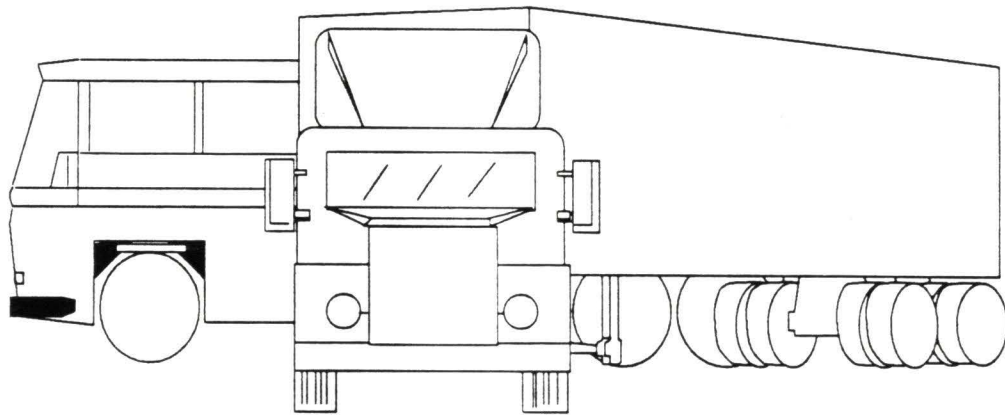


*Interpretations of
49 CFR Part 383*

**Commercial Driver's License
Standards:
Requirements
and Penalties**



*Based on regulatory text as
revised through February 8, 1991*

Federal Highway Administration

Office of Motor Carrier Standards
Standards Review Division (HCS-20)

These interpretations . . .

. . . are distilled and adapted from the official FHWA interpretations of the Commercial Driver's License (CDL) and related regulations in 49 CFR Part 383 and are intended to provide useful guidance to State personnel. If additional information or legal confirmation regarding any item(s) in this compendium is needed, readers should contact the Standards Review Division, HCS-20, Office of Motor Carrier Standards, Federal Highway Administration, 400 Seventh Street, SW., Washington DC 20590, telephone (202)366-4009. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

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Section 383.3: Applicability

Question 1: Are amphibious landing craft that are usually used in water but occasionally used on a public highway, CMVs?

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

A driver cannot be exempted from the requirements of the Act because the vehicle is driven for limited distances or is used for recreational purposes.

Vehicles used for recreational purposes, including amphibious landing craft, are exempt from the Act only when operated solely as a family/personal conveyance.

Question 2: Are school and church bus drivers required to get a CDL?

Interpretation: Yes, if they drive vehicles designed to transport 16 or more people.

The report accompanying the CDL law was very specific about including buses in the CMV definition, stating that it "is intended to include school buses as well as other motor carrier passenger vehicles."

Question 3: Do mechanics, shop help and other occasional drivers need a commercial driver's license (CDL) if they are operating a CMV or if they only test drive a vehicle?

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

Question 4: Does the Commercial Motor Vehicle Safety Act of 1986 (the Act) apply to drivers of recreational vehicles?

Interpretation: No, if the vehicle is used strictly for transportation of personal family members and/or their effects.

Rationale: A recreational vehicle which is not used in commerce and which is operated solely as a family/personal conveyance for recreational purposes is not covered under the Act.

Question 5: Does the Commercial Motor Vehicle Safety Act of 1986 (the Act) apply to drivers of vehicles used in "van pools"?

Interpretation: Yes, if the vehicle is designed to transport 16 or more people.

*Question 6: Can a person operate a CMV wholly on private property, not open to public travel, without a CDL?

Interpretation: Yes. However, the FHWA expects any driver of a CMV on a public highway, including any street, other road, or way open to the public, to have a CDL as of April 1, 1992.

*Question 7: Do CMV drivers need a CDL if they limit their driving to the confines of property separated by a fence and security guards from use by the general public, except on a restricted basis on short section of road between the entrance gate and the administration building?

Interpretation: No, if the CMV drivers confine their driving to other than public roads. The small road section within the boundaries of the complex that is open to the public is owned and under the control of the company and only allows restricted access to the public. Therefore, the roads in the complex are considered private roads.

*Question 8: Does the FHWA include off-road motorized construction equipment under the definitions of "motor vehicle" and "commercial motor vehicle" as used in 49 C.F.R. 390.5 and 383.5?

Interpretation: No, because it is neither used on the highway nor used in the transportation of passengers or property. Although off-road construction equipment has vehicular aspects, they are mechanically propelled on wheels, such equipment is obviously incompatible with highway traffic and is routinely found at construction sites, and operated by skilled mechanics. Occasionally, such equipment is moved to or from construction sites by "driving" the "vehicles" short distances on public highways. This is only incidental to their primary functions; they are not designed to operate in traffic; and their mechanical manipulation often requires a different set of knowledge and skills. In many instances, such "vehicles" have to be specially marked, even escorted and frequently not even allowed on the public highway without special permission of local authorities subject to strict controls as to time and circumstances for the very reason that they are incapable of conforming to the rules of the road.

*Question 9: What types of equipment are included in the category of off-road motorized construction equipment?

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

This interpretation does not extend to equipment which is designed to transport materials overland, such as dump trucks or tank trucks, nor does it extend to any truck or tractor-trailer combination upon which construction equipment is mounted or loaded for transportation.

*Question 10: 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?

Interpretation: Yes, because such vehicles are designed to be operated on the public highways and therefore do not qualify as off-road construction equipment. The fact that these vehicles are only driven for limited distances, at less than normal highway speeds and/or is incidental to their primary function does not exempt the operators from the CDL requirements. The intent of the ACT of 1986, clearly reflected in the implementing regulations, is that all CMV drivers, regardless of the amount of mileage and/or time they drive on the public road, shall have a CDL.

*Question 11: Can a state establish a statute requiring persons operating recreational vehicles or other CMVs used by family members for nonbusiness purposes to have a CDL?

Interpretation: Yes. Although the Federal requirements do not require a driver of a recreational vehicle or other CMV that is exclusively used to transport personal family members and/or their effects to obtain a CDL, the Act specifically provides that any State may impose more stringent requirements.

*Question 12: Do drivers engaged in the delivery, testing and/or demonstration of streetsweeping equipment that is over 26,000 pounds GVWR need a CDL?

Interpretation: Yes. Although the primary responsibilities of these drivers are delivery, testing and demonstration, if these drivers are required to operate the streetsweeping equipment on public roads, they would need a CDL.

*Question 13: Do drivers of either a tractor trailer or straight truck that is converted into a mobile office need a CDL?

Interpretation: Yes, if the vehicle meets the definition of a CMV under 383.5. Only persons who use a CMV strictly and exclusively to transport personal possessions or family members for nonbusiness purposes are exempt from needing a CDL.

