



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 383 and 384**

**[Docket No. FMCSA-2016-0429]**

**Commercial Driver's License Standards, Requirements and Penalties; Regulatory Guidance**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notification of updated regulatory guidance; request for comments.

**SUMMARY:** FMCSA revises certain regulatory guidance concerning the “Commercial Driver’s License Standards; Requirements and Penalties” and “State Compliance with Commercial Driver’s License Program” rules. FMCSA seeks comment specifically on the deletion of 47 FMCSA guidance statements because: the rule is clear and further guidance is not needed; the deleted guidance was unclear; the deleted guidance is duplicative of other guidance statements; or the guidance is obsolete due to rulemakings completed since the guidance was issued. In addition, other guidance statements were revised for clarity and reorganized so that like content is grouped together. While this guidance is effective immediately, FMCSA is also seeking comments on the revisions to this guidance regarding commercial driver’s license standards, requirements, and penalties and may issue additional changes if comments demonstrate a need. It is noted, however, that the Commercial Driver’s License (CDL) regulations are not amended.

**DATES:** *Effective Date:* The updated guidance is effective on [***INSERT DATE OF OFFICE OF FEDERAL REGISTER FILING***].

*Comment Date:* Comments must be received on or before [***INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER***].

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2016-0429 using any of the following methods:

*Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.

*Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 0590-0001.

*Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

*Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The on-line Federal document

management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its guidance process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Mr. Selden Fritschner, CDL Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, phone (202) 366-0677, e-mail [Selden.Fritschner@dot.gov](mailto:Selden.Fritschner@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Federal Motor Carrier Safety Regulations (FMCSRs) are located in chapter III of subtitle B of title 49 of the Code of Federal Regulations (49 CFR parts 350 through 399). FMCSA employs regulatory guidance statements to explain how the Agency applies particular regulations to specific facts. A guidance statement does not alter the meaning of an FMCSR. Guidance statements are provided in question-and-answer format; statements interpreting the same regulation are numbered (*e.g.*, “Section 395.8, Question 7”).

The Agency notifies the public of regulatory guidance through publication in the Federal Register. Over the years, the Federal Highway Administration (FHWA),

FMCSA's predecessor agency, and FMCSA have published regulatory guidance on numerous occasions interpreting many parts of the FMCSRs. In 1997, FHWA published a comprehensive compilation of its regulatory guidance (62 FR 16370, April 4, 1997). The Agency stated that regulatory guidance issued prior to that date was superseded to the extent it was inconsistent with the compilation. Agency guidance published since then has been limited to specific topics that amend or supplement the 1997 document.

Section 5203 of the Fixing America's Surface Transportation Act (Pub. L. 114-94, 129 Stat. 1312, 1535, Dec. 4, 2015) (FAST Act), titled "Guidance," requires that each guidance document issued by FMCSA have a date of issuance or a date of revision, as applicable, and include the name and contact information of a point of contact at the Agency who can respond to questions regarding the guidance. In addition, this section of the FAST Act requires that each guidance document issued or revised by FMCSA be published on a publicly accessible Internet Web site of the Department on the date of issuance or revision. As a result, these interpretations will also be published on FMCSA's website at [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov).

Further, Section 5203 requires that not later than 5 years after the date on which a guidance document is published under paragraph (a)(2) or during an applicable review under subsection (c), whichever is earlier, the Secretary must revise regulations to incorporate the guidance document to the extent practicable. FMCSA considered this requirement in making deletions and edits to guidance where the regulations themselves now fully address questions answered by the guidance. For example, Question 4 under section 383.73 clarifies that State Driver Licensing Agencies (SDLAs) may facilitate the commercial learner's permit application process and to administer the commercial

driver's license general knowledge test to individuals who are not domiciled in that State. FMCSA anticipates publishing a rulemaking to incorporate the guidance document into the regulations. This question would be removed from the guidance when that rulemaking is complete

Section 5203 also requires that the Administrator publish in the Federal Register a notice and request for comment that solicits input from stakeholders on which guidance documents should be updated or eliminated. Because improvement of guidance documents is a focus for all components of the Department (not just FMCSA), DOT will publish a *Federal Register* document inviting public comments on which DOT guidance (from any DOT operating administration) should be updated or eliminated. In addition, FMCSA is also reviewing its interpretations and guidance incrementally, starting with parts 383 and 384. This document serves as a separate request for comments and input on guidance for these specific parts.

In response to the FAST Act, FMCSA is also reviewing the guidance statements for 49 CFR part 325 (Compliance with Interstate Motor Carrier Noise Emission Standards) and the rest of the FMCSRs (49 CFR parts 350-382 and 385-399). Any such revisions shall be the subject of separate future Federal register documents.

The Agency also tasked its Motor Carrier Safety Advisory Committee (MCSAC)<sup>1</sup> with reviewing the existing guidance statements to obtain stakeholders' views prior to making the preliminary decision concerning the deletion, revision, and reorganization of guidance statements. The MCSAC provided recommendations to FMCSA on November 21, 2016, which are available in the docket listed at the beginning of this

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<sup>1</sup> See <https://www.fmcsa.dot.gov/advisory-committees/mcsac/welcome-fmcsa-mcsac>.

document. The MCSAC recommendations included guidance statements for 49 CFR parts 383 and 384. FMCSA reviewed the MCSAC final report in the development of these guidance changes. It should be noted that the guidance published today does not include all of the deletions recommended by MCSAC because the Agency believes some of the guidance still has value. In other cases, FMCSA proposes to delete guidance not recommended for deletion by MCSAC.

### **Regulatory Guidance Previously Deleted**

Since the 1997 comprehensive publication, the guidance noted on the table below was deleted pursuant to the cited Federal Register documents. FMCSA restates those deletions in Table 1 of this document as subsequent regulatory publications did not properly reflect those deletions.

