

Federal Motor Carrier Safety Regulations 390.3 or 390.3T. Which One Should You Read and Follow?

Well, for now, you need to follow the one with the letter "T". "Why?", you ask. The Final Rule published by Federal Motor Carrier Safety Administration (FMCSA) on January 17, 2017 (82 FR 5292) says to until further notice which will be when the proposed Unified Registration System (URS 1 final rule) is deemed compatible with its State partners and implemented for use. The URS 1 final rule was initially to be on track for implementation by October 2015 which was delayed to January 13, 2017. Regulation and guidance were written and in place for the new URS system with an effective date of January 14, 2107. These regulations have been suspended and the regulations that were in place before the January 14, 2017 implementation date are now the "temporary" provisions within the Code of Federal Regulations and are identified with the letter "T" (ex: 390.3T). For now, you will see both the temporary regulation (the with the "T") and the suspended regulation (without the "T") which will be used in the future when the new URS system is fully implemented.

The new URS system will replace certain existing registration and information systems with a single, online, Federal system that would consolidate and simplify four systems: (1) the U.S. Department of Transportation's (USDOT) identification number system; (2) the 9 U.S.C. CHAPTER 139 commercial registration system; (3) the 49 U.S.C. 13906 financial responsibility information system; and (4) the service of process agent designation system (49 U.S.C. 503 AND 13304). FMCSA believes the system, when it is finalized and operating, will improve, and streamline the registration process for motor carriers, property brokers, freight forwarders, Intermodal Equipment Providers (IEPs), hazardous materials

safety permit (HMSP) applicants and cargo tank facilities who are required to register with FMCSA.

Proposed Rules on Obstructive Sleep Apnea Laid to Rest

Effective August 8, 2017 both the Federal Motor Carrier Safety Administration (FMCSA) and Federal Railroad Administration (FRA) withdrew (82 FR 37038) the March 2016 advance notice of proposed rulemaking (ANPRM) concerning obstructive sleep apnea (OSA). This withdrawal follows on the heels of input requested in the ANPRM and the follow-up recommendations from the August 2016 Medical Review Board (MRB) on obstructive sleep apnea. FMCSA will consider updating its January 2015 "Bulletin to Medical Examiners and Training Organizations Regarding Obstructive Sleep Apnea" to ensure that medical examiners "fully understand their role in screening drivers for OSA, identifying drivers at the greatest risk of having OSA, and refer only those individuals to a sleep specialist for testing." Going forward, FMCSA reminded medical examiners that there are no FMCSA rules or other regulatory guidance beyond what is referenced in the bulletin and 82 FR 37038 with guidelines for screening, diagnosis, and treatment of OSA. Examiners must base their medical certification for drivers on their clinical observations, findings, standards of practice, and medical judgment and not on Federal regulation or requirement.

As a means of prevention and fatigue management, FMCSA recommends drivers and their employers use the North American Fatigue Management Program (NAFMP) which is a voluntary interactive web-based educational and training program and can be accessed by visiting <http://www.nafmp.org/index.php?lang=en>.

Atkins Purchased by SNC-Lavalin

Many of you may be aware that Atkins was purchased by SNC-Lavalin in July. Loyal and outstanding customers like you, once again made our company an attractive acquisition and we are proud to become a part of the Canadian based, SNC-Lavalin team! For the time being, we will continue to operate in a "business-as-usual" manner under the Atkins name. As with the conversion to Atkins last year, we expect a seamless transition for our customers. Everything that you value and appreciate about our transportation, suspect/counterfeit items and motor carrier classes will remain unaffected. You can still register for our classes at www.atkinsglobal.com/energytraining. Also, our phone numbers and contacts remain the same. If you have any question, please feel free to contact us.



Latest Happenings in the Federal Register

Proposed Rulemaking Procedure Change

On August 7, 2017 (82 FR 36719) the Federal Motor Carrier Safety Administration (FMCSA) proposed to amend its rulemaking procedures by revising the process for preparing and adopting rules, petitions, and direct final rules. Also, the Agency adds new definitions, and makes general administrative corrections throughout its rulemaking procedures. These proposed actions are authorized under the Fixing America's Surface Transportation (FAST) Act and the Administrative Procedure Act (APA). Comments on this document must be received on or before October 6, 2017.

Out of State CDL Testing Allowed

On August 3, 2017 (82 FR 36101) the Federal Motor Carrier Safety Administration (FMCSA) announced regulatory guidance clarifying that State Driver Licensing Agencies (SDLAs) may agree to facilitate the commercial learner's permit (CLP) application process and to administer the commercial driver's license (CDL) general knowledge test to individuals who are not domiciled in the State. The guidance makes clear that SDLAs may accept applications for CLPs and administer the general knowledge test to individuals taking commercial motor vehicle driver training in that State, but who are not domiciled there, provided that: The SDLA administering the general knowledge test transmits the test results directly, securely, and electronically to the applicant's State of domicile; and the State of domicile agrees to accept the test results and issue the CLP. While the guidance is in answer to general knowledge testing as addressed in FMCSA regulations, they note that this regulatory guidance is consistent with the Agency's October 13, 2016, final rule which amended the CDL regulations to ease the transition of military personnel

into civilian careers driving commercial motor vehicles (CMVs). The regulatory guidance was applicable August 3, 2017 and this guidance expires on August 3, 2022.

Input Solicited for Transport of Dangerous Goods

On July 26, 2017 (82 FR 34745) the Pipeline and Hazardous Materials Safety Administration (PHMSA) requested comments on issues being considered during the 51st and 52nd sessions of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG). Comments must be received by November 17, 2017. The 51st session of the UNSCOE TDG was held in Geneva, Switzerland from July 3 to 7, 2017. The 52nd session will be held November 27 to December 6, 2017, also in Geneva. These are the first and second of four meetings scheduled for the 2017-2018 biennium. Topics on the agenda for the UNSCOE TDG meeting include: (1) Explosives and related matters; (2) Listing, classification, and packing; (3) Electric storage systems; (4) Transport of gases; (5) Miscellaneous proposals for amendments to the Model Regulations on the Transport of Dangerous Goods; (6) Global harmonization of the Transport of Dangerous Goods Regulations with the Model Regulations; (7) Cooperation with the International Atomic Energy Agency; (8) Guiding principles for the Model Regulations; and (9) Issues relating to the Globally Harmonized System of Classification and Labelling of Chemicals (GHS).

Review of Accident Register Extended

On July 7, 2017 (82 FR 31682) in accordance with the Paperwork Reduction Act of 1995 (PRA), Federal Motor Carrier Safety Administration (FMCSA) announced its plan to submit the Information Collection Request

(ICR) described below to the Office of Management and Budget (OMB) for its review and approval. FMCSA requested approval to extend a currently-approved ICR entitled "Accident Recordkeeping Requirements." This ICR relates to Agency requirements that motor carriers maintain a record of accidents involving their commercial motor vehicles (CMVs). On March 22, 2017, FMCSA published a Federal Register notice announcing an increase in the Agency's estimate of the total information-collection (IC) burden of this requirement and asked for public comment. No comments were received. The regulatory burden has not changed, but the population of motor carriers has increased, both organically and because the Agency now includes the population of intrastate motor carriers in this ICR. The deadline for comments was August 7, 2017.

Sleeper Berth Study

On June 27, 2017 (82 FR 29145) the Federal Motor Carrier Safety Administration (FMCSA) published a notice and request for comments seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, FMCSA is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment. FMCSA proposed a pilot program to allow temporary regulatory relief from the Agency's sleeper berth regulation for a limited number of commercial drivers who have a valid commercial driver's license (CDL), and who regularly use a sleeper berth to accumulate their required 10 hours of non-duty work status. During the pilot program, participating drivers would have the option to split their sleeper berth time within parameters specified by FMCSA.

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Driver metrics would be collected for the duration of the study, and participants' safety performance and fatigue levels would be analyzed. This pilot program seeks to produce statistically reliable evidence on the question as to whether split sleeper berth time affects driver safety performance and fatigue levels.

Request of Comments on Spent Nuclear Fuel Storage

On Thursday, June 15, 2017 (82 FR 27536) the U.S. Nuclear Regulatory Commission (NRC) invited public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste and Reactor-Related Greater than Class C Waste." The deadline for comments was August 14, 2017. Comments received after this date will be considered if it is practical to do so, but the commission is able to ensure consideration only for comments received on or before this date.

CLP One Year Timeline May Change

On June 12, 2017 (82 FR 26888) the Federal Motor Carrier Safety Administration (FMCSA) proposed to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to allow States to issue a commercial learner's permit (CLP) with an expiration date of up to one year from the date of initial issuance. CLPs issued for shorter periods may be renewed but the total period of time between the date of initial issuance and the expiration of the renewed CLP could not exceed one year. This proposed amendment would replace the current regulations, which require the States to issue CLPs initially for no more than

180 days, with the possibility of an additional 180-day renewal at the State's discretion. The deadline for comments was August 11, 2017.

Minimum Financial Responsibility to Remain Same

On June 5, 2017 (82 FR 25753) the Federal Motor Carrier Safety Administration (FMCSA) withdrew its November 28, 2014 advance notice of proposed rulemaking (ANPRM) concerning financial responsibility for motor carriers, freight forwarders, and brokers. FMCSA is authorized to establish minimum levels of financial responsibility for motor carriers at or above the minimum levels set by Congress. In the ANPRM, FMCSA sought public comment on whether to exercise its discretion to increase the minimum levels of financial responsibility, and, if so, to what levels. After reviewing all public comments to the ANPRM, FMCSA has determined that it has insufficient data or information to support moving forward with a rulemaking proposal, at this time. As of June 5, 2017, the proposal published on November 28, 2014 at 79 FR 70839 is withdrawn.

NRC Consolidates Regulations

On May 31, 2017 (82 FR 24997) the U.S. Nuclear Regulatory Commission (NRC) issued Regulatory Guide (RG) 5.41, "Shipping, Receiving, and Internal Transfer of Special Nuclear Material." This new RG consolidates in one document NRC guidance concerning the material control and accounting requirements pertaining to shipments, receipts, and internal transfers of special nuclear material. In addition, this guide provides updated guidance for source material (SM) and depleted uranium (DU) at uranium enrichment facilities. Revision 0 to RG 5.41 was available on May 31, 2017.

NRC Withdraws and Combines Regulations

Effective May 31, 2017 (82 FR 25016) the U.S. Nuclear Regulatory Commission (NRC) withdrew the following three regulatory guides (RGs): RG 5.28, "Evaluation of Shipper-Receiver Differences in the Transfer of Special Nuclear Material;" RG 5.49, "Internal Transfers of Special Nuclear Material;" and RG 5.57, "Shipping and Receiving Control of Strategic Special Nuclear Material." These RGs are being withdrawn because the guidance has been incorporated into RG 5.41, "Shipping, Receiving, and Internal Transfer of Special Nuclear Material." The effective date of the withdrawal of RGs 5.28, 5.49, and 5.57 is May 31, 2017.

Entry-Level Training Requirements Further Delayed

On May 23, 2017 (82 FR 23516) the Federal Motor Carrier Safety Administration (FMCSA), in a Final Rule, further delayed the effective date of Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators. In accordance with the Presidential directive as expressed in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled "Regulatory Freeze Pending Review," this action temporarily delays, until June 5, 2017, the effective date of the final rule titled "Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators," initially effective on February 6, 2017. The effective date of the final rule published on December 8, 2016 (81 FR 88732), delayed to March 21, 2017 at 82 FR 8903 and then further delayed to May 22, 2017 at 82 FR 14476, was further delayed until June 5, 2017.

Emergency Response Information – Satisfying the Requirement

In 49 CFR Part 172 Subpart G–*Emergency Response Information*, the requirements indicate that the emergency response information be immediately available at all times that hazardous material is present during transportation. This information is to be available to a Federal, State or local government agency that is responding to an emergency or investigating an incident. When a shipper offers a hazardous material that requires a shipping paper, the emergency response information needs to be included.

At a minimum, emergency response information must include the 7 elements in 172.601(a) the first of which is the basic description (four digit identification number preceded by the letters UN, NA or ID, the Proper Shipping Name, the primary hazard class or division followed by any labeled subsidiaries in parenthesis, and the Packing Group as applicable) and technical name of the hazardous material (required for Proper Shipping Names which have a “G” in column 1 of the Hazardous Material Table in 172.101) as required in Subpart C–Shipping Papers. This is in addition to the other required information for hazards to health, risks of fire or explosion, immediate precautions to be taken in the event of an accident or incident, immediate methods for handling fires or spills, and preliminary first aid measures.

A DOT letter of interpretation (13-0081) from 2013 helps to clarify and give guidance on several ways to satisfy this requirement.

1) Present the information on the shipping paper. With this option, the shipping paper would already have the basic description and technical names.

2) Present the information on another document. The example that they give is a Material Safety Data Sheet (MSDS). Some MSDS’s have the required emergency response information included except for the basic description and technical name(s). The shipper would need to enter that information on the MSDS to satisfy the requirement.

3) Related to the information on a shipping paper, in a separate document. The example here is an Emergency Response Guide (ERG) page printed out from an online source and cross referenced to the hazardous material on the shipping paper. This requires the basic description and technical names

to be entered on the ERG page and the ERG guide page number to be entered on the shipping paper.

4) The entire ERG book is present in the transport vehicle. In this case, nothing other than the shipping paper and the ERG book need be present. Often carriers will already possess the ERG book. In that case, it is always a good idea to make sure it is the most current version (2016 is current now) and that the book contains the guide page numbers for the materials that are being offered. If the carrier does not possess one, the shipper may offer the book with the shipping paper to satisfy the requirement.

Challenge Yourself

Scenario: A driver operates a tractor in interstate commerce of exactly 26,000 pounds Gross Vehicle Weight Rating (GVWR) , towing a trailer of exactly 10,000 pounds GVWR, for a Gross Combination Weight Rating (GCWR) OF 36,000 pounds. Hazmat and passengers are not involved.

Question: Is it a commercial motor vehicle (CMV) and does the driver need a commercial drivers license (CDL)?

Answer: Yes, it is a CMV and no, the driver does not require a CDL. According to 49 CFR 390.5, because the GVWR (and GCWR coincidentally) of the vehicle(s) are greater than 10,000 lbs and are operating in interstate commerce, they are considered commercial motor vehicles as defined in 49 CFR 390.5.

While the combination of these two units is more than 26,000 lbs it does not meet one of the three vehicle groups’ definition that require a CDL driver (49 CFR 383.5). Let’s look at each of the groups’ defining criteria per 383.5 and how it relates to our scenario.

Group A – the combination of the vehicles must be 26,001 lbs or more

with a towed unit(s) of 10,001 lbs or more. While this combination is 26,001 lbs or more the towed unit is not 10,001 lbs or more; therefore, it is not a Group A vehicle(s).

Group B – the straight vehicle must be 26,001 lbs or more. This tractor is one pound shy of the requirement; therefore, it is not a Group B vehicle.

Group C – the vehicle does not meet the requirements of Groups A or B, and may be of any size carrying hazardous materials as defined in 383.5 or carrying 16 or more passengers including the driver. This scenario does not have hazmat or passengers and is not a Group A or B vehicle; therefore, it is not a Group C vehicle.

Not meeting one of these three group criteria means a CDL is not required.

Note: Since this scenario involves transportation in interstate commerce, 49 CFR 391 requires a qualified commercial motor vehicle operator to drive this vehicle/combination (49 CFR 391).

Class Schedule September 2017 – December 2017

Course	Date	Location
Federal Motor Carrier Safety Regulations for Drivers	September 6, 2017	Richland, WA
Hazardous Material General Awareness Transportation Training	September 7, 2017	Richland, WA
Federal Motor Carrier Safety Regulations for Managers & Supervisors	Sept. 12-13, 2017	Richland, WA
Advanced Hazardous Waste Shipper Certification Training	Sept. 12-14, 2017	Las Vegas, NV
Reasonable Suspicion Training for Supervisors	September 14, 2017	Richland, WA
Highway Route Control Quantity (HRCQ)	September 14, 2017	Richland, WA
Advanced Hazardous Waste Shipper Certification Training	Sept. 19-21, 2017	Richland, WA
Advanced Mixed Waste Shipper Certification Training	Sept. 25-28, 2017	Richland, WA
Advanced Hazardous Waste Shipper Certification Training	Sept. 26-28, 2017	Albuquerque, NM
Federal Motor Carrier Safety Regulations for Drivers	September 26, 2017	Richland, WA
Hazardous Material General Awareness Transportation Training	September 27, 2017	Richland, WA
Load Securement for Drivers and Traffic Personnel	October 4, 2017	Richland, WA
Advanced Radioactive Material Shipper Certification Training	October 10-12, 2017	Las Vegas, NV
Advanced Radioactive Material Shipper Certification Training	October 17-19, 2017	Richland, WA
IATA: Transportation of Dangerous Goods by Air Shipper Certification Training	October 17-19, 2017	Richland, WA
Advanced Radioactive Material Shipper Certification Training	October 24-26, 2017	Albuquerque, NM
IATA: Transportation of Dangerous Goods by Air Shipper Certification Training	October 24-26, 2017	Las Vegas, NV
Hazardous Material General Awareness Transportation Training	October 25, 2017	Richland, WA
Load Securement for Drivers and Traffic Personnel	October 31, 2017	Richland, WA
Federal Motor Carrier Safety Regulations for Drivers	November 1, 2017	Richland, WA
Hazardous Material General Awareness Transportation Training	November 2, 2017	Richland, WA
Advanced Mixed Waste Shipper Certification Training	November 6-9, 2017	Las Vegas, NV
Highway Route Control Quantity (HRCQ)	November 8, 2017	Richland, WA
Advanced Mixed Waste Shipper Certification Training	Nov. 13-16, 2017	Richland, WA
Hazardous Materials Drivers Training	November 28, 2017	Richland, WA
Hazardous Material General Awareness Transportation Training	November 29, 2017	Richland, WA
Federal Motor Carrier Safety Regulations for Drivers	November 30, 2017	Richland, WA
Load Securement for Drivers and Traffic Personnel	December 6, 2017	Richland, WA
Federal Motor Carrier Safety Regulations for Managers & Supervisors	Dec. 12-13, 2017	Richland, WA
Reasonable Suspicion Training for Supervisors	December 14, 2017	Richland, WA
Hazardous Material General Awareness Transportation Training	December 19, 2017	Richland, WA
Federal Motor Carrier Safety Regulations for Drivers	December 20, 2017	Richland, WA
Hazardous Materials Drivers Training	December 21, 2017	Richland, WA

Class dates and locations are subject to change