*Question 14: Would the altering of the original manufacturer's gross vehicle weight rating (GVWR) of a vehicle and the changing of the original GVWR plate have any effect on the applicability of the Commercial Motor Vehicle Safety Act of 1986 to that vehicle or its driver?

Interpretation: No. The GVWR of a vehicle, as defined in the Act means the GVWR assigned to a vehicle prior to its first sale to a customer. The alteration of the GVWR plate of a used vehicle by the owner would not have any effect on the applicability of the Act to that vehicle or its driver.

*Question 15: Do State motor vehicle inspectors who drive trucks and buses on an infrequent basis and for short distances as part of their job have to obtain a CDL?

Interpretation: Yes. While inspectors do not drive commercial motor vehicles (CMVs) as often as professional drivers, the public has a right to expect that anyone who drives a CMV has proven he or she can drive it safely.

*Question 16: Are State, county and municipal workers operating CMVs considered to be engaged "in commerce" as used in the definition of commercial motor vehicle in 383.5 and therefore required to obtain a CDL?

Interpretation: Yes, but a State may waive State, county and municipal employees who operate firefighting and other emergency equipment from the requirements of the Act.

Section 383.5: Definitions

*Question 1: Does "designed to transport" as used in the definition of a commercial motor vehicle in 383.5 mean original design or current design when the number of seats are permanently altered?

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

Note: The subject of "design" is under review by the Federal Highway Administration. Rulemaking is being considered which would either address changes to or confirmation of the above interpretation.

*Question 2: Are rubberized collapsible containers or "bladder bags" attached to a trailer considered a tank vehicle, requiring operators to obtain a CDL with a tank vehicle endorsement?

Interpretation: Yes. A tank vehicle as defined in 383.5 includes tanks permanently and temporarily attached to a vehicle or chassis. Operators using these collapsible rubber containers would need to possess the general knowledge contained in the tank vehicle endorsement examination.

Section 383.7: Waiver Provisions

Procedures: Waivers may be granted by the FHWA Administrator after public comment, only if two findings can be made:

- o the waiver would not diminish commercial vehicle safety, and
- o the waiver would not be contrary to public safety.

Waivers Granted: States must waive non-civilian operators of military equipment owned or operated by the Department of Defense, including the National Guard.

States may waive certain farmers and firefighters.

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

Interpretation: The State may waive operators of farm vehicles which are:

- (a) controlled and operated by a farmer;
- (b) used to transport either agricultural products, farm machinery, farm supplies or [some combination thereof] to or from a farm;
- (c) not used in the operation of a common or contract motor carrier; and
- (d) used within 150 miles of the person's farm.

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

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

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

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

Interpretation: Either, at the State's discretion.

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

Interpretation: If a State waives certain farm vehicle drivers from obtaining a CDL, and the farm vehicle driver is in compliance with other State licensing laws, he/she would be properly licensed. Under the Federal requirements, a non-waiving or limited waiver State can allow the farmer from the full waiver State to operate in its State. However, if the nonresident State does not recognize the resident State farm waiver, the driver will need a CDL to drive in the nonresident State. The act only requires reciprocity of a CDL license if a driver holds one, but does not require reciprocity of the waiver provisions.

***Question 5:** Can drivers of rice and cane mill product vehicles be waived under the Federal farm waiver provisions?

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

***Question 6:** Can employees of a Federal, State or local government forest service, police department, rescue and emergency squads or departments of safety who drive emergency or firefighting equipment or volunteers who perform wilderness search and rescue functions and disaster relief activities in government owned vehicles be waived from the requirements of the Act, even though the vehicles meet the definition of a commercial motor vehicle and the drivers are not part of a volunteer or paid fire department?

Interpretation: Yes. The Federal requirements allow States to grant waivers to drivers of firefighting and other emergency equipment. The intent of the waiver was to include the drivers of these vehicles that meet the conditions of the waiver, whether or not they are part of a volunteer or paid fire organization, provided the vehicles are equipped with audible and visual signals. While the majority of the States have provided a waiver provision in their CDL legislation for firefighters and operators of emergency equipment, the decision to grant the waiver and the conditions of the waiver are up to each individual State.

Note: An appropriate amendment to the Federal requirements will be made at a convenient future opportunity to reflect the intent of the waiver.

*Question 7: Are drivers of antique fire engines required to obtain CDLs?

Interpretation: No. The State may waive drivers of antique fire engines under the existing waiver for drivers of firefighting and other emergency equipment.

*Question 8: a) Can police officers who operate buses and vans which are designed to carry 16 or more persons and are used to transport police officers during demonstrations and other crowd control activities be waived from obtaining a CDL?

b) Can police officers who operate armored personnel carriers that are over 26,000 pounds GVWR and used in SWAT team activities be waived from obtaining a CDL?

Interpretation: a) No. The Act applies to anyone who operates a CMV, including employees of Federal, State and local governments. Crowd control activities do not meet the conditions for a waiver of operators of firefighting and other emergency vehicles

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

**Section 383.21:
Number of
Drivers' Licenses**

Question: Are there any circumstances under which the driver of a CMV is allowed to hold more than one driver's license?

Interpretation: Yes. A new driver's license recipient may hold more than one license during the 10 days beginning on the date the person is issued a driver's license.

Rationale: This exception is intended to accommodate the different license issuance practices of various States and to allow sufficient time for a license from a former State of residence to be returned to that State and cancelled.

Section 383.23: Commercial Driver's License

Question 1: May a CMV learner's permit holder continue to hold his/her basic driver's license without violating the single-license rule?

Interpretation: Yes, since the learner's permit is not a license.

Question 2: The requirements for States regarding CMV learners' permits in Section 383.23 appear to be ambiguous. For example, if the CMV is "considered a valid CDL" for instructional purposes, is the State to enter the learner's permit issuance as a CDLIS transaction?

Interpretation: Recognizing that the existing regulations for CMV learners' permits are not explicit, the FHWA is preparing a notice of proposed rulemaking on commercial driver instruction permits. Any final rule on this topic will not be mandatory for States and driver trainees until April 1, 1992. In the meantime, States should at least conform their programs to such minimum standards as are clearly spelled out in Section 383.23(c): learner's permit holders must be accompanied by CDL holders, and must either hold valid drivers' licenses or pass all vision, sign/symbol, and knowledge tests which are requisite in the State to automobile drivers' licenses.

**Section 383.31:
Notification of
Driver Convictions**

Question 1: What is "a state or local law relating to motor vehicle traffic control (other than a parking violation)," as used in the Commercial Motor Vehicle Safety Act of 1986, Section 12003 and the ensuing regulations?

Interpretation: The law specifically excludes only parking violations; thus, all other motor vehicle violations should be included.

Question 2: Does a driver have to notify the licensing State and employer of a conviction of a motor vehicle traffic control violation only when operating a commercial motor vehicle or when operating any vehicle?