<b>Table 1 — Deletions by Final Rule (Date and Federal Register Edition Noted)</b>		
<b>Section</b>	<b>Previous Guidance Numbers</b>	<b>Previously Deleted By:</b>
383.5	3 and 4	Final Rule titled “Gross Combination Weight Rating; Definition” dated March 19, 2014 (79 FR 15245)
383.23	1, 2, and 4	Final Rule titled, “Commercial Driver’s License Testing and Commercial Learner’s Permit Standards dated May 9, 2011 (76 FR 26854)
383.73	11	Final Rule titled, “Commercial Driver’s License Testing and Commercial Learner’s Permit Standards dated May 9, 2011 (76 FR 26854)
383.95	2 and 3	Final Rule titled, “Commercial Driver’s License Testing and Commercial Learner’s Permit Standards dated May 9, 2011 (76 FR 26854)
383.113	1 and 2	Final Rule titled, “Commercial Driver’s License Testing and Commercial Learner’s Permit Standards dated May 9, 2011 (76 FR 26854)
383.131	1	Final Rule titled, “Commercial Driver’s License Testing and Commercial Learner’s Permit Standards dated May 9, 2011 (76 FR 26854)

<b>Section</b>	<b>Previous Guidance Numbers</b>	<b>Previously Deleted By:</b>
383.133	1, 2 and 3	Final Rule titled, “Commercial Driver’s License Testing and Commercial Learner’s Permit Standards dated May 9, 2011 (76 FR 26854)
383.153	1, 2, 3, 4, 5, 6 and 7	Final Rule titled, “Commercial Driver’s License Testing and Commercial Learner’s Permit Standards dated May 9, 2011 (76 FR 26854)

**Regulatory Guidance Deleted By This Document**

FMCSA deletes 47 regulatory guidance statements that interpret sections in parts 383 and 384 of the CDL regulations as shown in Table 2.

<b>49 CFR Section</b>	<b>Previous Question Numbers Now Deleted</b>
383.3	3,5,7,11,14,17,18,32
383.5	6,8,10
383.21	1
383.23	3
383.37	1,2
383.51 (General)	7,8
383.51 (Alcohol)	1,4,5
383.71	1,2,3,4
383.73	1,2,3,4,6,9,10,11
383.77	1,2
383.93	1,3,5,11,12
383.95	1
Special Topics (Motorcoaches)	1
Special Topics (State Reciprocity)	1,2,3
Special Topics (International)	1
384.209	1
384.211	1

The reason for the particular deletion is set forth in Table 3 below:

<b>49 CFR Section</b>	<b>Previous Guidance Numbers</b>	<b>Reason</b>

<b>Table 3 — Reasons for Deletions</b>		
<b>49 CFR Section</b>	<b>Previous Guidance Numbers</b>	<b>Reason</b>
383.3	3,7,14,32	Issue addressed in deleted question is more accurately addressed in other, retained guidance.
383.93	1,3	
383.95	1	
Special Topics (State Reciprocity)	2	
383.3	5,11	Language of the regulation is clear on the issue
383.5	10	
383.23	3	
383.37	1,2	
383.73	2,11	
383.77	2	
383.93	12	
383.3	18	Current regulation makes these questions obsolete.
383.5	8	
383.21	1	
383.51 (General)	7,8	
383.51 (Alcohol)	4,5	
383.71	1	
383.73	1,6,9,10	
383.77	1	
383.93	5,11	
Special Topics (Motorcoaches)	1	
Special Topics (State Reciprocity)	1	
384.209	1	
384.211	1	
383.5	6	Either the question, answer, or both were unclear and the regulation is clear on the issue.
383.71	2,3	
383.73	4	
Special Topics (State Reciprocity)	3	
		Irrelevant to any regulatory language within this part.
383.51 (Alcohol)	1	
383.71	4	

<b>Table 3 — Reasons for Deletions</b>		
<b>49 CFR Section</b>	<b>Previous Guidance Numbers</b>	<b>Reason</b>
383.3	17	Restates the language of the regulation, and, therefore, does not clarify the rule.
Special Topics (International)	1	Obsolete. On February 25, 2016, the Government of Mexico published an accord that changed the validity of the Mexican licenses.

### **Regulatory Guidance Added**

FMCSA adds two regulatory guidance statements that interpret sections in the part 383 CDL regulations. These new statements were developed in response to requests for guidance from the States and others. The new guidance statements are in Table 4.

<b>Table 4 — New Guidance Added</b>	
<b>49 CFR Section</b>	<b>New Guidance Number</b>
383.91	6
383.113	1

### **Regulatory Guidance Revised/Renumbered**

FMCSA revises 55 regulatory guidance statements that interpret sections in parts 383 and 384 and makes number changes only to 24 other guidance statements. Technical corrections are minor ministerial changes, for example, changing references to “FHWA” to “FMCSA,” updating regulatory citations, or making minor grammatical changes. The revised or renumbered guidance statements are in Table 5:

<b>Table 5 — Guidance Revised or Renumbered</b>			
<b>Section</b>	<b>Previous Guidance Number</b>	<b>Changes</b>	<b>New Guidance Number</b>
383.3	1	Technical correction	1
383.3	2	Technical correction	2
383.3	4	Number change only; no substantive change	3
383.3	6	Text of guidance to previous Question 7 was added to this guidance and number change	4
383.3	8	Technical correction and number change	5
383.3	9	Technical correction and number change	6
383.3	10	Technical correction and number change	7
383.3	12	Number change only; no substantive change	8
383.3	13	Technical correction and number change	9
383.3	14	Technical correction and number change	§383.93, Question 1
383.3	15	Technical correction and number change	10
383.3	16	Technical correction and number change	11
383.3	19	Number change only; no substantive change	12
383.3	20	Number change only; no substantive change	14
383.3	21	Number change only; no substantive change	13
383.3	22	Number change only; no substantive change	16
383.3	23	Number change only; no substantive change	17
383.3	24	Number change only; no substantive change	18
383.3	25	Technical correction and number change	19
383.3	26	Technical correction and number change	15
383.3	27	Technical correction and number change	20
383.3	28	Technical correction and number change	21
383.3	29	Edited to improve accuracy and number change	22
383.3	30	Edited to improve accuracy and number change	23
383.3	31	Edited to improve accuracy and number change	24

