

§ 355.1

on sound medical judgment combined with appropriate performance standards causing no adverse affect on safety.

[57 FR 40956, Sept. 8, 1992, as amended at 58 FR 33776, June 21, 1993; 58 FR 40600, July 29, 1993; 59 FR 5264, Feb. 3, 1994; 60 FR 38743, July 28, 1995]

**PART 355—COMPATIBILITY OF STATE LAWS AND REGULATIONS AFFECTING INTERSTATE MOTOR CARRIER OPERATIONS**

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**AUTHORITY:** 49 U.S.C. app. 2505—2508; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

**SOURCE:** 57 FR 40962, Sept. 8, 1992, unless otherwise noted.

**Subpart A—General Applicability and Definitions**

**§355.1 Purpose.**

(a) To promote adoption and enforcement of State laws and regulations pertaining to commercial motor vehicle safety that are compatible with appropriate parts of the Federal Motor Carrier Safety Regulations.

(b) To provide guidelines for a continuous regulatory review of State laws and regulations.

(c) To establish deadlines for States to achieve compatibility with appropriate parts of the Federal Motor Carrier Safety Regulations with respect to interstate commerce.

**§355.3 Applicability.**

These provisions apply to any State that adopts or enforces laws or regulations pertaining to commercial motor vehicle safety in interstate commerce.

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**§355.5 Definitions.**

Unless specifically defined in this section, terms used in this part are subject to the definitions in 49 CFR 390.5.

*Compatible* or *compatibility* means, in relation to State laws and regulations pertaining to commercial motor vehicle safety, having the same effect as the Federal Motor Carrier Safety Regulations in that those State laws and regulations are either identical or fall within the guidelines in appendix C of part 350.

*Federal Motor Carrier Safety Regulations* means those safety regulations which are contained in parts 390, 391, 392, 393, 395, 396, and 397 of this subchapter.

*State* means a State of the United States and the District of Columbia.

**Subpart B—Requirements**

**§355.21 Regulatory review.**

(a) *General.* Each State shall annually analyze its laws and regulations, including those of its political subdivisions, which pertain to commercial motor vehicle safety to determine whether its laws and regulations are compatible with the Federal Motor Carrier Safety Regulations. Guidelines for the regulatory review are provided in the appendix to this part.

(b) *Responsibility.* The State agency designated as lead agency for the administration of grants made pursuant to part 350 of this subchapter is responsible for reviewing and analyzing State laws and regulations for compliance with this part. In the absence of an officially designated Motor Carrier Safety Assistance Program (MCSAP) lead agency or in its discretion, the State shall designate another agency responsible to review and determine compliance with these regulations.

(c) *State review.* (1) The State shall determine which of its laws and regulations pertaining to commercial motor vehicle safety are the same as the Federal Motor Carrier Safety or Federal Hazardous Materials Regulations. With respect to any State law or regulation which is not the same, the State shall identify such law or regulation and determine whether:

(i) It has the same effect as a corresponding section of the Federal Motor Carrier Safety or Federal Hazardous Materials Regulations;

(ii) It applies to interstate commerce;

(iii) It is more stringent than the FMCSR or FHMR in that it is more restrictive or places a greater burden on any entity subject to its provisions;

(2) If the inconsistent State law or regulation applies to interstate commerce and is more stringent than the FMCSR or FHMR, the State shall determine:

(i) The safety benefits associated with such State law or regulation; and

(ii) The effect of the enforcement of such State law or regulation on interstate commerce.

(3) If the inconsistent State law or regulation does not apply to interstate commerce or is less stringent than the FMCSR or FHMR, the tolerance guidelines for participation in the Motor Carrier Safety Assistance Program in part 350 of this subchapter shall apply.

#### **§355.23 Submission of results.**

Each State shall submit the results of its regulatory review annually with its certification of compliance under 49 CFR 350.15. It shall submit the results of the regulatory review with the certification no later than August 1 of each year with the SEP. The State shall include copies of pertinent laws and regulations.

#### **§355.25 Adopting and enforcing compatible laws and regulations.**

(a) *General.* No State shall have in effect or enforce any State law or regulation pertaining to commercial motor vehicle safety in interstate commerce which the Administrator finds to be incompatible with the provisions of the Federal Motor Carrier Safety Regulations.

(b) *New state requirements.* No State shall implement any changes to a law or regulation which makes that or any other law or regulation incompatible with a provision of the Federal Motor Carrier Safety Regulations.

(c) *Enforcement.* To enforce compliance with this section, the Administrator will initiate a rulemaking proceeding under part 389 of this sub-

chapter to declare the incompatible State law or regulation pertaining to commercial motor vehicle safety unenforceable in interstate commerce.

(d) *Waiver of determination.* Any person (including any State) may petition for a waiver of a determination made under paragraph (c) of this section. Such petition will also be considered in a rulemaking proceeding under part 389. Waivers shall be granted only upon a satisfactory showing that continued enforcement of the incompatible State law or regulation is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles.

(e) *Consolidation of proceedings.* The Administrator may consolidate any action to enforce this section with other proceedings required under this section if the Administrator determines that such consolidation will not adversely affect any party to any such proceeding.

#### APPENDIX A TO PART 355—GUIDELINES FOR THE REGULATORY REVIEW

Each State shall review its laws and regulations to achieve compatibility with the Federal Motor Carrier Safety Regulations (FMCSRs). Each State shall consider all related requirements on enforcement of the State's motor carrier safety regulations. The documentation shall be simple and brief.