Interpretation: A person who operates a CMV who violates a State or local law relating to motor vehicle traffic control (other than a parking violation) in any type of vehicle must notify the State and his/her employer of such violation. The person must indicate whether the violation occurred in a CMV.

Section 383.37: Employer Responsibilities

Question 1: Are motor carriers restricted to basing their evaluation of a driver's motor vehicle record on only those violations occurring while operating a CMV?

Interpretation: No. They may consider the entire record.

49 CFR Part 383 does not prohibit employers from requiring or enforcing more stringent requirements. 49 CFR Part 390.3(d) specifically allows employers to establish policies and programs for interstate drivers.

Question 2: Section 383.37(a) does not allow employers to knowingly use a driver who has lost his or her driver's license. Do motor carriers have latitude in their resulting actions: firing, suspension, layoff, authorized use of unused vacation time during suspension duration, transfer to non-driving position for duration of the suspension?

Interpretation: Yes. The employer's minimum responsibility is to prohibit operation of a CMV by such an employee.

*Question 3: Carrier X management recently found a driver who had a detectable presence of alcohol, placed him out of service in accordance with Section 395.2, and ordered a blood test which disclosed a blood alcohol concentration (BAC) of 0.05 percent. Is Carrier X obligated to place the driver out-of-service for 24 hours as prescribed by Section 392.5(c)? Is Carrier X obligated to disqualify the driver for a period of one year as prescribed by Sections 383.51(b) and 391.15(c)(3)(i) of the FMCSRs?

Interpretation: Carrier X need not place the driver "out-of-service" for 24 hours. Instead, Carrier X is obligated to prevent the driver from being on duty or from operating or being in control of a CMV, for at least as long as is necessary to assure the driver's full conformance with Section 392.5. For example, the employee may not go on duty, operate, or have physical control of a motor vehicle within four hours of consuming an intoxicating beverage or while having any measured alcohol concentration or detected presence of alcohol.

Disqualification under Sections 383.51(b) and 391.15(c) is predicated on a conviction (as defined in Section 383.5) for a disqualifying offense. There was no conviction in this case, and therefore no disqualification for driving while under the influence of alcohol. However, Carrier X may take such disciplinary action against the driver as may be appropriate under the terms of its employment contract with him or its negotiated labor contract.

**Section 383.51:
Driver Disqualifications
-- General Questions**

Question 1: To whom do the disqualifications of Section 383.51 currently apply -- CDL holders only, or all persons who drive CMVs as defined in Part 383?

Interpretation: All persons who drive CMVs are currently subject to "disqualification" as defined in Section 383.5 and detailed in Section 383.51.

Question 2: (a) If a driver received one "excessive speeding" violation in a CMV and the same violation in his/her personal passenger vehicle, would the driver be disqualified? or,

(b) If a driver received two "excessive speeding" violations in his/her personal passenger vehicle, would the driver be disqualified?

Interpretation: No.

Convictions for serious traffic violations, such as excessive speeding, only result in disqualification if the offenses were committed in a CMV -- unless the State has stricter regulations.

Question 3: In many States, two "excessive speeding" violations do not constitute a driver license suspension or revocation if the vehicle has a GVWR of 26,000 pounds or less. If the same violations are committed in a vehicle with a GVWR of 26,001 or more pounds, then the driver is disqualified. Why the discrepancy?

Interpretation: Because of the greater potential for loss of life, serious injury, and significant property damage in accidents involving CMVs, the FHWA's regulations (in 49 CFR Part 383) hold drivers of these vehicles to a higher standard of conduct than other highway users.

Question 4: How will enforcement officials on the scene make the determination whether a violation is a disqualifying offense under the Act?

Interpretation: The enforcement official only need indicate on the citation whether the vehicle driven is a CMV because disqualification only occurs upon conviction.

State laws requiring confiscation of a license upon arrest or citation are not affected by CDL.

Question 5: Section 383.51 of the FMCSRs disqualifies drivers if certain offenses were committed while operating a commercial motor vehicle (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?

Interpretation: No, only whether or not the violation occurred in a CMV. The only other indication that may be required is if the vehicle were carrying placarded amounts of hazardous materials.

*Question 6: If a CDL holder commits a disqualifying offense while driving a vehicle which is not a CMV, such as farm vehicle meeting all the farm waiver requirements, must conviction result in disqualification and action against the CDL?

Interpretation: No. In the above described operation the offense did not take place in a "commercial" vehicle. In this case, a State may issue a "hardship" or "occupational" license which allows the driver to operate a CMV with a CDL. The State is prohibited, however, from issuing any type of license which would give the driver limited privileges to operate a CMV when disqualified.

*Question 7: Does "leaving the scene of an accident involving a CMV" include leaving the scene where both parties are present and leaving the scene of an accident involving an unattended vehicle?

Interpretation: Yes. As used in Part 383, the disqualifying offense of "leaving the scene of an accident involving a commercial motor vehicle" is all-inclusive and covers the entire range of situations where the driver 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.

**Section 383.51:
Driver Disqualifications
-- Alcohol Questions**

Question 1: Are States expected to make major changes to their enforcement procedures in order to apply the alcohol disqualifications in the Federal regulations?

Interpretation: 49 CFR Sections 383.51 and 392.5 do not require any change in a State's existing procedures for initially stopping vehicles and drivers.

Roadblocks, random testing programs, or other enforcement procedures which have been held unconstitutional in the State or which the State does not wish to implement, are not required.

A State may implement the 24-hour out-of-service order in whatever way it deems effective.

Question 2: Where will States obtain funding to re-calibrate or purchase new DUI equipment to meet the .04 blood alcohol concentration (BAC) levels established by the Act?

Interpretation: Where new equipment, or the modification of old equipment, is needed, some funding may be available through the National Highway Traffic Safety Administration's 402 grant program.

*Question 3: Is a driver disqualified for driving a truck while off duty with a blood alcohol concentration over 0.04 percent?

Interpretation: A driver using a tractor for personal conveyance is subject to 49 CFR Part 392.5 and 393.51. Section 392.5 is "not applicable to a driver who is using a company vehicle for personal reasons while off duty." However, Section 383.51 applies to any person who is driving a commercial motor vehicle, as defined in Section 383.5 whether or not he is on duty. Therefore, the driver is disqualified under Section 383.51; but not under Section 392.

*Question 4: Can the State suspend the driver's operating privilege for 1 year when he is using the tractor for personal conveyance and is charged with and convicted of driving while under the influence of alcohol (i.e. BAC level over 0.04%)?

Interpretation: It depends on the State's law. If the law is identical to the pertinent part of Section 383, it would presumably apply under the same circumstances, and would need to do so in order to meet the requirements of the commercial driver's license program.

