



## **DOT Regulations and Trucking Litigation Overview**

Prepared and Presented by:  
Kevin P. Schnurbusch

### **Overview:**

Every motor vehicle accident involving a big truck raises issues not present in other motor vehicle litigation. If you are a plaintiff's attorney and don't know the impact of federal safety regulations on your case you may be missing an opportunity to establish a cause of action that might not otherwise have occurred to you. If you defend trucking cases you had better be aware of the pitfalls awaiting your client that can turn a simple case into one that is both costly and dangerous to defend. If you are a part of the trucking industry you may be familiar with the regulations, but unaware of their impact on litigation, and how you can better prepare your company to deal with potential exposure for regulation violations.

Large tractor trailers are generally bigger and heavier than any other vehicle on the road. That makes many of the accidents they are involved in more serious in terms of personal injuries and property damage. What once might have been a nighttime rear end accident by a truck into a passenger vehicle now immediately raises a whole host of issues. Did the driver fall asleep? Had the driver had enough rest time in the previous 24 hours? Did the headlights on the truck work properly and did they comply with all the current charts? Were all the sets of brakes within specification? Did the driver even do his pre trip inspection? Had the driver been drinking or using drugs? Had they been tested properly? Was the truck overweight? Did the driver have a history of accidents and were they properly recorded? Had the driver been trained properly and tested properly? All of these issues are controlled by the Federal Motor Carrier Safety Regulations. Violations of those regulations are becoming an ever larger part of litigation involving big trucks. Where do you find these regulations and what do they require?

### **Where To Find the Regulations:**

Chapter 49 of the Code of Federal Regulations, Part 382 et. seq.

[www.fmcsa.dot.gov](http://www.fmcsa.dot.gov)

J.J. Keller & Associates Handbooks

Most of the following information is taken directly from the Federal Motor Carrier Safety Administration website listed above. This website is maintained by the Administration with a wealth of information and downloadable publications available to the public.



## Motor Carrier Safety Regulations - General – Part 390

The Federal Motor Carrier Safety Regulations (FMCSRs) apply to all employers, employees, and commercial motor vehicles transporting property or passengers in interstate commerce.

**Commercial Motor Vehicle:** Any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle:

Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or

Is designed or used to transport more than 8 passengers (including the driver) for compensation; or

Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

Is used in transporting a quantity of hazardous material requiring placarding.

### Exceptions to general applicability

Transportation provided by Federal, State, and local governments are exempt from the FMCSRs. Occasional transportation of personal property by individuals for non-commercial purposes, school bus operations, and transportation of human corpses, or sick and injured people are also exempt.

### Accident register

**Accident:** An occurrence involving a commercial motor vehicle operating on a public road that results in at least one of the following:

#### A fatality

Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident

Disabling damage to one or more motor vehicles, requiring the vehicle(s) to be towed or otherwise transported from the scene by a tow truck or other vehicle

For a period of one year after an accident occurs, motor carriers are required to maintain an accident register containing the following information:

Date and place of accident

Driver's name



Number of injuries and fatalities

Hazardous materials (other than fuel) released, if any.

Motor carriers are also required to maintain copies of all accident reports required by State or other governmental entities or insurers for a period of one year after an accident occurs.

Vehicle identification

Every commercial motor vehicle operated by a motor carrier in interstate commerce must be marked, on BOTH sides of vehicle, with the following:

The motor carrier's name or trade name

The city and State of its principal place of business

The motor carrier's identification number, preceded by "US DOT."

Relief from regulations during emergencies

Relief from Parts 390-399 of the FMCSRs may be granted during declared emergencies to any motor carrier who provides emergency assistance.

Alcohol and Drug Test Requirements – Part 382

Applicability

Drivers required to have a commercial drivers license (CDL) are subject to the controlled substance and alcohol testing rules. This requirement extends to those drivers currently covered by the rule, including interstate and intrastate truck and motor coach operations.

This includes commercial motor vehicles operated by:

For-hire and private companies

Federal, State, local, and tribal governments

Church and civic organizations

Apiarian industries

Exemptions

Drivers exempt from commercial driver's license requirements by their issuing State

Active duty military personnel



#### Types of alcohol and controlled substance tests

**Pre-employment:** No employer shall allow a driver to perform a safety sensitive function until they have received the negative controlled substance test result.

**Post-Accident:** As soon as practicable following an accident involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol and controlled substances each surviving driver: Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or Who receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved: Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

**Random:** Companies are to randomly test drivers at a minimum annual percentage rate of 10% of the number of drivers for alcohol testing, and 50% for controlled substances testing. The random alcohol test must be performed immediately prior, during or immediately after a driver is about to, or has performed a safety sensitive function as defined in Section 382.107. All drivers must have an equal chance of being selected.

**Reasonable Suspicion:** An employer shall require a driver to submit to an alcohol and/or controlled substance test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions concerning alcohol and/or controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol and/or controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The required observations shall be made by a supervisor or company official who is trained in accordance with 382.603.

**Return-to-Duty:** Each employer shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part concerning alcohol or controlled substances, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. or the driver shall undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use.

