

Part 398 - Transportation of Migrant Workers

§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.*

§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°; 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: _____	
City: _____	
State: ____ Zip Code: ____ - ____	
Signature of driver: _____	
Address of driver: _____	
City: _____	
State: ____ Zip Code: ____ - ____	

* Full-size forms available free of charge at www.dotcfr.com.

- (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.

§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.