In such a case it is appropriate, although perhaps unnecessary, for the FHWA to disqualify the driver (see 383.5) because many States are not yet connected to the CDLIS. The FHWA's action has the effect of prohibiting carriers from employing the driver and the States' action would preclude any other State from issuing the driver a CDL.

Section 383.71: Driver Application Procedures

*Question 1: Section 383.71(a)(1) divides drivers into two categories and specifies a certification for each: either a driver is subject to Part 391 and must certify that he or she meets the qualifications of that Part; or a driver is "entirely in intrastate commerce and is not subject to Part 391," and must certify that he or she is not subject to that Part. What must a driver certify if he or she is in interstate commerce but is excepted or exempted from Part 391 under the provisions of Parts 390 or 391?

Interpretation: The driver should certify that he or she is not subject to Part 391, and the State should instruct the driver accordingly.

See also the special topic, "CDL and Part 391, Qualification of Drivers," for further interpretations on this subject.

Section 383.73: State Procedures

Question 1: Must the State make a CDLIS check at the time of a driver's CDL renewal?

Interpretation: Yes. As stated in Section 383.73(c)(2), a State must perform the same record checks (including CDLIS) for a CDL renewal application as it does for the initial CDL licensure.

Question 2: Does the State have any role in certifying compliance with § 391.11(b)(2) of the FMCSRs, which requires driver competence in the English language?

Interpretation: No, but a driver, at the time of applying for a CDL, must certify to the State that he or she meets the qualifications of Part 391 if he or she expects to operate in interstate or foreign commerce. Although the State must require the certification, it does not need to give exams or tests to assure driver compliance (including competence in the English language) in this area.

Question 3: Are States required to change their current medical standards for drivers who need CDLs?

Interpretation: No, but interstate drivers must continue to meet the Federal standards, while intrastate drivers are subject to the requirements adopted by the State.

Question 4: Will a State be in compliance with Federal law if it issues CDLs to persons who committed a disqualifying offense (or offenses) prior to the effective date of the State's CDL law?

Interpretation: No. If --

- o A person is charged with a disqualifying offense or offenses as defined in Section 383.51 and
- o Is convicted of the offense(s) under State or other applicable law or regulation in effect at the time of the resulting legal and/or administrative proceeding and

- o The conviction occurs on or after the effective date of the Federal regulation delineating the offense (see the table below for effective dates) and
- o The resulting automatic disqualification period, as specified in Section 383.51(b)(3) and (c)(2), and beginning on the date of conviction, has not expired at the time the person applies for the CDL,

Then --

- o The State may not issue the person a CDL.

This is true even if the State's CDL law was not in effect at the time of conviction, as long as a conviction occurred.
For example:

A state has enacted CDL legislation effective January 1, 1990, including the .04% BAC limit. The BAC limit in effect for all drivers prior to January 1990 is .10%.

CMV Driver A is arrested while driving a commercial vehicle in November 1989 for suspicion of driving while intoxicated, but a subsequent BAC test shows a BAC of only .06, and the DWI charge is dropped. No DWI conviction takes place. Driver A's employer places her out of service for 24 hours.

On February 1, 1990, Driver A applies for a CDL.

- o The State may issue her a CDL if she is otherwise eligible. Since no conviction occurred, she was never disqualified.

CMV Driver B is arrested also in November 1989 for the same charge in a CMV and is tested at .11% BAC. In December 1989, Driver B is convicted under the existing state statute for DWI. In addition to the state criminal sanctions for DWI, the following conditions and actions are also effective under Federal regulation:

- o Driver B is automatically disqualified (as specified in definition "c" of "disqualification" in Section 383.5) from operating a CMV for a period of 1 year from the date of conviction. The effective date of the Federal regulation (October 1988) is the determining date.
- o Driver B must notify his employer of the conviction.
- o Driver B's employer may not permit him to drive a CMV for 1 year.
- o The State may not issue Driver B a CDL until the 1 year automatic disqualification period has elapsed -- i.e., no earlier than December 1990.

Effective dates for offenses are as shown in the following table:

EFFECTIVE DATES FOR CMV DISQUALIFYING OFFENSES

<u>Offense</u>	<u>Effective Date</u>	<u>Federal Register Cite</u>
<u>Long-term disqualifying offenses [§ 383.51(b)]:</u>		
Driving a CMV while under the influence of alcohol	October 27, 1988	53 FR 39044
Driving a CMV while under the influence of a controlled substance	July 1, 1987	52 FR 20574
Leaving the scene of an accident involving a CMV	July 1, 1987	52 FR 20574
Commission of a felony involving the use of a CMV	July 1, 1987	52 FR 20574
Use of a CMV in commission of a felony of manufacturing, distributing, or dispensing a controlled substance	July 1, 1987	52 FR 20574
<u>Disqualifying serious traffic violations [§§ 383.51(c) and 383.5]</u>		
Excessive speeding (15 m.p.h. or more above posted limit)	November 2, 1989	54 FR 40782
Reckless driving	July 1, 1987	52 FR 20574
Improper or erratic lane changes	November 2, 1989	54 FR 40782
Following the vehicle ahead too closely	November 2, 1989	54 FR 40782
Motor vehicle traffic control violation arising in connection with a fatal accident (does not include parking violations)	July 1, 1987	52 FR 20574

Question 5: To what does the qualifying phrase "as contained in Section 383.51" refer in Section 383.73, which states: "(a) Prior to issuing a CDL to a person, a State shall . . . (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 Section 383.51 . . ."

Interpretation: The phrase refers only to the word "disqualification."

Rationale: The qualifying phrase has unfortunately been misplaced in the sentence and will be the subject of a forthcoming FHWA technical amendment.

Question 6: Are States required to refuse a CDL to an applicant if it finds that the NDR check as required under State Procedures, Section 383.73(a)(3)(iii)(B), shows that he/she had a license suspended, revoked, or cancelled within 3 years of the date of the application.

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

Beyond this, the data gathered are for informational purposes, and Part 383 does not specifically require the State to refuse a CDL to anyone whose currently valid license has been revoked, suspended, or cancelled at any time within 3 years of the date of application.

Question 7: 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?

Interpretation: Yes, once the new State-of-record joins the Commercial Driver's License Information System.

Question 8: If the new State-of-record must accept the out-of-State driving record on CDL transfer applications, must the State-of-record accept all driving record entries or only CMV entries?

Interpretation: Only CMV entries. However, the new State-of-record must consider current driver status based on his or her entire record to determine CDL eligibility.

The new State-of-record may accept non-CMV related driving record entries if it wishes to do so.

Question 9: If the new State-of-record must include the out-of-State record as part of the new State-of-record file, is the new State-of-record required to take subsequent action against an individual using either all out-of-State record entries or only CMV record entries?

Interpretation: Only CMV entries are required to be considered.

*Question 10: How should a State deal with commercial driver's license applicants who possess a provisional license evidencing passage of the CDL written and road test in States which have not connected with the CDLIS?

Interpretation: Part 383 does not currently contemplate acceptance of a CDL knowledge test given in another State unless the applicant has received a CDL and is applying for transfer. The State may, however, accept skills tests given by other States with which it has completed third party testing agreements.

*Question 11: Is it permissible under the Commercial Motor Vehicle Safety Act of 1986 for the State's statute or rules to provide that insurers are to be provided with only that portion of an individual's driving record relating to the relevant activity, i.e., the employment or non-employment record?

Interpretation: The State has the flexibility to maintain the drivers' records in any format it chooses, as long as the information is correct and up to date. This information must be made available to the employee, the employer, another State, or the Secretary of Transportation. The Act does not address how this information is to be presented to insurers.

Section 383.75: Third Party Testing

Question 1: Can the CDL knowledge test be administered by a third party?

Interpretation: No. The third party testing provision found in 49 C.F.R. Section 383.75 applies only to the skills portion of the testing procedure.

*Question 2: Do third party examiners have to meet all the requirements of State employed examiners -- i.e. all the State's qualification and training standards?

Interpretation: No. Section 383.75(a)(2)(iii) requires third party examiners meet the same standards as State examiners only "to the extent necessary to conduct skills tests." This language would also allow a State to qualify a third party examiner who had a commercial driver's license from another State, as long as the examiner was otherwise qualified to administer the skills test.

*Question 3: Do third party examiners have to be qualified to administer skills tests in all types of CMVs?

Interpretation: No. For example, third party examiners that will only be administering Class B skills tests will not require training in a Class A vehicle.

**Section 383.77:
Substitute for
Driving Skills Test**

Question 1: What constitutes two years' experience in the "grandfathering" standards in Section 383.77(b)(3)?

Interpretation: The States must determine what amount and type of driving experience is needed to demonstrate appropriate experience.

Question 2: Would a driver's self-certification of his/her experience be adequate or are log books, vehicle registration receipts or employer certifications also required?

Interpretation: The applicant must certify and provide evidence that he or she meets the conditions for the skills test substitution.

States determine specific evidence to be required of driver applicants. Examples could be log books, employer certifications, or W-2 forms.

Question 3: Must an applicant for skills test "grandfathering" be regularly employed in a job that primarily or exclusively involves operation of a CMV?

Interpretation: No.

Question 4: Can the passenger endorsement skills test be "grandfathered"?

Interpretation: Yes, if the applicant meets the criteria contained in 383.77.

*Question 5: Section 383.77 specifies that drivers considered for skills test "grandfathering" cannot have any convictions for disqualifying offenses in the last 2 years. What is a "disqualifying offense" with regard to the "serious traffic violations"? Is one excessive speeding conviction a disqualifying offense despite the fact that it takes two "excessive speeding" convictions before a driver is actually disqualified? If so, need the excessive speeding conviction be for a violation in a CMV?

Interpretation: Section 383.77 was revised on June 22, 1990, to explicitly address this question. A State may, at its option, "grandfather" from skills testing a driver who has no more than one conviction for a "serious traffic violation" in the two-year period immediately prior to applying for a CDL, and

who meets all the other requirements for "grandfathering." On the other hand, a State may not "grandfather" any driver who has more than one conviction for a "serious traffic violation" (as defined in Section 383.5) in any type of vehicle in the past two years.

*Question 6: Should all license withdrawal actions (e.g., suspensions and revocations) keep a driver from being "grandfathered" from skills testing, or merely those directly resulting from convictions for moving traffic violations? For example, can the State elect to "grandfather" a driver who is suspended for failing to pay a parking fine or to appear in court on traffic charges?

Interpretation: If the license withdrawal action resulted, directly or indirectly, from any moving or non-moving traffic violation, or from any failure on the applicant's part to exercise his or her responsibilities as a driver or vehicle owner, then "grandfathering" is not possible.

If the license withdrawal resulted from an administrative error in the courts or the licensing agency, then the State would be expected to revise the person's record to show that no such withdrawal took place, thus permitting "grandfathering."

If the license withdrawal resulted from an action that was completely unrelated to vehicle or driver responsibilities, and if the State can distinguish these types of suspensions from those that are driving- or vehicle-related, then the State can discount such withdrawals in the "grandfathering" decision. For example, if the driver's record shows a withdrawal of driving privileges for failure to pay family support, for truancy from school, or for failure to pay court-ordered forfeitures for actions unrelated to the driving or vehicle ownership tasks (such as disorderly conduct or illegal cable TV hookup), then the State may still "grandfather" an otherwise eligible driver.

*Question 7: Can a driver applicant be "grandfathered" from any CDL knowledge test?

Interpretation: No. "Grandfathering" of CDL basic or endorsement knowledge testing is not permitted by Part 383.

Section 383.91: Vehicle Groups

Question 1: May a State expand a vehicle group to include vehicles that do not meet the Federal definition of the group?

Interpretation: Yes, if:

- o 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
- o The restriction is fully explained on the license.

Question 2: Is a driver of a combination vehicle with a combination weight rating (GCWR) of less than 26,001 pounds required to obtain a CDL if the trailer weighs more than 10,000 pounds?

Interpretation: No -- the vehicle described is less than 26,001 pounds GCWR. Its driver only needs a CDL if it is transporting hazardous materials requiring the vehicle to be placarded or if it is designed to transport 16 or more persons.

Several States included such configurations in Groups A or B. The FHWA will accept such classifications as long as the "representative vehicle" principle for skills testing is not compromised. (See Question 1 above.) In other words, if these vehicles are included in Group A or B, drivers who use them for skills tests must be restricted to operating vehicles that do not meet the Federal definition of Group A or B, as contained in Section 383.91.

Section 383.93: Endorsements

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

Interpretation: No. The Research and Special Programs Administration does not consider vehicles that are controlled and operated by State and local governments in the conduct of governmental functions, to be subject to the placarding requirements of 49 CFR Part 172, Subpart F. Therefore, the hazardous materials endorsement is not needed on their drivers' CDLs.

In addition, State and local governments' hazardous materials-carrying-vehicles with gross vehicle or combination weight ratings under 26,001 pounds are not commercial motor vehicles (CMVs) under the Federal definition; their drivers do not require CDLs. At or above the 26,001 pound threshold, the vehicle would be a CMV and its driver would require a CDL, although not with the hazardous materials endorsement.

The above is a minimum Federal standard based on current regulations. A State may elect to require drivers of State or local governments' hazardous materials-laden vehicles to possess CDLs regardless of the vehicles' weight, and to obtain the hazardous materials endorsement.

*Question 2: Is a vehicle laden only with infectious waste (i.e., medical waste) a CMV regardless of weight? Do drivers of infectious waste-laden vehicles require a hazardous materials endorsement?

