B. Procedures for Collecting Information.

1. To implement the provisions of Section 56-5-6560, the Department of Public Safety has developed a contact form to be utilized by Law Enforcement Agencies.
2. The contact form will be issued in book format with a sequential numbering system.
3. All law enforcement agencies which make traffic stops will be issued contact form books. Contact Form Books will be issued in the same manner in which Uniform Traffic Citation books are issued.
4. A contact form must be completed by a law enforcement officer each time a motor vehicle is stopped without a citation being issued or an arrest being made.
5. When a contact form is completed, all fields marked in red must be completed by the law enforcement officer. These fields include: race or ethnicity; gender; date of birth; and the date the contact was issued.

C. Procedures for Reporting Information.

1. Each law enforcement agency must summarize their contact information for a particular month into pre-determined categories.
2. Each law enforcement agency which has law enforcement officers that make traffic stops will be issued a user account and a password to access the Department of Public Safety's contact information database.
3. Each agency must report their summarized contact information via the Department's web portal on a monthly basis.

4. The summarized information collected for a particular month must be reported by the end of the next calendar month. The data for a particular month should include only those stops that occurred in that month.

5. An agency can amend any given month's report up to the time it is submitted. Once a report has been submitted, it can no longer be amended.

6. Fields on the contact database where there is no information to report should be left blank. The report generated by the Department will automatically generate a "0" in those fields. If an agency does not have any contacts to report for a particular month, the agency should still create and submit a "blank report" for that month. The blank report will have "0" in all the cells.

D. Report.

1. The Department will publish a reporting tool that will allow the agencies and the general public to query the summary information that has been submitted by the agencies.

2. The reporting tool will allow the summary information that has been submitted to be queried either by a specific agency or for all agencies. In either case, the data can be further refined to reflect a specific month or a range of months.

3. The reports generated from the reporting tool reflect the summary information that has been submitted at that specific point in time. Until all agencies submit their reports for a given period, the values on any given report may change.

4. The reporting tool will be accessible from the Department's website.

HISTORY: Added by State Register Volume 33, Issue No. 6, eff June 26, 2009.