**Follow-up:** If a Substance Abuse Professional has determined that a driver needs assistance for the misuse of alcohol, or for use of a controlled substance, an employer must ensure that the driver is subject to follow-up testing. A minimum of six tests must be conducted in the first 12 months, and the driver may only be subject to this test for a maximum of 60 months.

#### Retention of records

Five Years:



Alcohol test results indicating a Breath Alcohol Concentration (BAC) of 0.02 or greater

Verified positive drug test results

Refusals to submit to required alcohol and drug tests

Required calibration of Evidential Breath Testing (EBT) devices

Two Years:

Records related to the collection process and required training

One Year:

Negative and canceled controlled substance test results

Alcohol test results indicating a BAC of less than 0.02

Location of records

All required records shall be maintained in a secure location with limited access, and shall be made available for inspection by an authorized representative of the Federal Motor Carrier Safety Administration.

Supervisor training/Driver Awareness

Every motor carrier shall provide educational materials explaining the requirements of the regulations as well as the employer's policies regarding alcohol misuse and controlled substances abuse. At a minimum, detailed discussions should include:

The identity of the person designated to answer drug and alcohol questions

Which drivers are subject to these requirements, what behavior is prohibited, and a clarification of what a "safety sensitive function" is.

The circumstances under which a driver will be tested, and the procedures that will be used for testing.

Explanations of the requirement that a driver submit to the testing, as well as what constitutes a driver's refusal to submit to testing.

The consequences for drivers who have violated the testing requirements.

Information concerning the effects of alcohol misuse, and controlled substances abuse on health, work, and personal life.

Inquiries to previous employers

A motor carrier, with the driver's written authorization, shall inquire about the following information on a driver from the driver's previous employers for a period of two years preceding the driver's date of application:



Alcohol tests with a result of 0.04 alcohol concentration or greater;

Verified positive controlled substances test results; and

Refusals to be tested.

It is not required to complete either the "FMCSA Controlled Substance and Alcohol Testing MIS Data Collect Report" form or the "EZ" version of the form contained in this section unless you have received official notification from the Federal Motor Carrier Safety Administration.

#### Commercial Driver's License Standards: Requirements and Penalties – Part 383

The licensing provisions in Part 383 are intended to help reduce accidents by setting standards that:

Require commercial drivers to be properly qualified and to hold a single valid driver's license (CDL); and

Disqualify drivers who do not operate

Commercial Motor Vehicles (CMV) safely.

The CDLIS enables the States to exchange information about the driving records and driver's licenses of CMV drivers. This helps assure that only one license is issued to a driver and that drivers currently disqualified are prevented from obtaining a CDL. Employers have access to the CDLIS clearinghouse through their State's vehicle licensing agency.

Vehicles requiring commercial driver's licenses

Drivers must hold CDLs if they operate in interstate, intrastate, or foreign commerce and drive a vehicle:

With a Gross Vehicle Weight Rating (GVWR) or Gross Vehicle Weight (GVW) of at least 26,001 pounds, whichever is greater, or a lesser GVWR or GVW the Secretary of Transportation prescribes by regulation, but not less than a GVWR of 10,001 pounds; or

Designed to transport at least 16 passengers including the driver; or

Transporting a quantity of hazardous materials requiring placarding.

Because the CDL is a State-issued license, you should check with appropriate State officials regarding particular license classes and specific exemptions.



#### Notification to employer and licensing State

Upon conviction for any State or local traffic violation, a driver must notify his/her employer(s) within 30 days. This notification must be in writing and must include the following information:

Driver's full name

Driver's license number

Date of conviction

Details about the offense, including any resulting suspension, revocation, or cancellation of driving privileges

Indication of whether the violation happened in a CMV

Location of offense, and

Driver's signature.

#### Disqualifying offenses

No employer shall knowingly allow, require, permit, or authorize a disqualified driver to drive a CMV. Disqualifying offenses include:

Driving a CMV while under the influence of alcohol.

Driving a CMV while under the influence of a disqualifying drug or other controlled substance.

Leaving the scene of an accident that involves a CMV.

Using a CMV to commit a felony.

#### Penalties

Using a CMV to commit serious traffic violations.

Using a CMV to violate an Out-of-Service Order.

Using a CMV to violate the Railroad-Highway Grade Crossing rule.

A driver convicted of a felony offense for using a CMV for manufacturing, distributing or dispensing a controlled substance is disqualified for life, but may be eligible for reinstatement after ten years.

Suspensions for traffic violations 60-day suspension



A 60-day suspension will be imposed following conviction for two serious traffic violations within three years while driving a CMV.

These violations include:

Excessive speeding (15 miles per hour or more above the posted speed limit in a single offense)

Reckless driving, improper or erratic lane changes, or following the vehicle ahead too closely; and

Traffic offenses involving a fatal accident.

120-day suspension

A 120-day suspension will be imposed following three convictions of any serious violations within three years.

Implied consent

Any CDL holder is automatically considered to have consented to alcohol testing by any State or jurisdiction.