##### SCOPE

The State review required by §355.21 may be limited to those laws and regulations previously determined to be incompatible in the report of the Commercial Motor Vehicle Safety Regulatory Review Panel issued in August 1990, or by subsequent determination by the Administrator under this part, and any State laws or regulations enacted or issued after August 1990.

##### APPLICABILITY

The requirements must apply to all segments of the motor carrier industry common, contract, and private carriers of property and for-hire carriers of passengers.

##### DEFINITIONS

Definitions of terms must be consistent with those in the FMCSR. For example, a commercial motor vehicle is a vehicle operating in interstate commerce on a public highway, that (1) has a gross vehicle weight rating (GVWR) of 10,001 pounds or more, (2) is designed to transport more than 15 passengers (including the driver), or (3) is used

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to transport hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act, as amended (49 U.S.C. app. 1801 et seq).

DRIVER QUALIFICATIONS

Require a driver to be properly licensed to drive a motor vehicle; require a driver to be in good physical health, at least 21 years of age, able to operate a vehicle safely, and maintain a good driving record; prohibit drug and alcohol abuse; require a motor carrier to maintain a driver qualification file for each driver; require a motor carrier to ensure that a driver is medically qualified; and require a motor carrier to establish an anti-drug program with testing of drivers prior to employment, periodically, based on reasonable cause, after accidents, and by random selection.

NOTE: The requirements for testing apply only to drivers of commercial motor vehicles as defined in 49 CFR part 383.

DRIVING OF MOTOR VEHICLES

Prohibit possession, use, or driving under the influence of alcohol or other controlled substances (while on duty); and establish 0.04 percent as the level of alcohol in the blood at which a driver is considered under the influence of alcohol.

PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Require operational lights and reflectors; require systematically arranged and installed wiring; and require brakes working at the required performance level, and other key components included in 49 CFR part 393.

HOURS OF SERVICE

Prohibit a motor carrier from allowing or requiring any driver to drive: More than 10 hours following 8 consecutive hours off duty; after being on duty 15 hours, after being on duty more than 60 hours in any 7 consecutive days; or after being on duty more than 70 hours in any 8 consecutive days.

Require a driver to prepare a record-of-duty status for each 24-hour period. The driver and motor carrier must retain the records.

INSPECTION AND MAINTENANCE

Prohibit a commercial motor vehicle from being operated when it is likely to cause an accident or a breakdown; require the driver to conduct a walk-around inspection of the vehicle before driving it to ensure that it can be safely operated; require the driver to prepare a driver vehicle inspection report; and require commercial motor vehicles to be inspected at least annually.

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HAZARDOUS MATERIALS

Require a motor carrier or a person operating a commercial motor vehicle transporting hazardous materials to follow the safety and hazardous materials requirements.

STATE DETERMINATIONS

1. Each State must determine whether its requirements affecting interstate motor carriers are "less stringent" than the Federal requirements. "Less stringent" requirements represent either gaps in the State requirements in relation to the Federal requirements as summarized under item number one in this appendix or State requirements which are less restrictive than the Federal requirements.

a. An example of a gap is when a State does not have the authority to regulate the safety of for-hire carriers of passengers or has the authority but chooses to exempt the carrier.

b. An example of a less restrictive State requirement is when a State allows a person under 21 years of age to operate a commercial motor vehicle in interstate commerce.

2. Each State must determine whether its requirements affecting interstate motor carriers are "more stringent" than the Federal requirements: "More stringent" requirements are more restrictive or inclusive in relation to the Federal requirements as summarized under item number one in this appendix. For example, a requirement that a driver must have 2 days off after working 5 consecutive days. The State would demonstrate that its more stringent requirements:

a. Have a "safety benefit;" for example, result in fewer accidents or reduce the risk of accidents;

b. do not create "an undue burden on interstate commerce," e.g., do not delay, interfere with, or increase that cost or the administrative burden for a motor carrier transporting property or passengers in interstate commerce; and

c. Are otherwise compatible with Federal safety requirements.

3. A State must adopt and enforce in a consistent manner the requirements referenced in the above guidelines in order for the FHWA to accept the State's determination that it has compatible safety requirements affecting interstate motor carrier operations. Generally, the States would have up to 3 years from the effective date of the new Federal requirement to adopt and enforce compatible requirements. The FHWA would specify the deadline when promulgating future Federal safety requirements. The requirements are considered of equal importance.

[57 FR 40962, Sept. 8, 1992, as amended by 58 FR 33776, June 21, 1993]

## PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

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- 382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.
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AUTHORITY: 49 U.S.C. 31133, 31136, 31301 *et seq.*, 31502; and 49 CFR 1.48.

SOURCE: 61 FR 9553, Mar. 8, 1996, unless otherwise noted.

### Subpart A—General

#### § 382.101 Purpose.

The purpose of this part is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

#### § 382.103 Applicability.

(a) This part applies to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State, and is subject to:

(1) The commercial driver's license requirements of part 383 of this subchapter;

(2) The Licencia Federal de Conductor (Mexico) requirements; or

(3) The commercial driver's license requirements of the Canadian National Safety Code.

(b) An employer who employs himself/herself as a driver must comply with both the requirements in this part that apply to employers and the requirements in this part that apply to drivers. An employer who employs only himself/herself as a driver shall implement a random alcohol and controlled substances testing program of two or more covered employees in the random testing selection pool.

(c) The exceptions contained in § 390.3(g) of this subchapter do not apply to this part. The employers and drivers identified in § 390.3(g) must comply with the requirements of this part, unless otherwise specifically provided in paragraph (d) of this section.

(d) *Exceptions.* This part shall not apply to employers and their drivers: