



Regulations current to October 28, 2013

§ 398.1 Definitions.

(a) ***Migrant worker.*** “Migrant worker” means any individual proceeding to or returning from employment in agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203(f)) or section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)).

(b) ***Carrier of migrant workers by motor vehicle.*** “Carrier of migrant worker by motor vehicle” means any person, including any “contract carrier by motor vehicle”, but not including any “common carrier by motor vehicle”, who or which transports in interstate or foreign commerce at any one time three or more migrant workers to or from their employment by any motor vehicle other than a passenger automobile or station wagon, except a migrant worker transporting himself/herself or his/her immediate family.

(c) ***Motor carrier.*** “Motor carrier” means any carrier of migrant workers by motor vehicle as defined in paragraph (b) of this section.

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

(e) ***Bus.*** “Bus” means any motor vehicle designed, constructed, and used for the transportation of passengers: Except passenger automobiles or station wagons other than taxicabs.

(f) ***Truck.*** “Truck” means any self-propelled motor vehicle except a truck tractor, designed and constructed primarily for the transportation of property.

(g) ***Truck tractor.*** “Truck tractor” means a self-propelled motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(h) ***Semitrailer.*** “Semitrailer” means any motor vehicle other than a “pole trailer”, with or without motive power designed to be drawn by another motor vehicle and so constructed that some part of its weight rests upon the towing vehicle.

(i) ***Driver or operator.*** “Driver or operator” means any person who drives any motor vehicle.

(j) ***Highway.*** “Highway” means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic.

§ 398.2 Applicability.

(a) ***General.*** The regulations prescribed in this part are applicable to carriers of migrant workers by motor vehicle, as defined in [§398.1\(b\)](#), but only in the case of transportation of any migrant

worker for a total distance of more than 75 miles (120.7 kilometers) in interstate commerce, as defined in 49 CFR 390.5.

(b) **Exception.** (1) The regulations prescribed in this part are not applicable to carriers of migrant workers by motor vehicle, as defined in § 398.1(b), when:

(i) The motor vehicle is designed or used to transport between 9 and 15 passengers (including the driver);

(ii) The motor carrier is directly compensated for the transportation service; and

(iii) The vehicle used to transport migrant workers is operated beyond a 75 air-mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location.

(2) Carriers of migrant workers by motor vehicle that operate vehicles, designed or used to transport between 9 and 15 passengers (including the driver) for direct compensation, in interstate commerce, must comply with the applicable requirements of [49 CFR parts 385](#), 390, [391](#), [392](#), [393](#), [395](#), and [396](#), when the motor vehicle is operated beyond a 75 air-mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location.

[68 FR 47875, Aug. 12, 2003]

§ 398.3 Qualifications of drivers or operators.

(a) **Compliance required.** Every motor carrier, and its officers, agents, representatives and employees who drive motor vehicles or are responsible for the hiring, supervision, training, assignment or dispatching of drivers shall comply and be conversant with the requirements of this part.

(b) **Minimum physical requirements.** No person shall drive, nor shall any motor carrier require or permit any person to drive, any motor vehicle unless such person possesses the following minimum qualifications:

(1) No loss of foot, leg, hand or arm,

(2) No mental, nervous, organic, or functional disease, likely to interfere with safe driving.

(3) No loss of fingers, impairment of use of foot, leg, fingers, hand or arm, or other structural defect or limitation, likely to interfere with safe driving.

(4) **Eyesight.** Visual acuity of at least 20/40 (Snellen) in each eye either without glasses or by correction with glasses; form field of vision in the horizontal meridian shall not be less than a total of 140 degrees; ability to distinguish colors red, green and yellow; drivers requiring correction by glasses shall wear properly prescribed glasses at all times when driving.

(5) **Hearing.** Hearing shall not be less than 10/20 in the better ear, for conversational tones, without a hearing aid.

(6) **Liquor, narcotics and drugs.** Shall not be addicted to the use of narcotics or habit forming drugs, or the excessive use of alcoholic beverages or liquors.

(7) **Initial and periodic physical examination of drivers.** No person shall drive nor shall any motor carrier require or permit any person to drive any motor vehicle unless within the immediately preceding 36 month period such person shall have been physically examined and shall have been

certified in accordance with the provisions of paragraph (b)(8) of this section by a licensed doctor of medicine or osteopathy as meeting the requirements of this subsection.

(8) ***Certificate of physical examination.*** Every motor carrier shall have in its files at its principal place of business for every driver employed or used by it a legible certificate of a licensed doctor of medicine or osteopathy based on a physical examination as required by paragraph (b)(7) of this section or a legible photographically reproduced copy thereof, and every driver shall have in his/her possession while driving, such a certificate or a photographically reproduced copy thereof covering himself/herself.