<b>Table 5 — Guidance Revised or Renumbered</b>			
<b>Section</b>	<b>Previous Guidance Number</b>	<b>Changes</b>	<b>New Guidance Number</b>
383.3	33	Number change only; no substantive change	26
383.5	1	Technical correction	1
383.5	2	Number change only; no substantive change	6
383.5	5	Technical correction and number change	2
383.5	7	Technical correction and number change	3
383.5	9	Technical correction and number change	4
383.5	11	Technical correction and number change	5
383.5	12	Technical correction and number change	7
383.5	13	Number change only; no substantive change	8
383.5	14	Number change only; no substantive change	9
383.21	2	Number change only; no substantive change	1
383.23	5	Technical correction and number change	1
383.31	1	Technical correction	1
383.33	1	Technical correction	1
383.37	3	Technical correction and number change	1
383.37	4	Updated pursuant to 67 FR 49742, “Commercial Driver’s License Standards, Requirements, and Penalties; Commercial Driver’s License Program Improvement and Noncommercial Motor Vehicle Violations Final Rule,” July 31, 2002 and number change	2

<b>Table 5 — Guidance Revised or Renumbered</b>			
<b>Section</b>	<b>Previous Guidance Number</b>	<b>Changes</b>	<b>New Guidance Number</b>
383.51 – General Questions	1	Updated pursuant to 67 FR 49742, “Commercial Driver’s License Standards, Requirements, and Penalties; Commercial Driver’s License Program Improvement and Noncommercial Motor Vehicle Violations Final Rule,” July 31, 2002	1
383.51 – General Questions	2	Technical correction and number change	3
383.51 – General Questions	3	Technical correction and number change	5
383.51 – General Questions	4	No changes.	4
383.51 – General Questions	5	Technical correction and number change	2
383.51 – General Questions	6	Updated pursuant to 67 FR 49742, “Commercial Driver’s License Standards, Requirements, and Penalties; Commercial Driver’s License Program Improvement and Noncommercial Motor Vehicle Violations Final Rule,” July 31, 2002	7

<b>Table 5 — Guidance Revised or Renumbered</b>			
<b>Section</b>	<b>Previous Guidance Number</b>	<b>Changes</b>	<b>New Guidance Number</b>
383.51 – Alcohol Questions	2	Technical correction and number change	1
383.51 – Alcohol Questions	3	Technical correction and number change	2
383.51 – Alcohol Questions	6	Updated pursuant to 67 FR 49742, “Commercial Driver’s License Standards, Requirements, and Penalties; Commercial Driver’s License Program Improvement and Noncommercial Motor Vehicle Violations Final Rule,” July 31, 2002 and number change	§383.51, General Question 6
383.51 – Alcohol Questions	7	Technical correction and number change	§383.51, General Question 8
383.51 – Alcohol Questions	8	Technical correction and number change	§383.51, General Question 9
383.71	4	Technical correction and number change	1
383.73	5	Number change only; no substantive change	1
383.73	7	Technical correction and number change	2
383.73	8	Number change only; no substantive change	3
383.73	NA-New as of August 11, 2017. See 82 FR 36101	Assigned guidance number; no substantive change or technical corrections.	4
383.75	1	Technical correction	1
383.75	2	Updated pursuant to 76 FR 26854, “Commercial Driver's License Testing and Commercial Learner's Permit Standards Final Rule,” May 9, 2011.	2
383.75	3	Technical correction	3

<b>Table 5 — Guidance Revised or Renumbered</b>			
<b>Section</b>	<b>Previous Guidance Number</b>	<b>Changes</b>	<b>New Guidance Number</b>
383.91	2	Technical correction	2
383.91	4	Technical correction	4
383.91	5	Technical correction	5
383.93	383.3, Question 14	Technical correction and number change	1
383.93	2	Number change only; no substantive change	5
383.93	4	Technical correction and number change	2
383.93	7	Number change only; no substantive change	3
383.93	8	Number change only; no substantive change	7
383.93	9	Technical correction and number change	4
383.93	10	Number change only; no substantive change	8
383.93	13	Number change only; no substantive change	9
383.93	14	Technical correction and number change	10
383.93	15	Number change only; no substantive change	11
383.93	383.3, Question 34	Technical correction and number change	12
383.95	4	Technical correction and number change	1
383.153	8	Technical correction and number change	1
Special Topics – Motorcoaches and CDL	2	Technical correction and number change	1
384.209	2	Number change only; no substantive change.	1
384.231	1	Technical correction	1

## **Current Guidance**

The guidance published today in this document uses the following abbreviations:

Commercial Driver's License – CDL

Commercial Motor Vehicle – CMV

Commercial Motor Vehicle Safety Act of 1986 - CMVSA

Farm-Related Service Industries - FRSI

Federal Motor Carrier Safety Administration – FMCSA

Federal Motor Carrier Safety Regulations – FMCSRs

Gross Combination Weight Rating - GCWR

Gross Vehicle Weight - GVW

Gross Vehicle Weight Rating - GVWR

Hazardous Materials – HM

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

### **Regulatory Guidance for 49 CFR 383.3 Applicability**

#### Question 1

Is a school or church bus driver required to obtain a CDL?

#### Guidance

Yes, if the driver operates a vehicle designed to transport 16 or more people (including the driver) or that has a GVWR or GVW, whichever is higher, of 26,001 pounds or more.

### Question 2

Do mechanics, shop help, and other occasional drivers need a CDL?

### Guidance

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

### Question 3

Does part 383 apply to drivers of vehicles used in “van pools”?