Interpretation: No. The Hazardous Materials Regulations (49 CFR Section 172.101) do not prescribe placarding for vehicles hauling only "etiologic agents, not otherwise specified." If under the weight thresholds for CDL groups A and B, such vehicles would not be considered CMVs; if over those weight thresholds, such vehicles' drivers would need CDLs but not the hazardous materials endorsement.

**Section 383.95:
Air Brake Restriction**

*Question 1: A driver has a Group B or C CDL valid for air-brake-equipped vehicles. He or she later upgrades to a Group A license by testing in a vehicle that is not equipped with air brakes. Must the State restrict the upgraded license to non-air-brake-equipped vehicles?

Interpretation: No, in this type of upgrade situation the air brake restriction need not be placed on the Group A license. The FHWA has determined that the air brake systems on combination versus single vehicles do not differ sufficiently to necessitate a restriction on such a driver's Group A privileges.

*Question 2: Are operators of vehicles equipped with vacuum brakes which use the engine as the vacuum source required to take the air brake tests (knowledge and skills) as prescribed in Sections 383.111(g), 383.113(c), and 383.133(g)?

Interpretation: No.

Section 383.113: Required Skills

Question 1: Where will a State get the money to construct off-road testing facilities?

Interpretation: Off-road testing is not a requirement of the Act or the regulations. Items such as alley docking, straight line backing, parallel parking and the backward serpentine may be performed during the on-road portion of the test or simulated by the use of cones or temporary stands on a parking lot.

*Question 2: Do drivers of Group C vehicles need to satisfy all requirements of Section 383.113, including those of paragraph 383.113(a), "Basic Vehicle Control Skills"?

Interpretation: Yes. The minimum requirements contained in Section 383.113 apply to all CDL applicants, without regard to vehicle group, unless the substitution criteria in Section 383.77 have been met.

**Section 383.131:
Test Procedures**

Question: What is the reading level of the Model Driver's Manual prepared by the Essex Corporation?

Interpretation: All Essex test forms and materials, except those of the hazardous materials test, have reading levels at or below the sixth grade level.

Section 383.133: Testing Methods

Question 1: Is a State allowed to provide for an alternative test (e.g., oral) or administer alternate exam formats providing it meets Federal Highway Administration requirements?

Interpretation: Yes. The knowledge portion of the test may be administered verbally, in automated formats or otherwise at the discretion of the State. The American Association of Motor Vehicle Administrators and the FHWA have jointly undertaken a program to explore alternative CDL testing and training methods to address the needs of functionally illiterate drivers.

Question 2: Does the FHWA allow States to administer part or all of the CDL tests in Spanish or another foreign language?

Interpretation: A State may offer CDL tests in any foreign language if it so wishes.

Question 3: May a State test its drivers before it is ready to issue CDLs? Do the Federal standards limit the number of times a driver can take a test if he or she fails?

Interpretation: States have the latitude to test drivers early and often. There is no stipulation in the rule that would limit the number of times a driver can take a test.

**Section 383.153:
Information on the
CDL Document**

Question 1: Can a State use the residence address as opposed to the mailing address on the commercial driver's license (CDL)?

Interpretation: Yes.

Rationale: Use of the driver's "mailing address" may be in conflict with the practices and statutes of many States. Thus, either the mailing or residence address is acceptable for the CDL document. A technical amendment to modify the regulatory text will be issued.

Question 2: Several States will initiate CDL testing before completing their linkages to the CDLIS. In such cases, may a State issue a non-CDL commercial license to a tested driver and then, after completing CDLIS checks and any remaining licensing procedures, mail the driver a "validation sticker" upgrading the document to full CDL status?

Interpretation: Yes. Issuance of a sticker that contains the words "commercial driver's license" or "CDL" would be in compliance, provided that adequate controls are placed on such stickers.

The non-CDL license initially held by the driver must not contain the words "commercial driver's license" or the inscription "CDL" until the CDLIS and other processes are completed.

Some states are using this option, with FHWA's concurrence.

Question 3: Can a person who has a religious objection to being photographed be issued a CDL?

Interpretation: Yes. States may issue licenses without a color photograph if including such information would violate the seriously held religious belief of the applicant. Documentation required to verify this belief is the responsibility of the issuing State.

Question 4: May a State issue temporary non-photo CDLs?

Interpretation: A State may issue a temporary CDL without a photograph for the administrative convenience of the State, as long as --

- o The State does not liberalize any existing procedures for issuing non-photo licenses; and
- o The State does not allow drivers to operate CMVs indefinitely without a CDL which meets the standards of 49 CFR Section 383.153.

Question 5: May a State choose to implement a driver license system involving multiple part license documents?

Interpretation: Yes. A two or more part document, as currently used in some States, is acceptable, provided:

- o The two documents must both be present to constitute a "license."
- o Each document is explicitly "tied" to the other document(s), and to a single driver's record. Each document must indicate that the driver is licensed as a CMV driver, if that is the case.
- o The multi-part license document includes all of the data elements specified in 49 C.F.R. Part 383, Subpart J.

Question 6: If the state restricts the CDL driving privilege, must that restriction be shown on the license?

Interpretation: Yes -- restrictions which affect the CDL operating privilege must be explained on the license so as to be usable for reciprocity and enforcement.

These may include, but are not limited to "No Air Brakes," or restrictions on the vehicle group, if the State expands the classification to include more vehicles.

States may use the reverse side of the document or an attached sticker to explain these restrictions.

*Question 7: Can a State issue a CDL that does not show the driver's Social Security Number (SSN)?

Interpretation: Yes. Section 383.153 does not specify the SSN as a required element of the CDL document.

*Question 8: Can a State issue a CDL to an applicant who, for religious reasons, does not possess or does not provide an SSN?

Interpretation: Yes. If the person has convinced the Social Security Administration and the Internal Revenue Service that his or her seriously held religious beliefs would be violated by the assignment or use of an SSN, then the State would have no choice but to waive the requirement (in Section 383.153(d)(1)) that the applicant provide the SSN.

Special Topics

Buses and CDL

Question 1: The basic knowledge test given to all CDL applicants must address two topics -- cargo handling and hazardous materials -- that may not immediately concern bus drivers. May a State delete these two areas in basic knowledge tests given to bus drivers?

Interpretation: Two of the required knowledge areas in the basic knowledge test relate specifically to truck operations because the vehicle classification system in the Federal standard allows a bus driver having a CDL with a passenger endorsement, to drive trucks within the same weight group as the bus in which he/she took the skills test, unless the State otherwise restricts the license.

A State could develop a basic knowledge test for bus drivers only, by deleting the cargo handling and hazardous materials questions from its normative basic knowledge test. In that case, the driver applicant would still need to pass the specialized knowledge and skills tests for the passenger endorsement, and the State would need to restrict the CDL to passenger operations only.

Question 2: What skills test is required for a CDL holder seeking to add a passenger endorsement?

If a person already holds a CDL without a passenger endorsement, and subsequently applies for such endorsement, three situations can arise:

- (1) *The passenger test vehicle is in the same vehicle group as that shown on the CDL.*

This situation poses no problem since there is no discrepancy.

- (2) *The passenger test vehicle is in a greater vehicle group than that shown on the preexisting CDL.*

This is an upgrade situation. The driver and the State must meet the requirements of 49 CFR Sections 383.71(d)

and 383.73(d), and the upgraded CDL must show the vehicle group of the passenger test vehicle.

- (3) *The passenger test vehicle is in a lesser vehicle group than that shown on the preexisting CDL.*

In this situation, the CDL retains the vehicle group of the preexisting CDL, but also restricts the driver, when engaged in CMV passenger operations, to vehicles in the group in which the passenger skills test was taken, or to a lesser group.

The following table illustrates example situations:

<u>If the person --</u>		<u>Then the revised CDL would show --</u>			
<u>Already holds a CDL in vehicle group:</u>	<u>And takes passenger skills test in vehicle representative of group:</u>	<u>Vehicle group:</u>	<u>Passenger endorsement</u>	<u>Passenger use restricted to vehicles in group(s):</u>	<u>Item Number Above</u>
A	B	A	P	B and C	(3)
A	C	A	P	C	(3)
B	C	B	P	C	(3)
C	B	B	P	no restriction	(2)

To implement this requirement, a State would have to establish two new restrictions: the first would restrict CMV passenger operation to groups B and C; the second would restrict CMV passenger operation to group C. Although the FHWA has not provided, in its standard, uniform restriction codes for States to use on their licenses, CDLIS officials will be developing standard codes for this purpose for use in the "restriction" section of CDLIS records, to which the State restriction codes must be translated.

CDLIS

Question: What can a State do about the costly and time-consuming problem of adding the network interface and CDLIS inquiry procedures to its CDL licensing process?

Interpretation: The money available to States in the CDL grant program can help offset some of the costs.

The use of generic software products, such as the Enhanced State Interface (ESI) can save time.

However, many States are still experiencing difficulty and delays establishing the software and network connection to the Commercial Driver's License Information System (CDLIS).

States facing delays can begin driver testing, while waiting for the completion of the computer system interface. While drivers tested under this circumstance cannot be issued a CDL or a license inscribed "CDL" or "Commercial Driver's License," the record of testing can be retained by the State and the driver issued an endorsing sticker or card, or even a new license, when the CDLIS process is completed. Such tests count toward the distribution of Supplementary Grant funds.

Some States have already adopted plans along these lines to progress toward the April 1992 date when all commercial drivers must have CDLs.

State Compliance

Question 1: What about a delay in the deadline for implementation?

Interpretation: The time frames established in the Act are important to maintain as an acceptable goal for compliance.

The regulations have several provisions that will allow the States, with proper planning and programming, to comply more easily. "Third party testing" and "grandfathering" can ease the burden on State personnel and facilities.

A CDL Implementation Team has been formed, consisting of FHWA and AAMVA, to assist States with CDL implementation.

Question 2: What is "substantial compliance"?

Interpretation:

- o A Notice of Proposed Rulemaking (NPRM) will address "substantial compliance" with Section 12009 of the Commercial Motor Vehicle Safety Act of 1986, and the FHWA's procedures to determine each State's compliance status by the September 30, 1993 deadline. It should be published in the first half of 1990.
- o Meanwhile, 49 CFR Part 383 (the CDL regulation) provides guidelines for States to follow in implementing programs for testing, licensing, and disqualifying commercial motor vehicle operators.
- o States that adhere strictly to the standards of Part 383 will be well-positioned for 1993.

Question 3: May a State choose to delay, until April 1, 1992, the enforcement of the disqualification provisions of the CDL Program against existing CDL holders?

Interpretation: Yes. If, subsequent to obtaining a CDL, a CDL holder commits a disqualifying offense under Section 383.51, the State is under no immediate legal obligation to suspend, revoke, or cancel such CDL.

For the driver, however, a conviction for a disqualifying offense under 49 CFR Section 383.51 automatically results in a loss of qualification. An employer cannot allow a disqualified driver to operate a commercial motor vehicle; therefore, the employer is responsible to rely on the

disqualification provisions of Section 383.51, even in States which have not yet implemented licensing-based enforcement of those provisions for existing CDL holders.

Question 4: If the State adopts and uses the Essex knowledge and skills tests and study manual, will the State meet the minimum testing requirements of the Act?

Interpretation: Yes, as long as testing is done in accordance with Subparts F, G, and H of Part 383.

Tow Truck Operations and CDL

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

For basic CDL purposes, the tow truck and its towed vehicle are treated the same as any other powered unit towing a nonpowered unit. Thus:

- o If the GCWR of the tow truck and its towed vehicle is 26,001 pounds or more, and the towed vehicle alone exceeds 10,000 pounds GVWR, then the driver needs a Group A CDL.
- o 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, then the driver needs a Group B CDL.
- o A driver of a tow truck or towing configuration that does not fit either description above, requires a Group C CDL only if he or she tows, on a "subsequent move," a vehicle placarded for hazardous materials.

Does a CDL-holding tow truck operator require endorsements to tow "endorsable" vehicles?

For CDL endorsement purposes, the nature of the tow truck operations comes into play.

- o If the driver's towing operations are restricted to emergency "first moves" from the site of a malfunction or accident to the nearest appropriate repair facility, then no CDL endorsement of any kind is required.
- o 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 endorsement.

Examples

- o A 9,900 pound GVWR truck carrying placarded hazardous materials breaks down and is taken by a tow truck under 26,001 pounds GVWR

to a garage for repairs. Does the tow truck driver need a CDL? If so -- does he or she also need a hazardous materials endorsement?

No CDL is needed. The tow truck and towed vehicle do not fit into the Group A or B categories. Moreover, since this is a "first move," the tow truck operator needs neither a Group C CDL nor (obviously) a hazardous materials endorsement.

- o An over-26,001-pound bus is towed from one garage to another (i.e., a subsequent move). Does the tow truck driver need a CDL? If so, in what vehicle group, and is a passenger endorsement required?

Since the GCWR of the tow truck/bus combination exceeds 26,001 pounds, and since the towed vehicle exceeds 10,000 pounds, the driver must hold a CDL in Group A irrespective of the type of move involved. However, according to the interpretation above, no passenger endorsement would be required.

What is a "representative vehicle" for a Group A tow truck for skills testing? May States modify skills tests to recognize differences between tow truck configurations and tractor/trailer combinations?

- o A tow truck driver seeking a Group A CDL may take his/her skills test in a tractor/trailer combination, or in a tow truck with another vehicle in tow. As long as the GCWR of the combination is 26,001 pounds or more and the vehicle in tow exceeds 10,000 pounds GVWR, the vehicle is a representative vehicle and the driver can operate all Group A vehicles.
- o The State may modify its skills test to conform with the special configuration of the "tow truck in tow"; in that case, the State would appropriately restrict the resultant Group A CDL (for example, "valid in tow trucks only" or "not valid in tractor/trailers").

**CDL and Part 391,
"Qualification of Drivers"**

*Question 1: Is an employer still required to administer a road test if the State has implemented skills testing?

Interpretation: Paragraph 391.33(a)(1) allows an employer to accept, in lieu of the road test, a CDL. However, if the employer intends to assign to the driver a vehicle necessitating the doubles/triples or tank vehicle endorsement, the employer still needs to administer the road test under Section 391.31 in that type of vehicle (as enunciated at 53 FR 27644).

*Question 2: What if the driver possesses a CDL, but fails a road test given by the company?

Interpretation: The person's State-granted driving privileges would not be affected since he or she has already passed the CDL skills test or met the substitution requirements of Section 383.77. Failure of a company-administered road test could, however, affect the driver's qualifications to drive for that particular company.

*Question 3: Need an employer possess a CDL license if he or she is giving a road test under Part 391 to a prospective employee who now holds either a CDL or a CMV learner's permit?

Interpretation: If the job applicant holds a CDL, the employer administering the road test need not have a CDL. If the applicant holds a learner's permit only, then the employer must hold a CDL.

*Question 4: State Y reads the questions on the written exam to functionally illiterate drivers, and writes down the drivers' answers for them. This does not seem to fit the requirements that applicants read and write English. Is this aspect of State Y's CDL program legal?

Interpretation: Yes, such procedures are perfectly acceptable. Part 383 does not require, as a precondition of licensing, any greater fluency in English than may be already required of the driver under Part 391 or analogous State requirements.

*Question 5: May States administer the hazardous materials endorsement knowledge test to drivers in languages other than English, and in formats other than written?

Interpretation: Yes. Part 383 contains no provision singling out the hazardous materials test as requiring the English language and a written format. The English language proficiency provision in paragraph 391.11(b)(2) has been in existence in its current format for many years. To date, there has been no compelling evidence raised in regard to its insufficiency with respect to the transportation of hazardous materials. The CDL standards have not changed or in any way diluted the authority of this provision.

*Question 6: Do the Federal age requirements (in § 391.11(b)(1)) apply to CMV drivers involved entirely in intrastate commerce?

Interpretation: No. Neither the CDL requirements in Part 383 nor the traditional Federal Motor Carrier Safety Regulations in Parts 390-99 require drivers engaged purely in intrastate commerce to be 21 years old. However, the States are free to set such age thresholds for their domiciled drivers regardless of the type of transportation they provide. Thus, it is up to each State to determine its policy for the minimum age of exclusively intrastate drivers.

*Question 7: State Z has adopted the traditional Federal Motor Carrier Safety Regulations (in Parts 390 through 399) in toto with no additional requirements. Must employees of political subdivisions of State Z who operate CMVs meet the "qualification requirements" of Part 391 so as to obtain CDLs? Must such employees who operate CMVs be "medically certified" to obtain CDLs? Must political subdivisions test their employees who drive CMVs for controlled substances under Part 391?

Interpretation: No, to all three questions. Paragraph 390.3(f)(92) excepts "transportation performed by the Federal government, a State, or any political subdivision of a State" from Part 391 (and generally from Parts 390 through 399). Unless State Z, in adopting Parts 390 through 399, makes driver qualification and controlled substance testing requirements specifically applicable to employees of State political subdivisions, such employees should remain excepted from said requirements.

CDL and MCSAP

*Question 1: My State is going to grandfather current intrastate drivers from the medical qualification standards and will still be eligible for MCSAP funding. How should I reflect this on the CDLs we issue?

Interpretation: The CDL does not have to reflect this, nor does the State have to enforce, by means of its CDL program, medical standards that were upgraded to meet Federal interstate standards in Part 391. The only thing you must do under 49 C.F.R. Sections 383.71 and 383.73 is to have the intrastate driver certify that he/she is not subject to Part 391.

To enhance enforcement, the State may wish to:

- (1) indicate on the CDL that the driver is restricted to "intrastate commerce only"; or
- (2) indicate on the medical examination certificate that such certificate is valid for "intrastate commerce only."

Within the context of CDL, your State will not put its confirmation at risk if you use either, or neither, of the above.

Reciprocity

*Question 1: Can a State place an "intrastate only" or similar restriction on the CDL of a driver who certifies that he or she is not subject to Part 391?

Interpretation: Yes, at the State's option. However, an "intrastate only" restriction does not apply to drivers who are in interstate commerce but are excepted or exempted from Part 391 under the provisions of Part 390 or 391. For example, an 18-year-old driver, taking a job with a custom harvester, certifies on his CDL application that he is "not subject to Part 391." (See above under Section 383.71.) The State issues a CDL and restricts it to "intrastate only." Because custom harvesters are exempted from Part 391 under Section 391.2, the "intrastate only" restriction has no effect on this driver, who may conduct custom harvester operations in interstate commerce. For this reason, States are urged to explain on the CDL document either that the "intrastate only" restriction does not apply to drivers in excepted or exempted industries named in 49 CFR 390.3 and 391.2; or that the CDL is valid in interstate commerce only in movements of the excepted or exempted industries.

*Question 2: What policy must a State adopt with regard to out-of-State CDLs carrying an intrastate restriction?

Interpretation: The FHWA currently regards this as a State matter.

*Question 3: May States choose to interpret "intrastate" in ways that differ from established transportation practice?

Interpretation: States do not have the discretion to change the Federal definition of either "interstate" or "intrastate" commerce. If the transportation is interstate, then the driver is engaged in interstate commerce even if his or her portion of the movement is exclusively within a single State's boundaries. If the origin and destination of the movement are within a single State but the route traverses another State, the driver is engaged in interstate commerce.

*Question 4: State X has developed stringent requirements for bus drivers that substantially exceed those of the CDL program. To whom can the State apply these stringent requirements given the "reciprocity" provision of the Commercial Motor Vehicle Safety Act of 1986?

Interpretation: State X may apply the stringent requirements to all bus drivers domiciled in State X, and to all bus drivers who conduct exclusively intrastate commerce within State X.

State X may also apply the stringent requirements to drivers, domiciled in other States, who conduct interstate commerce in State X, as long as they do not hold CDLs. (Nevertheless, State X will not be able to impose the stringent requirements on such drivers if the FHWA determines that State X's requirements are so inconsistent with Federal safety requirements as to call into play the preemption process of 49 U.S.C. app. 2507.)

State X may not apply the stringent requirements to bus drivers domiciled in other States who conduct interstate commerce in State X and who hold valid CDLs.