

VII. LIST OF ACUTE AND CRITICAL REGULATIONS.

- §382.115(a) Failing to implement an alcohol and/or controlled substances testing program (domestic motor carrier) (acute).
- §382.115(b) Failing to implement an alcohol and/or controlled substances testing program (foreign motor carrier) (acute).
- §382.201 Using a driver known to have an alcohol concentration of 0.04 or greater (acute).
- §382.211 Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382 (acute).
- §382.213(c) Using a driver known to have used a controlled substance (acute).
- §382.215 Using a driver known to have tested positive for a controlled substance (acute).
- §382.301(a) Using a driver before the motor carrier has received a negative pre-employment controlled substance test result (critical).
- §382.303(a) Failing to conduct post accident testing on driver for alcohol (critical).
- §382.303(b) Failing to conduct post accident testing on driver for controlled substances (critical).
- §382.305 Failing to implement a random controlled substances and/or an alcohol testing program (acute).
- §382.305(b)(1) Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions (critical).
- §382.305(b)(2) Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions (critical).
- §382.309 Using a driver who has not undergone return-to-duty testing with a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 in accordance with 49 CFR 40.305 (acute).
- §382.503 Allowing a driver to perform safety sensitive function, after engaging in conduct prohibited by subpart B, without being evaluated by substance abuse professional, as required by §382.605 (critical).
- §382.505(a) Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater but less than 0.04 (acute).
- §382.605 Failing to subject a driver who has been identified as needing assistance to at least six unannounced follow-up drug and/or alcohol tests in the first 12 months following the driver's return-to-duty in accordance with 49 CFR 40.307 (critical).
- §383.23(a) Operating a commercial motor vehicle without a valid commercial driver's license (critical).
- §383.37(a) Knowingly allowing, requiring, permitting, or authorizing an employee who does not have a current CLP or CDL, who does not have a CLP or CDL with the proper class or endorsements, or who operates a CMV in violation of any restriction on the CLP or CDL to operate a CMV (acute).

- §383.37(b) Knowingly allowing, requiring, permitting, or authorizing an employee with a commercial driver's license which is suspended, revoked, or canceled by a state or who is disqualified to operate a commercial motor vehicle (acute).
- §383.37(c) Knowingly allowing, requiring, permitting, or authorizing an employee with more than one commercial driver's license to operate a commercial motor vehicle (acute).
- §383.51(a) Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle (acute).
- §387.7(a) Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage (acute).
- §387.7(d) Failing to maintain at principal place of business required proof of financial responsibility (critical).
- §387.31(a) Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility (acute).
- §387.31(d) Failing to maintain at principal place of business required proof of financial responsibility for passenger carrying vehicles (critical).
- §390.15(b)(2) Failing to maintain copies of all accident reports required by State or other governmental entities or insurers (critical).
- §390.35 Making, or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records (acute).
- §391.11(b)(4) Using a physically unqualified driver (acute).
- §391.15(a) Using a disqualified driver (acute).
- §391.45(a) Using a driver not medically examined and certified (critical).
- §391.45(b) Using a driver not medically examined and certified during the preceding 24 months (critical).
- §391.51(a) Failing to maintain driver qualification file on each driver employed (critical).
- §391.51(b)(2) Failing to maintain inquiries into driver's driving record in driver's qualification file (critical).
- §391.51(b)(7) Failing to maintain medical examiner's certificate in driver's qualification file (critical).
- §392.2 Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated (critical).
- §392.4(b) Requiring or permitting a driver to drive while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle (acute).
- §392.5(b)(1) Requiring or permitting a driver to drive a motor vehicle while under the influence of, or in possession of, an intoxicating beverage (acute).
- §392.5(b)(2) Requiring or permitting a driver who shows evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle (acute).

§392.6 Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed (critical).

§392.9(a)(1) Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured (critical).

§395.1(h)(1)(i) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska) (critical).

§395.1(h)(1)(ii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska) (critical).

§395.1(h)(1)(iii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska) (critical).

§395.1(h)(1)(iv) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska) (critical).

§395.1(h)(2)(i) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska) (critical).

§395.1(h)(2)(ii) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska) (critical).