### Guidance

Yes, if the vehicle is designed to transport 16 or more people (including the driver) or has a GVWR or GVW, whichever is higher, of 26,001 pounds or more.

### Question 4

Does off-road motorized construction equipment meet the definitions of “motor vehicle” and “commercial motor vehicle” as used in § 383.5 and 49 CFR 390.5?

### Guidance

No. Off-road motorized construction equipment is outside the scope of these definitions when (1) operated at construction sites; or (2) operated on a public road open to unrestricted public travel, provided the equipment is not used in furtherance of a transportation purpose. Occasionally driving such equipment on a public road to reach or leave a construction site does not amount to furtherance of a transportation purpose. The definition of off-road motorized construction equipment is to be narrowly construed and limited to equipment which, by its design and function is obviously not intended for use, nor is it used on a public road in furtherance of a transportation purpose. Examples of such equipment include motor scrapers, backhoes, motor graders, compactors, tractors, trenchers, bulldozers and railroad track maintenance cranes.

#### Question 5

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

#### Guidance

Yes, because such vehicles are designed to be operated on the public highways, they do not qualify as off-road construction equipment.

#### Question 6

May a State require persons operating recreational vehicles or other CMVs used by groups of people, including family members, for non-business purposes to have a CDL?

#### Guidance

Yes. States may extend the CDL requirements to drivers of recreational vehicles and other vehicles used for non-business purposes.

#### Question 7

Does a driver of either a tractor trailer or a straight truck that is converted into a mobile office need a CDL?

#### Guidance

Yes, if the vehicle meets the definition of a CMV in § 383.5.

Question 8

Are State, county and municipal workers operating CMVs required to obtain CDLs?

Guidance

Yes, unless they are waived by the State under the firefighting and emergency equipment exemption in § 383.3(d).

Question 9

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

Guidance

Yes. Any driver of a bus that is designed to transport 16 or more persons, or that has a GVWR of 26,001 pounds or more, is required to obtain a CDL in the applicable class with a passenger endorsement. This includes drivers transporting empty school buses on a public highway.

Question 10

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

Guidance

No, as long as they do not operate on public highways.

Question 11

Are drivers of non-military amphibious landing craft that are usually used in water but occasionally used on a public highway, such as those used for sightseeing tours, subject to the CDL requirements?

### Guidance

Yes, if they are designed to transport 16 or more passengers including the driver or have a GVWR or GVW, whichever is higher, of 26,001 pounds or more.

### Question 12

Must a civilian operator of a CMV, as defined in § 383.5, who operates wholly within a military facility open to public travel, have a CDL?

### Guidance

Yes, a civilian operator of a CMV, who operates wholly within a military facility open to public travel, must have a CDL. The CDL requirement applies to every person who operates a CMV in interstate, foreign or intrastate commerce. If the road, whether on military or other private property, is open to public travel, vehicles traveling upon it are operating in interstate, foreign or intrastate commerce.

### Question 13

Are police officers who operate buses and vans which are designed to transport 16 or more passengers, including the driver, and are used to transport police officers during demonstrations and other crowd control activities required to obtain a CDL?

### Guidance

Not necessarily. A State may, in its discretion, under § 383.3(d), exempt persons who operate CMVs necessary for the preservation of life or property or the execution of emergency governmental functions. These vehicles must be equipped with audible and visual signals and may include Special Weapons and Tactics (SWAT) team vehicles and other vehicles used in response to emergencies.

### Question 14

Does the FMCSA include the Space Cargo Transportation System (SCTS) off-road motorized military equipment under the definitions of "motor vehicle" and "commercial motor vehicle" as used in §383.5?

Guidance

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

Question 15

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

Guidance

Yes. The drivers in question do not need to be in military uniforms to qualify for the waivers if they are on active duty and performing a military function.

Question 16

May fuel be considered “farm supplies” as used in § 383.3(d)(1)?

Guidance

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

Question 17

Is the transportation of seed-cotton modules from the cotton field to the gin by a module transport vehicle considered a form of custom harvesting activity that may be included under the FRSI waiver (§ 383.3(f))?

Guidance

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

Question 18

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

Guidance

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

Question 19

Are custom harvesters who harvest trees for tree farmers eligible to be considered “custom harvesters” for purposes of the FRSI waiver from selected CDL requirements?

### Guidance

Yes, if the State considers a business that harvests trees for tree farmers to be a custom harvesting operation, then its employees could qualify for the FRSI-restricted CDLs, subject to the limitations of the waiver provisions in § 383.3(f).

### Question 20

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

### Guidance

No. If a farmer is transporting another farmer's products and being paid for doing so, directly or indirectly, he or she is acting as a for-hire carrier and does not meet the conditions for a farm waiver. The existence of contract, written or verbal, is not relevant to the CDL waiver provisions.

### Question 21

May a State exempt CMV drivers employed by a partnership, corporation or an association engaged in farming from the CDL requirements under the farmer waiver (§ 383.3(d)) or is the waiver only available to drivers employed by a family-owned farm?

### Guidance

Yes. Since farming partnerships, corporations, and associations are legal "persons," States may exempt drivers working for these organizations from the CDL requirements, provided they can operate within the waiver conditions.

### Question 22

May a State exempt CMV drivers employed by farm cooperatives from the CDL requirements under the farmer waiver (§ 383.3(d))?

### Guidance

No. The waiver covers only operators of farm vehicles which are controlled and operated by “farmers” as defined in 49 CFR 390.5. The waiver does not extend to ancillary businesses, like cooperatives, that provide farm-related services to members.

### Question 23

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

### Guidance

Yes, the State has the discretion to recognize the growing of sod as a farming activity and to provide an exemption under the farmer waiver in § 383.3.

### Question 24

Would a tillerman, a person exercising control over the steerable rear axle(s) on a CMV, be considered a driver or a person who operates a CMV and be subject to applicable CDL regulations?

### Guidance

Yes. A person physically located on the rear of a manned CMV who controls a steerable rear axle while the CMV is moving at highway speeds would be considered a person who operates a CMV, and would, therefore, be subject to the applicable CDL regulations in part 383. A person walking beside a CMV or riding in an escort car while

controlling a steerable rear axle at slow speeds would not be considered a person who operates a CMV, and, therefore, would not be subject to applicable CDL regulations.

### **Regulatory Guidance for 49 CFR 383.5 Definition**

#### Question 1

- a. Does “designed to transport” as used in the definition of a CMV in § 383.5 mean original design or current design when a number of seats are removed?
- b. If all of the seats except the driver’s seat are removed from a vehicle originally designed to transport only passengers to convert it to a cargo-carrying vehicle, does this vehicle meet the definition of a CMV in § 383.5?

#### Guidance

- a. “Designed to transport” means the original design. Removal of seats does not change the design capacity of the CMV so long as it still transports passengers.
- b. No, unless this modified vehicle has a GVWR or GVW, whichever is higher, of 26,001 pounds or more, or is used to transport placarded HM. This vehicle shall not transport passengers. Only the driver may occupy this converted vehicle.

#### Question 2

When a State agency contracts with private parties for services involving the operation of CMVs, is the State agency or contractor considered the employer?

#### Guidance

For the purposes of part 383, if the contractor employs individuals and assigns and monitors their driving tasks, the contractor is considered the employer. If the State agency assigns and monitors driving tasks, then the State agency is the employer.

### Question 3

Does the definition of a CMV in § 383.5 of the CDL requirements include parking lot and/or street sweeping vehicles and is a driver of such a vehicle required to have a CDL?

### Guidance

If the GVWR of a parking lot or street sweeping vehicle is 26,001 pounds or more, it is a CMV under § 383.5. If the vehicle is operated on a public highway, the driver would need a CDL.

### Question 4

One definition of CMV is a vehicle “designed to transport” 16 or more passengers, including the driver. Does that include standing passengers if the vehicle was specifically designed to accommodate standees?

### Guidance

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

### Question 5

Must operators of motor graders or motor scrapers obtain CDLs and be subject to controlled substances and alcohol testing if they operate the equipment on public roads?

### Guidance

No.

### Question 6

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

Guidance

Yes.

Question 7

A driver operates a combination vehicle with a GCWR of 26,001 pounds or more. The tractor is towing a semitrailer and a full trailer, each with a GVWR of less than 10,000 pounds. Is this combination a Group A vehicle that requires a driver with a Class A CDL?

Guidance

Yes. The GVWR for multiple towed units are added to determine whether the 10,000 pound GVWR threshold has been met. If the total GVWR for the two trailers is more than 10,000 pounds, and the tractor’s GVWR is sufficient to produce a GCWR of at least 26,001 pounds, the combination is a Group A vehicle requiring a driver with a Class A CDL with a double/triple trailers endorsement.

For example, a combination vehicle with a GCWR of 36,000 pounds includes a semitrailer and a trailer, each of which has a GVWR of 6,000 pounds. This is a Group A vehicle having a Gross GCWR of 36,000 pounds inclusive of two towed units having a combined GVWR of 12,000 pounds.

Question 8

On May 9, 2011, FMCSA revised the definition of “tank vehicle” to include any CMV that is designed to transport any liquid or gaseous materials within a tank or tanks

having an individual rated capacity of more than 119 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. Does the new definition include loaded Intermediate Bulk Containers (IBCs) or their tanks temporarily attached to a CMV?

Guidance

Yes. The new definition is intended to cover (1) a vehicle transporting an IBC or other tank used for any liquid or gaseous materials with an individual rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or chassis; or (2) a vehicle used to transport multiple IBCs or other tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that are permanently or temporarily attached to the vehicle or the chassis.

Question 9

On May 9, 2011, FMCSA revised the definition of “tank vehicle.” Does the new definition cover the transportation of empty Intermediate Bulk Containers (IBCs) or other tanks, or empty storage tanks?

Guidance

No. The definition of “tank vehicle” does not cover the transportation of empty IBCs or other tanks, or empty tanks when these containers are manifested either as empty or as residue on a bill of lading, and are actually empty or contain only residue.

Furthermore, the definition of tank vehicle does not cover the transportation of empty storage tanks that are not designed for transportation and have a rated capacity of 1,000 gallons or more, that are temporarily attached to a flatbed vehicle.

## **Regulatory Guidance for 49 CFR 383.21 – Number of Drivers’ Licenses**

### Question 1

Is a person from Puerto Rico required to surrender his or her driver’s license in order to obtain a non-domiciled CDL?

### Guidance

No. Since Puerto Rico and the U.S. Territories are not included in the definition of a State in section 12016 of the CMVSA (49 U.S.C. 31301(14)), they must be considered foreign countries for purposes of the CDL requirements. Under part 383, a person domiciled in a foreign country is not required to surrender his or her foreign license in order to obtain a non-domiciled CDL. There are two reasons for permitting this dual licensing to a person domiciled in Puerto Rico: (a) there is no reciprocal agreement with Puerto Rico recognizing its CMV testing and licensing standards as equivalent to the standards in part 383, and (b) the non-domiciled CDL may not be recognized as a valid license to drive in Puerto Rico.

## **Regulatory Guidance for 49 CFR 383.23 – Commercial Driver’s License**

### Question 1

May a foreign driver with an employment authorization document obtain a CDL to operate a CMV in the United States?