Endorsements

In addition to general knowledge and skills tests, drivers who operate specialized commercial motor vehicles must pass additional tests and obtain endorsements on their CDLs, as follows:

T – Double/triple trailers (knowledge test only)

P – Passenger (knowledge and skills tests)

N – Tank vehicle (knowledge test only)

H – Hazardous materials (knowledge test only)

X – Combination of tank vehicle and hazardous materials (knowledge tests)

Air brake restrictions

If an applicant fails the air brake section of the knowledge test, or performs the skills test in a vehicle not equipped with air brakes, his/her CDL, if issued, will indicate that the license holder may not operate any CMV equipped with air brakes.

Note: For the purposes of the skills test and the license restriction, air brakes include any braking system that operates fully or partially on the air brake principle.

Qualification of Drivers – Part 391



Motor carriers must assure that all drivers of commercial motor vehicles meet the minimum qualifications specified in Part 391.

#### Driver Requirements

A driver must meet the following requirements:

Be in good health and physically able to perform all duties of a driver.

Be at least 21 years of age.

Speak and read English well enough to converse with the general public, understand highway traffic signs and signals, respond to official questions, and be able to make legible entries on reports and records.

Be able to drive the vehicle safely.

Know how to safely load and properly block, brace, and secure the cargo.

Have only one valid commercial motor vehicle operator's license.

Provide an employing motor carrier with a list of all motor vehicle violations or a signed statement that the driver has not been convicted of any motor vehicle violations during the past 12 months. A disqualified driver must not be allowed to drive a commercial motor vehicle for any reason.

Pass a driver's road test or equivalent.

Complete an application for employment.

Possess a valid medical certificate.

#### Driver Qualification File - Check List

Every motor carrier must have a qualification file for each regularly employed driver.

The file must include:

**DRIVER'S APPLICATION FOR EMPLOYMENT** A person will not be allowed to drive a commercial motor vehicle unless he/she has completed and signed an application for employment.

**INQUIRY TO PREVIOUS EMPLOYERS— 3 YEARS** An investigation of the driver's employment record during the preceding three years. This investigation must be made within 30 days of the date his/her employment begins.

**INQUIRY TO STATE AGENCIES— 3 YEARS** The driver's driving record for the preceding three years.

**ANNUAL REVIEW OF DRIVING RECORD** At least once every 12 months, a motor carrier must review the driving record of each driver. A note stating the results of this review shall be included in the Driver's Qualification File.



**ANNUAL DRIVER'S CERTIFICATION OF VIOLATIONS** At least once every 12 months, a motor carrier must require each driver that it employs to prepare and furnish it with a list of all violations of motor vehicle traffic laws and ordinances during the previous 12 months. Note: Drivers who have provided information required by Section 383.31 need not repeat that information in this annual list of violations.

**DRIVER'S ROAD TEST CERTIFICATE OR EQUIVALENT** A person must not be allowed to drive a commercial motor vehicle until he/she has successfully completed a road test and has been issued a certificate, or a copy of the license or certificate which the motor carrier accepted as equivalent to the driver's road test pursuant to Section 391.33.

**MEDICAL EXAMINATIONS** The driver must pass a medical examination conducted by a licensed health care professional. A driver must be issued a Medical Examiner's Certificate, which must be carried at all times and must be renewed every two years.

Examples of physical requirements (Section 391.41 provides the complete list of physical requirements)

Has no loss of a foot, a leg, a hand, or an arm

Has no established medical history or clinical diagnosis of diabetes requiring insulin for control

Has no clinical diagnosis of any disqualifying heart disease

Has no clinical diagnosis of high blood pressure

Has no clinical diagnosis of epilepsy

Has 20/40 vision or better with corrected lenses

Has distant binocular acuity of at least 20/40 in both eyes

Has the ability to recognize the colors (red, green and amber) of traffic signals

Has hearing to perceive a forced whisper

Has no history of drug (Schedule 1) use or any other substance identified in Appendix D

Has no clinical diagnosis of alcoholism

**Exemptions**

There are provisions for an exemption to a disqualification for certain physical defects if the individual is otherwise qualified to drive.

**Additional instructions for medical examination**



Additional instructions for the examining doctor are available from:

Director, Office of Bus and Trucks Standards and Operations Federal Motor Carrier Safety Administration 400 Seventh Street, S.W. (MC-PS) Washington, DC 20590  
Limited exemptions

The following specific conditions and types of drivers are exempt from specific record keeping requirements:

Drivers regularly employed before January 1, 1971 — Drivers who have been regular employees of a motor carrier for a continuous period that began before January 1, 1971 are exempt from:

Applications for employment

Road Tests

Multiple employer drivers

Multiple-employer drivers— If a motor carrier employs a person as a driver on any basis, the motor carrier must have on file the driver's name, social security number, identification number, type, issuing state of his/her motor vehicle operator's license, medical certificate, road test and certificate, and controlled substance test results, even if that driver's primary employment is with another carrier.

Drivers furnished by other motor carriers— A motor carrier using a driver regularly employed by another motor carrier must have on file a signed written certificate that includes the driver's name and signature, certification of the driver's full qualifications, and expiration date of the driver's medical examiner's certificate.