§395.1(h)(2)(iii) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska) (critical).

§395.1(h)(2)(iv) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska) (critical).

§395.1(o) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 16 consecutive hours (critical).

§395.3(a)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive without taking an off-duty period of at least 10 consecutive hours prior to driving (critical).

§395.3(a)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after the end of the 14th hour after coming on duty (critical).

§395.3(a)(3)(i) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours (critical).

§395.3(a)(3)(ii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive if more than 8 hours have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes (critical).

§395.3(b)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 60 hours in 7 consecutive days (critical).

§395.3(b)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days (critical).

- §395.5(a)(1) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 10 hours (critical).
- §395.5(a)(2) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 15 hours (critical).
- §395.5(b)(1) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 60 hours in 7 consecutive days (critical).
- §395.5(b)(2) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days (critical).
- §395.8(a)(1) Failing to require a driver to prepare a record of duty status using appropriate method (critical).
- §395.8(a)(2)(ii) Failure to require a driver to submit record of duty status (critical).
- §395.8(e)(1) Making, or permitting a driver to make, a false report regarding duty status (critical).
- §395.8(e)(2) or (3) Disabling, deactivating, disengaging, jamming, or otherwise blocking or degrading a signal transmission or reception; tampering with an automatic on-board recording device or ELD; or permitting or requiring another person to engage in such activity (acute).
- §395.8(k)(1) Failing to preserve a driver's record of duty status or supporting documents for 6 months (critical).
- §395.11(b) Failing to require a driver to submit supporting documents (critical).
- §395.11(c) Failing to retain types of supporting documents as required by §395.11(c) (critical).
- §395.11(e) Failing to retain supporting documents in a manner that permits the effective matching of the documents to the driver's record of duty status (critical).
- §395.11(f) Altering, defacing, destroying, mutilating, or obscuring a supporting document (critical).
- §395.30(f) Failing to retain ELD information (acute).
- §396.3(b) Failing to keep minimum records of inspection and vehicle maintenance (critical).
- §396.9(c)(2) Requiring or permitting the operation of a motor vehicle declared "out-of-service" before repairs were made (acute).
- §396.11(a) Failing to require driver to prepare driver vehicle inspection report (critical).
- §396.11(a)(3) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again (acute)
- §396.17(a) Using a commercial motor vehicle not periodically inspected (critical).
- §396.17(g) Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards (acute).
- §397.5(a) Failing to ensure a motor vehicle containing Division 1.1, 1.2, or 1.3 (explosive) material is attended at all times by its driver or a qualified representative (acute).
- §397.7(a)(1) Parking a motor vehicle containing Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street (critical).

- §397.7(b) Parking a motor vehicle containing hazardous material(s) other than Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street (critical).
- §397.13(a) Permitting a person to smoke or carry a lighted cigarette, cigar or pipe within 25 feet of a motor vehicle containing Class 1 materials, Class 5 materials, or flammable materials classified as Division 2.1, Class 3, Divisions 4.1 and 4.2 (critical).
- §397.19(a) Failing to furnish driver of motor vehicle transporting Division 1.1, 1.2, or 1.3 (explosive) materials with a copy of the rules of part 397 and/or emergency response instructions (critical).
- §397.67(d) Requiring or permitting the operation of a motor vehicle containing explosives in Class 1, Divisions 1.1, 1.2, or 1.3 that is not accompanied by a written route plan (critical).
- §171.15 Carrier failing to give immediate telephone notice of an incident involving hazardous materials (critical).
- §171.16 Carrier failing to make a written report of an incident involving hazardous materials (critical).
- §172.313(a) Accepting for transportation or transporting a package containing a poisonous-by-inhalation material that is not marked with the words "Inhalation Hazard" (acute).
- §172.704(a)(4) Failing to provide security awareness training (critical).
- §172.704(a)(5) Failing to provide in-depth security awareness training (critical).
- §172.800(b) Transporting HM without a security plan (acute).
- §172.800(b) Transporting HM without a security plan that conforms to Subpart I requirements (acute).
- §172.800(b) Failure to adhere to a required security plan (acute).
- §173.24(b)(1) Accepting for transportation or transporting a package that has an identifiable release of a hazardous material to the environment (acute).
- §173.421 Accepting for transportation or transporting a Class 7 (radioactive) material described, marked, and packaged as a limited quantity when the radiation level on the surface of the package exceeds 0.005mSv/hour (0.5 mrem/hour) (acute).
- §173.431(a) Accepting for transportation or transporting in a Type A packaging a greater quantity of Class 7 (radioactive) material than authorized (acute).
- §173.431(b) Accepting for transportation or transporting in a Type B packaging a greater quantity of Class 7 (radioactive) material than authorized (acute).
- §173.441(a) Accepting for transportation or transporting a package containing Class 7 (radioactive) material with external radiation exceeding allowable limits (acute).
- §173.442(b) Accepting for transportation or transporting a package containing Class 7 (radioactive) material when the temperature of the accessible external surface of the loaded package exceeds 50 °C (122 °F) in other than an exclusive use shipment, or 85 °C (185 °F) in an exclusive use shipment (acute).

