

(Approved by the Office of Management and Budget under control number 2125–0518)

[48 FR 52683, Nov. 21, 1983, as amended at 49 FR 22326, May 29, 1984; 54 FR 49093, Nov. 29, 1989]

§387.41 Violation and penalty.

Any person (except an employee who acts without knowledge) who knowingly violates the rules of this subpart shall be liable to the United States for civil penalty of no more than \$10,000 for each violation, and if any such violation is a continuing one, each day of violation will constitute a separate offense. The amount of any such penalty shall be assessed by the Associate Administrator for Motor Carriers or his/her designee, by written notice. In determining the amount of such penalty, the Associate Administrator or his/her designee shall take into account the nature, circumstances, extent, the gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

[53 FR 47543, Nov. 23, 1988]

PART 388—COOPERATIVE AGREEMENTS WITH STATES

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AUTHORITY: 49 U.S.C. 104 and 502; 49 CFR 1.48.

SOURCE: 33 FR 19725, Dec. 25, 1968, unless otherwise noted.

§388.1 Eligibility.

Any State may agree with the Federal Highway Administration to en-

force the safety laws and regulations of said State and the United States concerning motor carrier transportation by filing with the Administrator at Washington, DC 20591, a written acceptance of the terms herein.

§388.2 Extent of acceptance.

The written acceptance may be in letter form, signed by competent authority of said State charged with regulations of motor carrier safety and hazardous materials transportation and shall specify the terms herein pertaining to the obligations of a State in which said State will participate. To the extent that a State agrees to participate in the terms herein, officials of the Federal Highway Administration will reciprocate.

§388.3 Cancellation.

Cancellation or withdrawal, in whole or in part, from any agreement made under this chapter may be effected by written notice from either party indicating the effective date of said cancellation or withdrawal.

§388.4 Exchange of information.

(a) *Federal Highway Administration furnishing information to State.* Information that comes to the attention of an employee of the Federal Highway Administration in the course of his/her official duties of investigation, inspection, or examination of the property, equipment, and records of a motor carrier or others, pursuant to 49 U.S.C. 504(c), and that is believed to be a violation of any law or regulation of the State pertaining to unsafe motor carrier operations and practices, shall be communicated to the appropriate State authority by an official of the Federal Highway Administration.

(b) *State furnishing information to Federal Highway Administration.* Information that comes to the attention of a duly authorized agent of the State in the course of his/her official duties of investigation, inspection, or examination of the property, equipment, and records of a motor carrier or others, and that is believed to be a violation of

any provision of the safety or hazardous materials laws of the United States concerning highway transportation or the regulations of the Federal Highway Administration thereunder, shall be communicated to the Regional Director of Motor Carriers.

[51 FR 12621, Apr. 14, 1986]

§ 388.5 Requests for assistance.

(a) *State request for Federal Highway Administration assistance.* Upon written request of the appropriate State authority, the Office of Motor Carriers officials of the Federal Highway Administration for that State shall, as time, personnel, and funds permit, obtain evidence for use by said State in the enforcement of its laws and regulations concerning unsafe motor carrier operations. Evidence obtained in this manner shall be transmitted to the appropriate State authority together with the name and address of an agent or employee, if any, having knowledge of the facts, who shall be made available when necessary to testify as a witness in an enforcement proceeding or other action.

(b) *Federal Highway Administration request for State assistance.* Upon written request from a Regional Director of Motor Carriers, the appropriate State authority, shall, as time, personnel, and funds permit, obtain evidence in the State for use by the Federal Highway Administration in its enforcement of the safety and hazardous materials laws and regulations of the United States concerning highway transportation. Evidence obtained in this manner shall be transmitted to the Regional Director of Motor Carriers, together with the name and address of an agent or employee, if any, having knowledge of the facts, who shall be made available when necessary to testify as a witness in an enforcement proceeding or other action.

[33 FR 19725, Dec. 25, 1968, as amended at 51 FR 12621, Apr. 14, 1986; 60 FR 38743, July 28, 1995]

§ 388.6 Joint investigation, inspection, or examination.