(9) ***Doctor's certificate.*** The doctor's certificate shall certify as follows:

Doctor's Certificate

(Driver of Migrant Workers)

This is to certify that I have this day examined _____ in accordance with [§398.3\(b\)](#) of the Federal Motor Carrier Safety Regulations of the Federal Motor Carrier Safety Administration and that I find him/her

Qualified under said rules ?

Qualified only when wearing glasses ?

I have kept on file in my office a completed examination.

(Date)

(Place)

(Signature of examining doctor)

(Address of doctor)

Signature of driver

Address of driver

(c) ***Minimum age and experience requirements.*** No person shall drive, nor shall any motor carrier require or permit any person to drive, any motor vehicle unless such person possesses the following minimum qualifications:

(1) ***Age.*** Minimum age shall be 21 years.

(2) ***Driving skill.*** Experience in driving some type of motor vehicle (including private automobiles) for not less than one year, including experience throughout the four seasons.

(3) ***Knowledge of regulations.*** Familiarity with the rules and regulations prescribed in this part pertaining to the driving of motor vehicles.

(4) ***Knowledge of English.*** Every driver shall be able to read and speak the English language sufficiently to understand highway traffic signs and signals and directions given in English and to respond to official inquiries.

(5) ***Driver's permit.*** Possession of a valid permit qualifying the driver to operate the type of vehicle driven by him/her in the jurisdiction by which the permit is issued.

[33 FR 19765, Dec. 25, 1968, as amended at 40 FR 44557, Sept. 29, 1975]

§ 398.4 Driving of motor vehicles.

(a) **Compliance required.** Every motor carrier shall comply with the requirements of this part, shall instruct its officers, agents, representatives and drivers with respect thereto, and shall take such measures as are necessary to insure compliance therewith by such persons. All officers, agents, representatives, drivers, and employees of motor carriers directly concerned with the management, maintenance, operation, or driving of motor vehicles, shall comply with and be conversant with the requirements of this part.

(b) **Driving rules to be obeyed.** Every motor vehicle shall be driven in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated, unless such laws, ordinances and regulations are at variance with specific regulations of this Administration which impose a greater affirmative obligation or restraint.

(c) **Driving while ill or fatigued.** No driver shall drive or be required or permitted to drive a motor vehicle while his/her ability or alertness is so impaired through fatigue, illness, or any other cause as to make it unsafe for him/her to begin or continue to drive, except in case of grave emergency where the hazard to passengers would be increased by observance of this section and then only to the nearest point at which the safety of passengers is assured.

(d) **Alcoholic beverages.** No driver shall drive or be required or permitted to drive a motor vehicle, be in active control of any such vehicle, or go on duty or remain on duty, when under the influence of any alcoholic beverage or liquor, regardless of its alcoholic content, nor shall any driver drink any such beverage or liquor while on duty.

(e) **Schedules to conform with speed limits.** No motor carrier shall permit nor require the operation of any motor vehicle between points in such period of time as would necessitate the vehicle being operated at speeds greater than those prescribed by the jurisdictions in or through which the vehicle is being operated.

(f) **Equipment and emergency devices.** No motor vehicle shall be driven unless the driver thereof shall have satisfied himself/herself that the following parts, accessories, and emergency devices are in good working order; nor shall any driver fail to use or make use of such parts, accessories, and devices when and as needed:

Service brakes, including trailer brake connections.

Parking (hand) brake.

Steering mechanism.

Lighting devices and reflectors.

Tires.

Horn.

Windshield wiper or wipers.

Rear-vision mirror or mirrors.

Coupling devices.

Fire extinguisher, at least one properly mounted.

Road warning devices, at least one red burning fusee and at least three flares (oil burning pot torches), red electric lanterns, or red emergency reflectors.

(g) **Safe loading**—(1) **Distribution and securing of load.** No motor vehicle shall be driven nor shall any motor carrier permit or require any motor vehicle to be driven if it is so loaded, or if the load thereon is so improperly distributed or so inadequately secured, as to prevent its safe operation.

(2) **Doors, tarpaulins, tailgates and other equipment.** No motor vehicle shall be driven unless the tailgate, tailboard, tarpaulins, doors, all equipment and rigging used in the operation of said vehicle, and all means of fastening the load, are securely in place.

(3) **Interference with driver.** No motor vehicle shall be driven when any object obscures his/her view ahead, or to the right or left sides, or to the rear, or interferes with the free movement of his/her arms or legs, or prevents his/her free and ready access to the accessories required for emergencies, or prevents the free and ready exit of any person from the cab or driver's compartment.