§173.443(a) Accepting for transportation or transporting a package containing Class 7 (radioactive) material with removable contamination on the external surfaces of the package in excess of permissible limits (acute).

§177.800(c) Failing to instruct a category of employees in hazardous materials regulations (critical).

§177.801 Accepting for transportation or transporting a forbidden material (acute).

§177.835(a) Loading or unloading a Class 1 (explosive) material with the engine running (acute).

§177.835(c) Accepting for transportation or transporting Division 1.1 or 1.2 (explosive) materials in a motor vehicle or combination of vehicles that is not permitted (acute).

§177.835(j) Transferring Division 1.1, 1.2, or 1.3 (explosive) materials between containers or motor vehicles when not permitted (acute).

§177.817(a) Transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper (critical).

§177.817(e) Failing to maintain proper accessibility of shipping papers (critical).

§177.823(a) Moving a transport vehicle containing hazardous material that is not properly marked or placarded (critical).

§177.841(e) Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals unless an exception in §177.841(e)(i) or (ii) is met (acute).

§180.407(a) Transporting a shipment of hazardous material in cargo tank that has not been inspected or retested in accordance with §180.407 (critical).

§180.407(c) Failing to periodically test and inspect a cargo tank (critical).

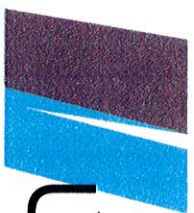
§180.415 Failing to mark a cargo tank which passed an inspection or test required by §180.407 (critical).

§180.417(a)(1) Failing to retain cargo tank manufacturer's data report certificate and related papers, as required (critical).

§180.417(a)(2) Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required (critical).

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EDITORIAL NOTE: For FEDERAL REGISTER citations affecting appendix B to part 385, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.



Understanding the "Rules of the Game"

C. Factor Ratings

(a) Parts of the FMCSRs and the HMRS having similar characteristics are combined together into five regulatory areas called "factors."

(b) The following table shows the five regulatory factors, parts of the FMCSRs and HMRS associated with each factor, and the accident factor. Factor Ratings are determined as follows:

FACTORS

- Factor 1 General = Parts 387 and 390
 - Factor 2 Driver = Parts 382, 383 and 391
 - Factor 3 Operational = Parts 392 and 395
 - Factor 4 Vehicle = Parts 393 and 396
 - Factor 5 Haz. Mat. = Parts 397, 171, 177 and 180
 - Factor 6 Accident Factor = Recordable Rate
- "Satisfactory"—if the acute and/or critical = 0 points
 "Conditional"—if the acute and/or critical = 1 point
 "Unsatisfactory"—if the acute and/or critical = 2 or more points

III. SAFETY RATING

A. Rating Table

(a) The ratings for the six factors are then entered into a rating table which establishes the motor carrier's safety rating.

(b) The FMCSA has developed a computerized rating formula for assessing the information obtained from the CR document and is using that formula in assigning a safety rating.

MOTOR CARRIER SAFETY RATING TABLE

Factor ratings	Conditional	Overall Safety rating
Unsatisfactory	2 or fewer	Satisfactory
0	more than 2	Conditional
0	2 or fewer	Conditional
1	more than 2	Unsatisfactory
1	0 or more	Unsatisfactory
2 or more		

(g) For each instance of noncompliance with an acute regulation or each pattern of noncompliance with a critical regulation during the CR one point will be assessed. A pattern is more than one violation. When a number of documents are reviewed, the number of violations required to meet a pattern is equal to at least 10 percent of those examined.

(h) However, each pattern of noncompliance with a critical regulation relative to Part 395, Hours of Service of Drivers, will be assessed two points.

- Hours of Service
- Regulations
- Regulatory Impact Analysis for 2011 Final Rule
- Environmental Assessment for 2011 Final Rule
- Agricultural Commodity
- Personal Conveyance**

driver is relieved from work and all responsibility for performing work by the motor carrier. The CMV may be used for personal conveyance even if it is laden, since the load is not being transported for the commercial benefit of the carrier at that time. Personal conveyance does not reduce a driver's or motor carrier's responsibility to operate a CMV safely. Motor carriers can establish personal conveyance limitations either within the scope of, or more restrictive than, this guidance, such as banning use of a CMV for personal conveyance purposes, imposing a distance limitation on personal conveyance, or prohibiting personal conveyance while the CMV is laden.

Share



Examples of Appropriate Uses of a CMV While Off-duty for Personal Conveyance

The following are examples of appropriate uses of a CMV while off-duty for personal conveyance include, but are not limited to:

1. Time spent traveling from a driver's en route lodging (such as a motel or truck stop) to restaurants and entertainment facilities.
2. Commuting between the driver's terminal and his or her residence, between trailer-drop lots and the driver's residence, and between work sites and his or her residence. In these scenarios, the commuting distance combined with the release from work and start to work times must allow the driver enough time to obtain the required restorative rest as to ensure the driver is not fatigued.
3. Time spent traveling to a nearby, reasonable, safe location to obtain required rest after loading or unloading. The time driving under personal conveyance must allow the driver adequate time to obtain the required rest in accordance with minimum off-duty periods under 49 CFR 395.3(a)(1) (property-carrying vehicles) or 395.5(a) (passenger-carrying vehicles) before returning to on-duty driving, and the resting location must be the first such location reasonably available.
4. Moving a CMV at the request of a safety official during the driver's off-duty time
5. Time spent traveling in a motorcoach without passengers to en route lodging (such as motel or truck stop), or to restaurants and entertainment facilities and back to the lodging. In this scenario, the driver of the motorcoach can claim personal conveyance provided the driver is off-duty. Other off-duty drivers may be on board the vehicle, and are not considered passengers.
6. Time spent transporting personal property while off-duty.
7. Authorized use of a CMV to travel home after working at an offsite location.

Examples of Uses of a CMV that Would Not Qualify as Personal Conveyance

The following are examples of uses of a CMV that would not qualify as personal conveyance include, but are not limited to, the following:

1. The movement of a CMV in order to enhance the operational readiness of a motor carrier. For example, bypassing available resting locations in order to get closer to the next loading or unloading point or other scheduled motor carrier destination.
2. After delivering a towed unit, and the towing unit no longer meets the definition of a CMV, the driver returns to the point of origin under the direction of the motor carrier to pick up another towed unit.
3. Continuation of a CMV trip in interstate commerce in order to fulfill a business purpose, including bobtailing or operating with an empty trailer in order to retrieve another load or repositioning a CMV (tractor or trailer) at the direction of the motor carrier.
4. Time spent driving a passenger-carrying CMV while passenger(s) are on board. Off-duty drivers are not considered passengers when traveling to a common destination of their own choice within the scope of this guidance.
5. Time spent transporting a CMV to a facility to have vehicle maintenance performed.
6. After being placed out of service for exceeding the maximum periods permitted under part 395, time spent driving to a location to obtain required rest, unless so directed by an enforcement officer at the scene.
7. Time spent traveling to a motor carrier's terminal after loading or unloading from a shipper or a receiver.
8. Time spent operating a motorcoach when luggage is stowed, the passengers have disembarked and the driver has been directed to deliver the luggage.