Upon agreement by the Regional Director of Motor Carriers and the appropriate State authority, there will be

conducted a joint investigation, inspection, or examination of the property, equipment, or records of motor carriers or others, for the enforcement of the safety and hazardous materials laws and regulations of the United States and the State concerning highway transportation. The said Regional Director of Motor Carriers and the appropriate State authority shall decide as to the location and time, the objectives sought, and the identity of the person who will supervise the joint effort and make the necessary decisions. Any agent or employee of either agency who has personal knowledge of pertinent facts shall be made available when necessary to testify as a witness in an enforcement proceeding or other action.

[33 FR 19725, Dec. 25, 1968, as amended at 51 FR 12621, Apr. 14, 1986]

§ 388.7 Joint administrative activities related to enforcement of safety and hazardous materials laws and regulations.

To facilitate the interchange of information and evidence, and the conduct of joint investigation and administrative action, the Regional Director of Motor Carriers and the appropriate State authority shall, when warranted, schedule joint conferences of staff members of both agencies. Information shall be exchanged as to the nature and extent of the authority and capabilities of the respective agencies to enforce the safety and hazardous materials laws and regulations of the State or of the United States concerning motor carrier transportation. The Federal Highway Administration and the State (or appropriate State authority) shall use their best efforts to inform each other of changes in their rules and regulations and cooperate with and assist each other in conducting training schools for Federal and State enforcement officials engaged in such duties.

[33 FR 19725, Dec. 25, 1968, as amended at 51 FR 12621, Apr. 14, 1986]

§ 388.8 Supplemental agreements.

The terms specified in this part may be supplemented from time to time by specific agreement between the Federal Highway Administration and the appropriate State authority in order to

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further implement the provisions of 49 U.S.C. 502.

[51 FR 12621, Apr. 14, 1986]

PART 389—RULEMAKING PROCEDURES—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

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- 389.31 Petitions for rule making.
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- 389.37 Proceedings on petitions for reconsideration.

AUTHORITY: Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99-570, 100 Stat. 3207-170 (49 U.S.C. 2701 *et seq.*); 49 U.S.C. 104 and 3102; sec. 30 of the Motor Carrier Act of 1980 (Pub. L. 96-296, 94 Stat. 820), as amended by sec. 108(b)(5) of Pub. L. 96-510, 94 Stat. 2767; sec. 406 of Pub. L. 97-424, 96 Stat. 2097; sec. 222 of Pub. L. 98-554, 98 Stat. 2846 (49 U.S.C. 10927 note); secs. 18 and 25(c) of the Bus Regulatory Reform Act of 1982 (Pub. L. 97-261, 96 Stat. 1102, 1120, 49 U.S.C. 10927 note); and 42 U.S.C. 4917.

SOURCE: 35 FR 9209, June 12, 1970, unless otherwise noted.

Subpart A—General

§ 389.1 Applicability.

This part prescribes rulemaking procedures that apply to the issuance, amendment and revocation of rules under 49 U.S.C. 3102; section 30 of the Motor Carrier Act of 1980, as amended; section 18 of the Bus Regulatory Reform Act of 1982, as amended; the Motor Carrier Safety Act of 1984; the

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Commercial Motor Vehicle Safety Act of 1986 and the Noise Control Act of 1972.

[51 FR 12621, Apr 14, 1986, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.3 Definitions.

Act means 49 U.S.C. 104, 501 *et seq.*, 3101 *et seq.*, the Motor Carrier Act of 1980, the Motor Carrier Safety Act of 1984, the Commercial Motor Vehicle Safety Act of 1986, the Bus Regulatory Reform Act of 1982, or the Noise Control Act of 1972.

Administrator means the Federal Highway Administrator.

Rule includes any order or regulation issued under the Act.

[35 FR 9209, June 12, 1970, as amended at 51 FR 12621, Apr. 14, 1986; 53 FR 2036, Jan. 26, 1988]

§ 389.5 Regulatory docket.

(a) Information and data deemed relevant by the Administrator relating to rule making actions, including notices of proposed rule making; comments received in response to notices; petitions for rule making and reconsideration; denials of petitions for rule making and reconsideration; records of additional rule making proceedings under § 389.25; and final rules are maintained at Headquarters, Federal Highway Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

(b) Any person may examine docketed material, at any time during regular business hours after the docket is established, except material ordered withheld from the public under section 552(b) of title 5 of the United States Code, and may obtain a copy of it upon payment of a fee.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.7 Records.

Records of the Administrator relating to rule making proceedings are available for inspection as provided in section 552(b) of title 5 of the United