### Guidance

Yes. A foreign driver holding an employment authorization document or an unexpired foreign passport accompanied by an approved Customs and Border Protection (CBP) I-94 Arrival/Departure Record may obtain a non-domiciled CDL. However, drivers who are citizens of Canada and Mexico are not eligible for non-domiciled CDLs

because FMCSA has determined that commercial licenses issued by Canadian provinces and territories, and the United Mexican States, are in accordance with the standards established by our rules. Therefore, all Mexican and Canadian drivers must have an appropriate commercial license from his or her home country. Finally, a foreign driver who is in this country on an employment authorization document or an unexpired foreign passport accompanied by an approved CBP I-94 Arrival/Departure Record may not obtain a resident CDL since he or she is not “domiciled” in a U.S. State, as defined in § 383.5 (“State of domicile”).

### **Regulatory Guidance for 49 CFR 383.31 – Notification of Convictions for Driver Violations**

#### Question 1

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

#### Guidance

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

## **Regulatory Guidance for 49 CFR 383.33 – Notification of Driver’s License**

### **Suspensions**

#### Question 1

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

#### Guidance

The effective date of the suspension is the date given the employee in the Administrative Order of Suspension. For the purpose of notifying the employer, the employee must notify his or her employer by the end of the next business day of receiving the Administrative Order of Suspension.

## **Regulatory Guidance for 49 CFR 383.37 – Employer Responsibilities**

#### Question 1

If an individual driver had two convictions for serious traffic violations while driving a CMV, and neither the FMCSA nor his/her State licensing agency took any disqualification action, does the motor carrier have any obligation under FMCSA regulations to refrain from using the driver for 60 days? If so, when does that time period begin?

#### Guidance

No. The motor carrier’s responsibility under § 383.37(a) to refrain from using the driver begins only when it learns of a disqualification action imposed by FMCSA or the

State agency and continues until the disqualification period set by the State or FMCSA is completed.

#### Question 2

Is a driver who has a CDL and has been convicted of a felony disqualified from operating a CMV under the FMCSRs?

#### Guidance

Not necessarily. The FMCSRs do not prohibit a driver who has been convicted of a felony from operating a CMV unless the offense involved the use of a motor vehicle, either a CMV or a non-CMV. (Table 1 to § 383.51(b))

### **Regulatory Guidance for 49 CFR 383.51 – Disqualification of Drivers– General**

#### **Questions**

##### Question 1

- a. If a CDL holder was convicted of one “excessive speeding” (15 or more miles over the speed limit) violation in a CMV and the same violation in his/her personal vehicle, would the driver be disqualified? Or,
- b. If a CDL holder was convicted of two separate “excessive speeding” (15 or more miles over the speed limit) violations in his/her personal passenger vehicle, would the driver be disqualified?

#### Guidance

Yes, in both cases, if the second offense was within 3 years of the first. Whether the vehicle is a CMV is irrelevant.

## Question 2

If a State disqualifies a driver for two convictions for serious traffic violations under § 383.51 and that driver is then reinstated and commits a third serious violation, what additional period of disqualification must be imposed on that driver?

### Guidance

If the third violation for a serious violation occurs within 3 years of the original violation and the driver is convicted of the third violation, then the driver must be disqualified for an additional 120 days.

## Question 3

Section 383.51 of the FMCSRs disqualifies a driver if certain offenses were committed while operating a CMV. Will the States be required to identify on the motor vehicle driver's record the class of vehicle being operated when a violation occurs?

### Guidance

No, the State must only identify whether the violation occurred in a CMV, not the specific class of CMV. The only other indication that is required is if the vehicle was carrying HM as defined in § 383.5.

## Question 4

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

### Guidance

As used in part 383, the disqualifying offense of "leaving the scene of an accident involving a CMV" is all-inclusive and covers the entire range of situations where the driver of the CMV is required by State law to stop after an accident and either give

information to the other party, render aid, or attempt to locate and notify the operator or owner of other vehicles involved in the accident.

#### Question 5

If a CDL holder commits an offense that would normally be disqualifying, but the CDL holder is driving under the farm waiver in § 383.3(d)(1), must the conviction result in a disqualification and action against the CDL holder?

#### Guidance

Yes. A CDL holder is subject to the disqualification requirements, even if the CDL holder is not operating a CMV or a vehicle requiring the CDL when the offense occurs.

#### Question 6

Is a driver who possesses a valid CDL issued by his/her State of domicile, but who is suspended by another State for reasons unrelated to the violation of a motor vehicle traffic control law, disqualified from operating a CMV?

#### Guidance

No. Section 383.5 defines the term "Disqualification" for CDL holders and limits the basis of out-of-State disqualifications to those resulting from a conviction for a violation of State or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations).

#### Question 7

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

Guidance

No. Under 49 CFR 384.210, a State may not knowingly issue a CLP, CDL, or a commercial special license or permit (including a provisional or temporary license) permitting a person to drive a CMV during a period in which the CLP or CDL holder's noncommercial driving privilege has been disqualified.

Question 8

Must the State use the date of conviction, rather than the offense date, to calculate the starting and ending dates for the driver disqualification period specified in § 383.51?

Guidance

Yes, the State must use the date of conviction or a later date, rather than the offense date, as the basis for calculating the starting and ending dates for the driver disqualification period. The use of the conviction date or a later date ensures that the driver receives due process of law but still serves the full disqualification required.

Question 9

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

Guidance

The State must use the offense dates to determine if two or more serious traffic convictions fall within the 3-year period specified in § 383.51, Table 2.

## **Regulatory Guidance for 49 CFR 383.51 – Disqualification of Drivers– Alcohol**

### **Questions**

#### Question 1

Is a driver disqualified for driving a CMV while off-duty with a blood alcohol concentration over 0.04 percent?

#### Guidance

Yes. Any person driving a CMV, as defined in § 383.5, regardless of the person's duty status, must be disqualified if convicted of driving with a blood alcohol concentration over 0.04 percent.

#### Question 2

- a. Does a receipt to drive issued pursuant to the administrative license revocation (ALR) procedure authorize the continued operation of a CMV when the license surrendered is a CDL?
- b. Does the acceptance of a receipt to drive place the CDL holder in violation of the one driver's license requirement?