(4) **Property on motor vehicles.** No vehicle transporting persons and property shall be driven unless such property is stowed in a manner which will assure:

(i) Unrestricted freedom of motion to the driver for proper operation of the vehicle;

(ii) Unobstructed passage to all exits by any person; and

(iii) Adequate protection to passengers and others from injury as a result of the displacement or falling of such articles.

(5) **Maximum passengers on motor vehicles.** No motor vehicle shall be driven if the total number of passengers exceeds the seating capacity which will be permitted on seats prescribed in § 398.5(f) when that section is effective. All passengers carried on such vehicle shall remain seated while the motor vehicle is in motion.

(h) **Rest and meal stops.** Every carrier shall provide for reasonable rest stops at least once between meal stops. Meal stops shall be made at intervals not to exceed six hours and shall be for a period of not less than 30 minutes duration.

(i) **Kinds of motor vehicles in which workers may be transported.** Workers may be transported in or on only the following types of motor vehicles: A bus, a truck with no trailer attached, or a semitrailer attached to a truck-tractor provided that no other trailer is attached to the semitrailer. Closed vans without windows or means to assure ventilation shall not be used.

(j) **Limitation on distance of travel in trucks.** Any truck when used for the transportation of migrant workers, if such workers are being transported in excess of 600 miles, shall be stopped for a period of not less than eight consecutive hours either before or upon completion of 600 miles travel, and either before or upon completion of any subsequent 600 miles travel to provide rest for drivers and passengers.

(k) **Lighting devices and reflectors.** No motor vehicle shall be driven when any of the required lamps or reflectors are obscured by the tailboard, by any and all lighting devices required by subpart B of part 393 of this subchapter shall be lighted during darkness or at any other time when

there is not sufficient light to render vehicles and persons visible upon the highway at a distance of 500 feet.

(l) **Ignition of fuel; prevention.** No driver or any employee of a motor carrier shall:

(1) Fuel a motor vehicle with the engine running, except when it is necessary to run the engine to fuel the vehicle;

(2) Smoke or expose any open flame in the vicinity of a vehicle being fueled;

(3) Fuel a motor vehicle unless the nozzle of the fuel hose is continuously in contact with the intake pipe of the fuel tank;

(4) Permit any other person to engage in such activities as would be likely to result in fire or explosion.

(m) **Reserve fuel.** No supply of fuel for the propulsion of any motor vehicle or for the operation of any accessory thereof shall be carried on the motor vehicle except in a properly mounted fuel tank or tanks.

(n) **Driving by unauthorized person.** Except in case of emergency, no driver shall permit a motor vehicle to which he/she is assigned to be driven by any person not authorized to drive such vehicle by the motor carrier in control thereof.

(o) **Protection of passengers from weather.** No motor vehicle shall be driven while transporting passengers unless the passengers therein are protected from inclement weather conditions such as rain, snow, or sleet, by use of the top or protective devices required by § 398.5(f).

(p) **Unattended vehicles; precautions.** No motor vehicle shall be left unattended by the driver until the parking brake has been securely set, the wheels chocked, and all reasonable precautions have been taken to prevent the movement of such vehicle.

(q) **Railroad grade crossings; stopping required; sign on rear of vehicle.** Every motor vehicle shall, upon approaching any railroad grade crossing, make a full stop not more than 50 feet, nor less than 15 feet from the nearest rail of such railroad grade crossing, and shall not proceed until due caution has been taken to ascertain that the course is clear; except that a full stop need not be made at:

(1) A street car crossing within a business or residence district of a municipality;

(2) A railroad grade crossing where a police officer or a traffic-control signal (not a railroad flashing signal) directs traffic to proceed;

(3) An abandoned or exempted grade crossing which is clearly marked as such by or with the consent of the proper state authority, when such marking can be read from the driver's position.

All such motor vehicles shall display a sign on the rear reading, "This Vehicle Stops at Railroad Crossings."

[33 FR 19765, Dec. 25, 1968, as amended at 40 FR 44557, Sept. 29, 1975]

§ 398.5 Parts and accessories necessary for safe operation.

(a) **Compliance.** Every motor carrier and its officers, agents, drivers, representatives and

employees directly concerned with the installation and maintenance of equipment and accessories shall comply and be conversant with the requirements and specifications of this part, and no motor carrier shall operate any motor vehicle, or cause or permit it to be operated, unless it is equipped in accordance with said requirements and specifications.

(b) **Lighting devices.** Every motor vehicle shall be equipped with the lighting devices and reflectors required by subpart B of part 393 of this subchapter.

(c) **Brakes.** Every motor vehicle shall be equipped with brakes as required by subpart C of part 393 of this subchapter, except [§393.44](#) of this subchapter, and shall satisfy the braking performance requirements contained therein.

(d) **Coupling devices; fifth wheel mounting and locking.** The lower half of every fifth wheel mounted on any truck-tractor or dolly shall be securely affixed to the frame thereof by U-bolts of adequate size, securely tightened, or by other means providing at least equivalent security. Such U-bolts shall not be of welded construction. The installation shall be such as not to cause cracking, warping, or deformation of the frame. Adequate means shall be provided positively to prevent the shifting of the lower half of a fifth wheel on the frame to which it is attached. The upper half of every fifth wheel shall be fastened to the motor vehicle with at least the security required for the securing of the lower half to a truck-tractor or dolly. Locking means shall be provided in every fifth wheel mechanism including adapters when used, so that the upper and lower halves may not be separated without the operation of a positive manual release. A release mechanism operated by the driver from the cab shall be deemed to meet this requirement. On fifth wheels designed and constructed as to be readily separable, the fifth wheel locking devices shall apply automatically on coupling for any motor vehicle the date of manufacture of which is subsequent to December 31, 1952.

(e) **Tires.** Every motor vehicle shall be equipped with tires of adequate capacity to support its gross weight. No motor vehicle shall be operated on tires which have been worn so smooth as to expose any tread fabric or which have any other defect likely to cause failure. No vehicle shall be operated while transporting passengers while using any tire which does not have tread configurations on that part of the tire which is in contact with the road surface. No vehicle transporting passengers shall be operated with re-grooved, re-capped, or re-treaded tires on front wheels.

(f) **Passenger compartment.** Every motor vehicle transporting passengers, other than a bus, shall have a passenger compartment meeting the following requirements:

(1) **Floors.** A substantially smooth floor, without protruding obstructions more than two inches high, except as are necessary for securing seats or other devices to the floor, and without cracks or holes.

(2) **Sides.** Side walls and ends above the floor at least 60 inches high, by attachment of sideboards to the permanent body construction if necessary. Stake body construction shall be construed to comply with this requirement only if all six-inch or larger spaces between stakes are suitably closed to prevent passengers from falling off the vehicle.

(3) **Nails, screws, splinters.** The floor and the interior of the sides and ends of the passenger-carrying space shall be free of inwardly protruding nails, screws, splinters, or other projecting

objects likely to be injurious to passengers or their apparel.

(4) **Seats.** On and after November 1, 1957, a seat shall be provided for each worker transported. The seats shall be: Securely attached to the vehicle during the course of transportation; not less than 16 inches nor more than 19 inches above the floor; at least 13 inches deep; equipped with backrests extending to a height of at least 36 inches above the floor, with at least 24 inches of space between the backrests or between the edges of the opposite seats when face to face; designed to provide at least 18 inches of seat for each passenger; without cracks more than two inches wide, and the exposed surfaces, if made of wood, planed or sanded smooth and free of splinters.

(5) **Protection from weather.** Whenever necessary to protect the passengers from inclement weather conditions, be equipped with a top at least 80 inches high above the floor and facilities for closing the sides and ends of the passenger-carrying compartment. Tarpaulins or other such removable devices for protection from the weather shall be secured in place.

(6) **Exit.** Adequate means of ingress and egress to and from the passenger space shall be provided on the rear or at the right side. Such means of ingress and egress shall be at least 18 inches wide. The top and the clear opening shall be at least 60 inches high, or as high as the side wall of the passenger space if less than 60 inches. The bottom shall be at the floor of the passenger space.

(7) **Gates and doors.** Gates or doors shall be provided to close the means of ingress and egress and each such gate or door shall be equipped with at least one latch or other fastening device of such construction as to keep the gate or door securely closed during the course of transportation; and readily operative without the use of tools.

(8) **Ladders or steps.** Ladders or steps for the purpose of ingress or egress shall be used when necessary. The maximum verticle spacing of footholds shall not exceed 12 inches, except that the lowest step may be not more than 18 inches above the ground when the vehicle is empty.

(9) **Hand holds.** Hand holds or devices for similar purpose shall be provided to permit ingress and egress without hazard to passengers.

(10) **Emergency exit.** Vehicles with permanently affixed roofs shall be equipped with at least one emergency exit having a gate or door, latch and hand hold as prescribed in paragraphs (f) (7) and (9) of this section and located on a side or rear not equipped with the exit prescribed in paragraph (f)(6) of this section.

(11) **Communication with driver.** Means shall be provided to enable the passengers to communicate with the driver. Such means may include telephone, speaker tubes, buzzers, pull cords, or other mechanical or electrical means.

(g) **Protection from cold.** Every motor vehicle shall be provided with a safe means of protecting passengers from cold or undue exposure, but in no event shall heaters of the following types be used:

(1) **Exhaust heaters.** Any type of exhaust heater in which the engine exhaust gases are conducted into or through any space occupied by persons or any heater which conducts engine compartment air into any such space.

- (2) ***Unenclosed flame heaters.*** Any type of heater employing a flame which is not fully enclosed.
- (3) ***Heaters permitting fuel leakage.*** Any type of heater from the burner of which there could be spillage or leakage of fuel upon the tilting or overturning of the vehicle in which it is mounted.
- (4) ***Heaters permitting air contamination.*** Any heater taking air, heated or to be heated, from the engine compartment or from direct contact with any portion of the exhaust system; or any heater taking air in ducts from the outside atmosphere to be conveyed through the engine compartment, unless said ducts are so constructed and installed as to prevent contamination of the air so conveyed by exhaust or engine compartment gases.
- (5) Any heater not securely fastened to the vehicle.

[33 FR 19765, Dec. 25, 1968, as amended at 77 FR 59828, Oct. 1, 2012]

§ 398.6 Hours of service of drivers; maximum driving time.

No person shall drive nor shall any motor carrier permit or require a driver employed or used by it to drive or operate for more than 10 hours in the aggregate (excluding rest stops and stops for meals) in any period of 24 consecutive hours, unless such driver be afforded eight consecutive hours rest immediately following the 10 hours aggregate driving. The term “24 consecutive hours” as used in this part means any such period starting at the time the driver reports for duty.

§ 398.7 Inspection and maintenance of motor vehicles.

Every motor carrier shall systematically inspect and maintain or cause to be systematically maintained, all motor vehicles and their accessories subject to its control, to insure that such motor vehicles and accessories are in safe and proper operating condition.

§ 398.8 Administration inspection of motor vehicles in operation.

(a) ***Administration personnel authorized to perform inspections.*** All persons designated as Special Agents of the Federal Motor Carrier Safety Administration, as detailed in appendix B of chapter III of this title, are authorized to enter upon and perform inspections of motor carrier's vehicles in operation.

(b) ***Prescribed inspection report.*** Form MCS 63, Driver-Equipment Compliance Check, shall be used to record findings from motor vehicles selected for final inspection by authorized Administration employees.

(c) ***Motor vehicles declared “out of service”.*** (1) Authorized Administration employees shall declare and mark “out of service” any motor vehicle which by reason of its mechanical condition or loading is so imminently hazardous to operate as to be likely to cause an accident or a breakdown. Form MCS 64, “Out of Service Vehicle” sticker shall be used to mark vehicles “out of service.”

(2) No motor carrier shall require or permit any person to operate nor shall any person operate any motor vehicle declared and marked, “out of service” until all repairs required by the “out of service notice” on Form MCS 63 have been satisfactorily completed. The term operate as used in this section shall include towing the vehicle; provided, however, that vehicles marked “out of service” may be towed away by means of a vehicle using a crane or hoist; and provided further, that the vehicle combination consisting of the emergency towing vehicle and the “out of service” vehicle meets the performance requirements of [§393.52](#).

(3) No person shall remove the “Out of Service Vehicle” sticker from any motor vehicle prior to completion of all repairs required by the “out of service notice” on Form MCS 63.

(4) The person or persons completing the repairs required by the “out of service notice” shall sign the “Certification of Repairman” in accordance with the terms prescribed on Form MCS 63, entering the name of his/her shop or garage and the date and time the required repairs were completed. If the driver completes the required repairs, he/she shall sign and complete the “Certification of Repairman.”

(d) ***Motor carrier's disposition of Form MCS 63.*** (1) Motor carriers shall carefully examine Forms MCS 63. Any and all violations or mechanical defects noted thereon shall be corrected. To the extent drivers are shown not to be in compliance with the Federal Motor Carrier Safety Regulations, appropriate corrective action shall be taken by the motor carrier.

(2) Motor carriers shall complete the “Motor Carrier Certification of Action Taken” on Form MCS 63 in accordance with the terms prescribed thereon. Motor carriers shall return Forms MCS 63 to the address indicated upon Form MCS 63 within fifteen (15) days following the date of the vehicle inspection.

[33 FR 19765, Dec. 25, 1968, as amended at 40 FR 44557, Sept. 29, 1975]