Disqualifying offenses

A driver is disqualified from operating a commercial motor vehicle on public highways, for the following offenses:

Revocation, suspension, or withdrawal of an operator's license

Conviction or forfeiture of bond for the following criminal offenses while driving a commercial motor vehicle:

Driving a CMV while under the influence of alcohol.

Driving a CMV while under the influence of a disqualifying drug or other controlled substance.

Leaving the scene of an accident that involves a CMV.

Using a CMV to commit a felony.

Using a CMV to violate an Out-of-Service Order.

Penalties

A first offender is disqualified for one year following conviction or forfeiture



For a second offense within three years, a driver is disqualified for three years.

## Hours of Service of Drivers and Driver Fatigue – Part 395

### General rule

The hours of service rules apply to all motor carriers and drivers, with exceptions found in paragraphs (b) through (k) of Section 395.1.

### Ten-hour rule

Drivers are allowed to drive for ten hours following eight consecutive hours off duty.

### 15-hour rule

A motor carrier cannot permit or require a driver to drive after 15 hours are spent on duty following 8 consecutive hours off.

### 60 and 70 hour rules

A motor carrier must not permit or require a driver to drive after a total of

60 hours on duty in 7 consecutive days or;

70 hours on duty in 8 consecutive days

If the driver works more than one job of any kind, that time must also be included as On Duty Time.

### Driver's record of duty status

Every driver shall prepare a record of duty status (Driver's daily log) in his/her own handwriting for each 24-hour period, unless operating under the 100 air-mile radius exemption.

Failure to complete or retain the log, or knowingly falsifying logs or other reports, makes the driver and/or carrier liable to prosecution.

### 100 air-mile radius exemption

A driver is exempt from maintaining the driver's daily log requirements of Section 395.8 if all of the following is true:

The driver operates within a 100 air-mile radius of the normal work reporting location.

The driver returns to the work reporting location and is released from work within 12 consecutive hours.

Each 12 hours on duty are separated by at least 8 consecutive hours of off duty.



The driver does not exceed a maximum of ten hours driving time following eight consecutive hours off duty.

The motor carrier that employs the driver maintains and retains for a period of six months accurate and true time records that show:

The total number of hours the driver is on duty each day

The time the driver reports for duty each day

The time the driver is released from duty each day

The total time for the preceding seven days for first-time or intermittent drivers

Submitting/retaining duty status log

The driver must submit the original log sheet to the employing carrier within 13 days after completion. When a motor carrier uses a driver initially or intermittently, that carrier must obtain from him/her a signed statement giving the total time on duty during the immediately preceding 7 days and the time at which he/she was last relieved of duty. Records of duty status must be maintained for a minimum of six months at the carrier's principal place of business, with all supporting documents.

Automatic on-board recording devices

Alternatively, motor carriers may require a driver to use an automatic on-board recording device to record duty status. The driver must still have in his/her possession records of duty status in automated or written form, for the previous seven consecutive days. All hard copies of the driver's record of duty status must be signed by the driver.

Parts and Accessories Necessary for Safe Operation – Part 393

Every commercial motor vehicle must be equipped with certain standard equipment. Other (optional) equipment or accessories are permitted only if these items do not decrease the operational safety of the vehicle.

Lights

What lighting is covered?

Part 393 specifies the required color, position, and types of lamps and reflectors for commercial motor vehicles. All lamps and reflectors for commercial motor vehicles manufactured after March 7, 1989 must meet the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108 (49 CFR 571.108) in effect on the date of manufacture. Certain trailers manufactured on or after December 1, 1993, must have retroreflective sheeting or additional reflex reflectors to make them more visible to other motorists at nighttime and under other conditions of reduced visibility. Trailers manufactured before December 1, 1993 must be retrofitted with retroreflective sheeting or additional reflectors by June 1, 2001.



Lamps and reflectors on commercial motor vehicles manufactured on or prior to March 7, 1989 must meet either the requirements of Part 393 or of FMVSS No. 108 that were in effect on the date of manufacture.

Must be operable

All required lamps must light on request at an inspection and must light when required during regular operation of the vehicle.

Lamp mounting

All lamps must be permanently and securely mounted on a permanent part of the vehicle. The exceptions are temporary lamps, such as those used in a driveaway-towaway operation or mounted on projecting loads. Temporary lamps must be securely attached.

**BRAKES**

Commercial motor vehicles must be equipped with the following brake systems: A service brake system that meets the requirements of 49 CFR 393.52, which specifies braking and holding performance.

A parking brake system that meets the requirements of 49 CFR 393.41, which specifies parking brake activation and the method for holding the brakes in the applied position.

Brakes on all wheels

Every commercial motor vehicle must be equipped with brakes acting on all wheels, with the following exceptions:

Trucks and truck tractors with three or more axles, manufactured before July 25, 1980, are not required to have steering axle brakes.

Vehicles being towed in a driveaway-towaway operation. (However, the towed vehicle must have brakes in operation if the brakes on the towing vehicle are not capable of stopping the combination vehicle under the conditions covered by Section 393.52.)

Any full trailer, semitrailer, or pole trailer having a gross weight of 3,000 pounds or less, provided the trailer weight does not exceed 40 percent of weight of the towing vehicle.

Breakaway and emergency braking

Every vehicle used to tow a trailer equipped with brakes must have a means of maintaining the operation of the brakes on the towing vehicle in the event that the trailer breaks away from the towing vehicle. Among the other requirements:

Every truck or truck tractor equipped with air brakes, when used to tow other vehicles equipped with air brakes, must be capable of activating (manually and automatically) the emergency features of the trailer brakes. The brakes must apply automatically when the towing vehicle air supply pressure is between 20 and 45 psi. The manual control must be operable by the driver from the driver's seat, with seat belt in use.



Every trailer is required to be equipped with brakes that apply automatically if the trailer breaks away from the towing vehicle\*. The brakes must remain in the applied position for at least 15 minutes.

\*These requirements do not apply to vehicles in driveaway-towaway operations.

#### Brake tubing and hose

Safe and reliable operation of a vehicle's brakes depends upon adequate protection of the tubing and hoses from mechanical and other damage.

Design and construction of brake tubing and hose must ensure proper, adequate, and continued functioning.

Installation must ensure proper functioning of the hose.

Length and flexibility must accommodate all normal motions of the parts to which the hose is attached.

Protection against mechanical damage must include protection against chafing, kinking, and mechanical damage.

Protection from high temperature must include protection from or location away from exhaust pipes and other sources of high temperatures.

#### Brake warning devices

Buses, trucks, and truck tractors must be equipped with a signal that provides a warning to the driver when a failure occurs in the vehicle's service brake system. This signal requirement covers hydraulic brake systems, air brake systems, vacuum brake systems, and hydraulic brakes applied or assisted by air or vacuum.

#### Antilock Brake Systems (ABS)

Certain commercial motor vehicles are required to be equipped with antilock braking systems that meet the requirements of FMVSS No. 105 (49 CFR 571.105) concerning hydraulic brake systems, and FMVSS No. 121 (49 CFR 571.121) concerning air brake systems. The rules apply to:

Truck-tractors manufactured on or after March 1, 1997;

Air-braked single-unit trucks, buses, and trailers (including converter dollies) manufactured on or after March 1, 1998; and

Hydraulic-braked trucks and buses manufactured on or after March 1999.

#### Automatic brake adjusters and brake adjustment indicators

Each commercial motor vehicle manufactured on or after October 20, 1993, and equipped with a hydraulic brake system, must be equipped with an automatic brake adjustment system that meets the requirements of FMVSS No. 105.



Each commercial motor vehicle manufactured on or after October 20, 1994, and equipped with an air brake system, must be equipped with an automatic brake adjustment system that meets the requirements of FMVSS No. 121.

Air-braked vehicles manufactured on or after October 20, 1994, and equipped with an external automatic adjustment mechanism, must be equipped with an automatic brake adjustment indicator that meets the requirements of FMVSS No. 121.

#### WINDSHIELD CONDITION

A vehicle's windshield must be free of discoloration and cracks in the area extending from the top of the steering wheel to within two inches of the top of the windshield.

#### FUEL SYSTEMS

Fuel systems used for the operation of commercial motor vehicles and of auxiliary equipment installed on or used in connection with commercial motor vehicles must meet the following requirements.

Each fuel system must be located so that

No part of the system extends beyond the widest part of the vehicle.

No part of a fuel tank is forward of the front axle or a power unit.

Fuel lines do not extend between a towed vehicle and the towing unit while the combination is in motion.

No part of the fuel system of a bus manufactured on or after January 1, 1973, is located within or above the passenger compartment.

#### Coupling devices

Sections 393.70 and 393.71 provide requirements for the attachment and location of the fifth wheel and requirements for the towing of full trailers. In addition, requirements for saddle mount operations are provided.

#### Cargo securement

Sections 393.100-393.106 provide the standards covering cargo securement. Cargo is required to be loaded and secured so that it will not shift or fall off the vehicle. The cargo securement regulations include minimum strength requirements for securement devices and requirements for protection against longitudinal and lateral movement of the cargo. In addition, Section 393.106 covers headerboards.

#### MISCELLANEOUS PARTS AND ACCESSORIES

##### Tires

Tires used on commercial motor vehicles must meet specific safety rules. No tire that is in use on a commercial motor vehicle may have any of the following defects:



Body ply or belt material exposed through the tread or sidewall

Tread or sidewall separation

Audible leak (or flat)

A cut exposing the ply or belt material

A tread groove pattern depth of less than 4/32 of an inch (front tires) or 2/32 of an inch (other tires)

Regrooved tires on front wheels of trucks or truck tractors which have a load carrying capacity equal to or greater than 8.25-20 8-ply rating tires

Regrooved, recapped, or retreaded tires on the front wheels of buses are prohibited.