#### Guidance

- a. Yes. The ALR procedure of taking possession of the driver's CDL and issuing a receipt to drive or other "temporary license" is valid under part 383. The CDL that is being held by the State is still valid until the ALR period begins.
- b. The driver violates no CDL requirements for accepting the receipt which may be used to the extent authorized.

## **Regulatory Guidance for 49 CFR 383.71 – Driver Application Procedures**

### Question 1

May a CDL skills test examiner conduct a driving skills test administered in accordance with part 383 before a person subject to 49 CFR part 382 is tested for alcohol and controlled substances?

### Guidance

Yes. A CDL skills test examiner, including a third party examiner, may administer a driving skills test to a person subject to 49 CFR part 382 without first testing him/her for alcohol and controlled substances. The sole purpose of the CDL driving skills test is to assess a person's ability to operate a CMV.

## **Regulatory Guidance for 49 CFR 383.73 – State Procedures**

### Question 1

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

### Guidance

Yes.

### Question 2

May a State allow an applicant to keep his/her current valid State license when issued a FRSI-restricted CDL?

### Guidance

No. That would violate the single-license requirement.

### Question 3

Does the word “issuing” as used in § 383.73(b) include both temporary 60-day CDLs and permanent CDLs?

### Guidance

Yes, the word “issuing” applies to all CLPs/CDLs whether they are temporary or permanent.

### Question 4

May States accept applications for a CLP from individuals who are not domiciled in the State but who receive CDL training within the State, and administer the knowledge test to these individuals?

### Guidance

Yes. Section 383.73 does not prohibit States from accepting and processing CLP applications from Out-of-State applicants (e.g., individuals who are not domiciled in the State but who receive training there) and administering the knowledge test to such applicants, provided there is agreement between the testing State and the applicant’s State of domicile. In particular: (1) The testing State must administer the general knowledge test in accordance with part 383, subparts F, G, and H; (2) transmission of general knowledge test results and any other supporting documentation shall occur by a direct, secure, electronic means to the State of domicile; and (3) in accordance with § 383.73(h), only the State of domicile may create the CDLIS record and issue the physical CLP. Ultimately, the responsibility for compliance with all requirements of §§ 383.71 and 383.73 remains with the State of domicile. Under § 383.79, States of domicile are already required to accept skills test results from other States; this guidance clarifies that States of

domicile may (but are not required to) accept knowledge test results from other States in the same manner. This guidance shall not be construed to allow a State to issue a CLP or CDL to an individual who is not domiciled in that State. Both the CLP and the CDL must be issued by the State of domicile, as required by 49 U.S.C. 31311(a)(12)(A).

### **Regulatory Guidance for 49 CFR 383.75 – Third Party Testing**

#### Question 1

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

#### Guidance

No. The third party testing provision found in § 383.75 applies only to the skills portion of the testing procedure. However, if an employee of the State who is authorized to supervise knowledge testing is present during the testing, then FMCSA regards it as being administered by the State and not by a third party.

#### Question 2

Do third party skills test examiners have to meet all the requirements of State-employed examiners – i.e., all the State’s qualification and training standards?

#### Guidance

Yes. Section 384.228 requires third party skills examiners to meet the same qualification and training standards as State examiners to conduct skills tests.

#### Question 3

Do third party skills test examiners have to be qualified to administer skills tests in all types of CMVs?

### Guidance

No, but they may administer skills tests only in those types of CMVs for which they are qualified.

### **Regulatory Guidance for 49 CFR 383.91 – Commercial Motor Vehicle Groups**

#### Question 1

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

#### Guidance

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

#### Question 2

Is a driver of a combination vehicle with a GCWR of less than 26,001 pounds required to obtain a CDL, if the trailer's GVWR is more than 10,000 pounds?

#### Guidance

No, because the GCWR is less than 26,001 pounds. However, the driver would need a CDL if the vehicle is transporting HM, as defined in § 383.5, or if it is designed to transport 16 or more people, including the driver.

#### Question 3

Can a State which expands the vehicle group descriptions in § 383.91 enforce those expansions on out-of-State CMV drivers by requiring them to have a CDL?

### Guidance

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

### Question 4

What CMV group is a driver of an articulated motorcoach (bus) with a GVWR of 26,001 pounds or more required to possess?

### Guidance

A driver of an articulated bus with a GVWR of 26,001 pounds or more is required to possess a Class B CDL with the proper endorsement(s).

### Question 5

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

### Guidance

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

- If the GCWR of the tow truck is 26,001 pounds or more and the towed vehicle alone exceeds 10,000 pounds GVWR, then the driver needs a Class A CDL.
- If the GVWR of the tow truck alone is 26,001 pounds or more, and the driver either (a) drives the tow truck without a vehicle in tow, or (b) drives the tow truck with a towed vehicle of 10,000 pounds or less GVWR, then the driver needs a Class B CDL.
- A driver of a tow truck or towing configuration that does not fit either configuration description above requires a Class C CDL only if he or she tows a

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

Question 6

May a truck tractor (as defined in 49 CFR 390.5) be driven on public roads by a driver with a Class B CDL?

Guidance

Yes, but only if the truck tractor is not pulling a towed unit (trailer) that is in excess of 10,000 pounds.

**Regulatory Guidance for 49 CFR 383.93 – Endorsements**

Question 1

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

Guidance

No, if the vehicle is being operated under the provisions of § 383.3(d)(2).

Question 2

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

- a. A driver transports 1,001 or more pounds of Division 1.4 (Class C explosive) materials in a vehicle with a GVWR of less than 26,001 pounds?
- b. A driver transports less than 1,001 pounds of Division 1.4 materials in a vehicle with a GVWR of less than 26,001 pounds?
- c. The driver transports any quantity of Division 1.1, 1.2 or 1.3 (Class A or B explosive) materials in any vehicle?