Sleeper berths

Sleeper berths must meet minimum dimensions. A sleeper berth must not be installed on a trailer and must be located in or adjacent to the cab. An exit door at least 18" high by 36" wide must lead directly into the cab. Section 393.76 contains special provisions for sleeper berths installed before 1975.

Sleeper berths must be equipped with adequate sheets and blankets, and a mattress and springs or innerspring mattress. They must be adequately ventilated, and located so as to protect occupants against exhaust heat and fumes and fuel leaks. A mandatory restraint system must withstand at least 6,000 lbs. of force applied toward the front of the vehicle.

Exhaust systems

Exhaust systems must meet the following requirements:

The exhaust system and discharge must be located where it is not likely to burn or damage the electrical wiring, the fuel supply, nor any combustible part of the vehicle.

The discharge from the exhaust system must not be located immediately below the fuel tank or the fuel tank filler pipe.

The exhaust system may not be temporarily repaired with patch or wrap material.

The exhaust pipe and mufflers must be securely fastened to the vehicle.

The exhaust system may not leak or discharge at any point forward of or directly below the driver or sleeper compartment.

For trucks and truck tractors, the exhaust system must discharge at a location to the rear of the cab, or above and near the rear of the cab.

For a bus powered by a gasoline engine, the exhaust pipe must discharge at a point no farther forward than six inches forward of the rearmost part of the bus.



For a bus powered by diesel or other fuel (not gasoline), the exhaust pipe must discharge either

At a point no farther forward than 15 inches forward of the rearmost part of the bus, or

To the rear of all doors or windows designed to be open (not including emergency exits).

#### Rear end protection

Every commercial motor vehicle must be equipped with either bumpers or other devices that prevent the under ride of another vehicle. Tractors, pole trailers, and driveaway-towaway vehicles are exempt. Certain trailers manufactured on or after January 26, 1998 must have rear impact guards that meet FMVSS Nos. 223 & 224.

#### Seat belts

Commercial motor vehicle must be equipped with seats, seat belt assemblies, and seat belt anchorages as specified in the Federal Motor Vehicle Safety Standards (FMVSS).

#### EMERGENCY EQUIPMENT

Commercial motor vehicles must carry the following emergency equipment:

Fire extinguisher (not required for driveaway-towaway operations)

Spare fuses

Warning devices for stopped vehicles

#### Fire extinguisher

Fire extinguishers must be securely mounted and readily accessible for use. Each extinguisher must have a gauge or other indicator that shows whether the extinguisher is fully charged, and a label showing its Underwriters' Laboratories (UL) rating.

The fire extinguisher(s) must meet one of the following standards:

One extinguisher with a UL rating of 5 B:C or more or

Two extinguishers each with a UL rating of 4 B:C or more.

One extinguisher with a UL rating of 10 B:C, if the vehicle is transporting placardable quantities of hazardous material.

#### FRAMES, CAB AND BODY COMPONENTS, WHEELS, STEERING, AND SUSPENSION SYSTEMS

##### Suspension systems

Suspension systems are required to be structurally sound and in safe working order, including the following:



Axles must be in proper alignment, and no positioning part can be cracked, broken, loose, or missing.

Adjustable axles must have locking pins in place.

Leaf springs must not be cracked, broken, missing, or shifted out of position.

Coil springs must not be cracked or broken.

Torsion bars must not be cracked or broken.

Air suspensions must support the vehicle in a level position, and must not leak.

#### Steering systems

Steering system must be in proper working order, which includes the following:

Steering wheel must be properly secured and no cracked or missing spokes.

Steering wheel lash must meet the requirements of Section 393.209.

Steering column must be securely fastened.

Steering system must not have worn or welded universal joints, loose steering gear box, missing bolts, or a loose pitman arm on the steering gear output shaft.

Power steering unit must not have loose or broken parts, frayed, cracked, or slipping belts; leaks; or insufficient fluid in reservoir.

#### Inspections Repair and Maintenance; Out of Service Criteria – Part 396

Every motor carrier, its officers, drivers, agents, representatives, and employees directly concerned with inspection or maintenance of commercial motor vehicles must comply and be conversant with these rules.

#### General requirements

Every carrier shall systematically inspect, repair, and maintain all commercial motor vehicles under its control.

#### Record keeping requirements

Motor carriers must maintain the following information for every vehicle they have controlled for 30 days or more:

Identifying information, including company number, make, serial number, year, and tire size



A schedule of inspections to be performed, including type and due date

Inspection, repair, and maintenance records

Records of tests conducted on buses with pushout windows, emergency doors, and marking lights.

These records must be retained for one year at the location where the vehicle is garaged, and maintained for six months after the vehicle leaves the carrier's control (via sale, trade-in, or scrap).

Roadside inspection reports

Any driver who receives a roadside inspection report must deliver it to the motor carrier.

Certification of roadside inspection reports

An official of the motor carrier is to examine the roadside inspection report and ensure that any violations or defects noted on the report are corrected. Within 15 days after the inspection, the carrier must sign the completed roadside inspection report to certify that all violations have been corrected, and then return it to the indicated address. A copy must be retained for 12 months from the date of inspection.

Post-trip inspection report

Every carrier must require its drivers to prepare a daily written post-trip inspection report at the end of each driving day. Every driver is responsible for preparing such a report for each vehicle driven. This report must cover at least the following parts and accessories:

Service brakes (including trailer brake connections)

Parking (hand) brake

Steering mechanism

Lighting devices and reflectors

Tires

Horn

Windshield wipers

Rearview mirrors

Coupling devices

Wheels and rims

#### Emergency equipment.

The report must list any condition that the driver either found or had reported to him/her that would affect safety of operation or cause a breakdown. If no defect or deficiency is reported or found, the report should state this. The driver must sign the report in all cases. Before dispatching the vehicle again, a carrier shall ensure that a certification has been made as to any defect or deficiency, that they have been corrected, or state those deficiencies that do not require immediate correction. Carriers must keep the original post-trip inspection report and the certification of repairs for at least three months from the date of preparation.

Before starting out, the driver must be satisfied that the motor vehicle is in safe operating condition. If the last vehicle inspection report notes any deficiencies, the driver must review and sign to acknowledge that necessary repairs have been completed.

#### Periodic inspection

Every commercial vehicle, including each segment of a combination vehicle requires periodic inspection that must be performed at least once every 12 months. At a minimum, inspections must include all items enumerated in the Minimum Periodic Inspection Standards, Appendix G to Subchapter B. Carriers may perform required annual inspections themselves. The original or a copy of the periodic inspection report must be retained by the motor carrier for 14 months from the report date.

#### Documentation of Inspection

Documentation (report, sticker, or decal) of the most recent periodic inspection must be kept on the vehicle.

#### Inspector qualification

Motor carriers must ensure that persons performing annual inspections are qualified.

#### Inspectors must:

understand the inspection standards of Part 393 and Appendix G

be able to identify defective components

have knowledge and proficiency in methods, procedures, and tools.

#### Inspector training or experience

Inspectors may have gained experience or training by:

completing a State or Federal training program, or earning a State or Canadian Province qualifying certificate in commercial motor vehicle safety inspections

a combination of other training or experience totaling at least a year.

#### Evidence of qualifications



Motor carriers must retain evidence of an inspector's qualifications until one year after the inspector ceases to perform inspections for the carrier.

Equivalent to periodic inspection

The motor carrier may meet periodic inspection requirements through:

State or other jurisdiction's roadside inspection program,

Self-inspection by qualified employee, or

Third part inspection by qualified individual.

Brake inspector qualification

The motor carrier is responsible for ensuring that all inspections, maintenance, repairs, and service to brakes of commercial motor vehicles comply with these regulations. The carrier must ensure that the employees responsible for brake inspection, maintenance, service, or repairs meet minimum brake inspector qualifications.

Qualifications for brake inspectors

The brake inspector must:

understand and be able to perform the brake service and inspection.

know the methods, procedures, tools and equipment needed and

be qualified to perform brake service or inspection by training and/or experience.

Qualifying brake training or experience

Qualifying brake training or experience includes successful completion of:

a State, Canadian Province, Federal agency, or union training program,

a State-approved training program,

training that led to attainment of a State or Canadian Province qualifying certificate to perform assigned brake service or inspection tasks, including passage of CDL air brake test in the case of a brake inspection, or

one year of brake-related training, experience, or combination of both.

Maintaining evidence of brake inspector qualifications

Motor carriers must maintain evidence of brake inspector qualification at the principal place of business or the location where the inspector works. Evidence must be retained for the period during which the brake inspector is employed in that capacity, and for one year thereafter.

Differences in the levels of inspection

Inspection Items

Level I

Level II\*  
Level III  
Level IV  
Level VI\*\*

1. Driver's license

X  
X  
X

2. Medical examiner's certificate and waiver (if applicable)

X  
X  
X

3. Alcohol and drugs

X  
X  
X

4. Driver's log (hours-of-service and duty status)

X  
X  
X

5. Seatbelt system

X  
X  
X  
X

6. Periodic inspection documentation

X  
X  
X  
X

7. Brake system

X  
X  
X

8. Coupling devices

X  
X  
X

9. Exhaust system

X  
X

X

10. Frame

X

X

X

11. Fuel system

X

X

X

12. Brake, head and tail lamps, turn signals, and lamps on projecting loads

X

X

X

13. Safe loading of cargo

X

X

X

14. Steering mechanism

X

X

X

15. Suspension

X

X

X

16. Tires

X

X

X

17. Wheels, rims and hubs

X

X

X

18. Van and open top trailer bodies

X

X

X

19. Windshield wipers

X

X

X

20. Emergency exits (for buses)

X

X

X

21. Hazardous materials requirements (as applicable)

X

X

X

X

22. One time special inspection of a particular item

X

CVSA decal issued for "Pass" inspection (no violations/defects found in items 7-20)

X

X

•• Level II inspections only include those items that can be inspected without physically getting under the vehicle. \*\*Level V inspections are conducted without a driver present.

## Hazardous Materials – Part 397

Do the accident involve the transportation of hazardous materials?

Hazardous materials are any substance defined by the Secretary of Transportation as posing an unreasonable risk to health and safety or property. Most people recognize gasoline, propane, or dynamite as being hazardous materials, but did you know that common materials such as paint, nail polish remover, adhesives, cleaning compounds, hair spray, matches, and others may be classified as hazardous materials? It is important to know if hazardous materials are involved because detailed additional regulations exist and violations of the Hazardous Materials Regulations (HMR) carry civil fines of up to \$27,500 and possible criminal penalties



including up to five years in jail. Hazardous materials fall into one of the following basic classes and divisions:

Explosives 1.1 Explosives 1.2 Explosives 1.3 Explosives 1.4 Explosives 1.5 Explosives 1.6 Infectious Substance, 6.2 Non-Flammable Gas, 2.2 Organic Peroxide, 5.2 Flammable & Combustible Liquids, 3 Flammable Solids, 4.1 Flammable Gas, 2.1 Poison Gas, 2.3 Poison Liquid or Solid, 6.1 Radioactive, 7 Corrosive, 8 Spontaneously Combustible, 4.2 Dangerous When Wet, 4.3 Oxidizer, 5.1 Miscellaneous, 9 Consumer Commodities, ORM-D

To determine if a material being transported is hazardous, obtain information from the shipper who provided the material or see the definitions of these materials in the hazardous materials regulations.

What do I need to know if transportation of hazardous materials is involved?

A motor carrier that transports a hazardous material, whether interstate or intrastate, must comply with the Federal Hazardous Materials Regulations, 49 CFR 100-180. These regulations include requirements including registration, training, shipping papers, labels, placards, and packages. In addition, there are additional requirements in the Federal Motor Carrier Safety Regulations which include insurance requirements, operational restrictions, Commercial Drivers License endorsements, routing, parking, and attendance requirements for hazardous materials.

Where can I get more information?

There are many ways to get additional information about safe transportation of hazardous materials. The regulations and interpretations can be found on the Internet at <http://hazmat.dot.gov>. In addition, the Federal Motor Carrier Safety Administration has developed an informational booklet titled "How to Comply with the Federal Hazardous Materials Regulations" as well as a Spanish/English bi-lingual package which contains general awareness training for hazardous materials. These documents and more information, can be found on this website. The Department also offers a hazardous materials information hotline at 1-800-HMR-4922.

State Venue Laws Regarding Trucking Accidents – Missouri’s Motor Carrier Venue Statute

§508.070 (Revised Statutes of Missouri, 2000)

Suits against motor carrier, where brought: 1. Suit may be brought against any motor carrier which is subject to regulation pursuant to chapter 390, RSMo, in any county where the cause of action may arise, in any town or county where the motor carrier operates, or judicial circuit where the cause of action accrued, or where the defendant maintains an office or agent, and service may be had upon the motor carrier whether an individual person, firm, company, association, or corporation, by serving process upon the director, division of motor carrier and railroad safety.

2. When a summons and petition are served upon the director, division of motor carrier and railroad safety, naming any motor carrier, either a resident or nonresident of this state, as a defendant in any action, the director shall immediately mail the summons and petition by registered United States mail to the motor carrier at the business address of the motor carrier as it appears upon the records of the commission. The director shall request from the postmaster a return receipt from the motor carrier to whom the registered letter enclosing copy of summons and petition is mailed. The director shall inform the clerk of the court out of which the summons was issued that the summons and petition were mailed to the motor carrier, as herein described, and the director shall forward to the clerk the return receipt showing delivery of the registered letter.

3. Each motor carrier not a resident of this state and not maintaining an office or agent in this state shall, in writing, designate the director as its authorized agent upon whom legal service may be had in all actions arising in this state from any operation of the motor vehicle pursuant to authority of any certificate or permit, and service shall be had upon the nonresident motor carrier as herein provided.

4. There shall be kept in the office of the director, division of motor carrier and railroad safety a permanent record showing all process served, the name of the plaintiff and defendant, the court from which the summons issued, the name and title of the officer serving the same, the day and the hour of service, the day and date on which petition and summons were forwarded to the defendant or defendants by registered letter, the date on which return receipt is received by the director, and the date on which the return receipt was forwarded to the clerk of the court out of which the summons was issued.

A claimant who desires to include in suit against a motor carrier or contract hauler a defendant, who is not a motor carrier or contract hauler, must proceed under general venue statutes. State ex rel. O'Keefe v. Brown (Sup. 1951) 235 S.W.2d 304, 361 Mo. 618.

§390.020 (Revised Statutes of Missouri, 2000).

Definitions:

(6) "Common carrier", any person which holds itself out to the general public to engage in the transportation by motor vehicle of passengers or property for hire or compensation upon the public highways and airlines engaged in intrastate commerce;

(7) "Contract carrier", any person under individual contracts or agreements which engage in transportation by motor vehicles of passenger or property for hire or compensation upon the public highways;

(18) "Motor carrier", any person engaged in the transportation of property or passengers, or both, for compensation or hire, over the public roads of this state by motor vehicle. The term includes both common and contract carriers;