Guidance

- a. Yes; unless the explosive is a 1.4S explosive, which never requires placarding.
- b. No.
- c. Yes.

Question 3

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

Guidance

Yes, unless waived by the State, as allowed by the provisions of § 383.3.

Question 4

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

Guidance

No, battery powered vehicles and equipment are not required to be placarded for transportation.

Question 5

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

Guidance

Yes, if the following conditions apply:

- There is more than one point of articulation in the combination;
- The GCWR is 26,001 pounds or more; and

- The combined GVWR of the vehicle(s) being towed is in excess of 10,000 pounds.

#### Question 6

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

#### Guidance

Yes.

#### Question 7

Is a driver who operates a truck tractor pulling a heavy-haul trailer attached to the tractor by means of a “jeep,” that meets the definition of a CMV under part 383 required to have a CDL with a double/triple trailer endorsement?

#### Guidance

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

#### Question 8

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

#### Guidance

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

- If the driver's towing operations are restricted to emergency "first moves" from the site of a breakdown or crash to the nearest appropriate repair facility, then no CDL endorsement of any kind is required.
- If the driver's towing operations include any "subsequent moves" from one repair or disposal facility to another, then endorsements requisite to the vehicles being towed are required. Exception: Tow truck operators need not obtain a passenger or school bus endorsement.

#### Question 9

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

#### Guidance

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

#### Question 10

Are drivers required to have both the "P" passenger and "S" school bus endorsement if they are not transporting students when operating a "school bus," as defined in § 383.5?

#### Guidance

No. Only drivers actually transporting pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school sponsored events in a school bus are required to have both the "P" and "S" endorsements. Only a "P" endorsement is required by drivers delivering school buses from the manufacturer, by

mechanics and other drivers operating empty school buses, and by drivers transporting students and/or adults to and from events that are not sponsored by the school.

Question 11

Is a person who operates a custom motorcoach in commerce with a GVWR or GVW greater than 26,001 pounds required to have a passenger endorsement for his or her CDL if the vehicle is designed or used to transport fewer than 16 passengers, including the driver?

Guidance

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

Question 12

Must the driver of an empty tank vehicle that is being transported from the manufacturer to a local distributor or purchaser have a tank endorsement on his or her CDL?

Guidance

The vehicle described meets the definition of a tank vehicle and, therefore, the driver would need a tank endorsement, unless the driver is (1) transporting an empty tank and has in his or her possession a manifest that states that the tank is empty or contains only a residue, or (2) the driver is transporting empty storage tanks that are not designed for transportation and have a rated capacity of 1,000 gallons or more, that are temporarily attached to a flatbed vehicle. The driver does not need a manifest stating that the storage tanks are empty or contain only residue.

### **Regulatory Guidance for 49 CFR 383.95 – Air Brake Restrictions**

#### Question 1

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

#### Guidance

Yes. The air brake restriction applies only to the principal braking system used to stop the vehicle. Section 383.95(a) is not applicable to an air-assisted mechanism to release the parking brake.

### **Regulatory Guidance for 49 CFR 383.113 – Required Skills**

#### Question 1

May a driver use a truck tractor (as defined in 49 CFR 390.5) as a representative vehicle for purposes of completing the skills tests for a Class B CDL?

#### Guidance

Yes, but only if the truck tractor has a GVWR of 26,001 pounds or more.

## **Regulatory Guidance for 49 CFR 383.153 – Information on the Document and Application**

### Question 1

May a State issue a CDL without a color photograph?

### Guidance

Yes, if requiring a photograph (whether in color or black and white) would violate a driver's religious beliefs. The issuing State must determine whether a driver's objection to a photograph has a genuine religious basis.

## **Regulatory Guidance for 49 CFR 383 Special Topics CDL Requirements**

### Question 1

What skills test and restrictions are required for a CDL holder seeking to add a passenger endorsement?

### Guidance

The adding of an endorsement is considered a license upgrade and is regulated by §§ 383.71(e) and 383.73(e). The additional knowledge and skills testing requirements for passenger endorsements are found at § 383.117. Three scenarios may arise when a CDL holder applies for a passenger endorsement:

- a. The skills test is taken in a passenger vehicle that is in the same vehicle Class as the current CDL. In this scenario, the CDL holder retains the preexisting class of CDL and the passenger endorsement is added.
- b. The skills test is taken in a passenger vehicle that is in a higher vehicle Class than that of the current CDL. In this scenario, the CDL holder is issued a higher class CDL with the passenger endorsement.

c. The skills test is taken in a passenger vehicle that is in a lower vehicle class than the current CDL. In this scenario, the CDL holder retains the vehicle class of the current CDL, but is restricted to driving passenger vehicles in the class in which the passenger skills test was taken, or any lower class.

**PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S  
LICENSE PROGRAM**

**Regulatory Guidance for 49 CFR 384.209 Notification of traffic violations**

Question 1

Must the licensing agency establish a commercial driver record, including a CDLIS pointer record, for a person holding a non-commercial license issued by that jurisdiction upon receiving notification of a conviction of any offense committed while (illegally) operating a CMV?

Guidance

Yes.

**Regulatory Guidance for 49 CFR 384.231 Satisfaction of State disqualification  
requirement**

Question 1

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

## Guidance

Yes. Section 384.206(b)(1) requires a State, including a transferee State, to check the applicant's driving record for the past 10 years in every State where he/she was licensed. If adverse information is discovered, § 384.206(b)(3) requires a State, including a transferee State, to "promptly implement the disqualifications...that are called for in any applicable section(s) of this subpart." Section 384.231(a) makes the requirements of § 384.206(b) applicable to the "State of licensure" – which includes a transferee State under §§ 384.206(b)(1) and 384.231(b) then requires disqualifying action against a CDL holder who has been convicted of a disqualifying offense committed after the Federal compliance date for disqualification for that offense, but has not yet served the disqualification.

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Raymond P Martinez,  
*Administrator.*

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