

FLEET SAFETY COMPLIANCE MANUAL

PART 392 — DRIVING OF COMMERCIAL MOTOR VEHICLES

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■ AUTHORITY: 49 U.S.C. 13902, 31136, 31502; and 49 CFR 1.73.

Subpart A — General

§392.1 Scope of the rules in this part.

Every motor carrier, its officers, agents, representatives, and employees responsible for the management, maintenance, operation, or driving of commercial motor vehicles, or the hiring, supervising, training, assigning, or dispatching of drivers, shall be instructed in and comply with the rules in this part.

§392.2 Applicable operating rules.

Every commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. However, if a regulation of the Federal Motor Carrier Safety Administration imposes a higher standard of care than that law, ordinance or regulation, the Federal Highway Administration regulation must be complied with.

§392.3 Ill or fatigued operator.

No driver shall operate a commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a commercial motor vehicle, while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle. However, in a case of grave emergency where the hazard to occupants of the commercial motor vehicle or other users of the highway would be increased by compliance with this section, the driver may continue to operate the commercial motor vehicle to the nearest place at which that hazard is removed.

§392.4 Drugs and other substances.

(a) No driver shall be on duty and possess, be under the influence of, or use, any of the following drugs or other substances:

- (1) Any 21 CFR 1308.11 *Schedule I* substance;
- (2) An amphetamine or any formulation thereof (including, but not limited, to "pep pills," and "bennies");
- (3) A narcotic drug or any derivative thereof; or
- (4) Any other substance, to a degree which renders the driver incapable of safely operating a motor vehicle.

(b) No motor carrier shall require or permit a driver to violate paragraph (a) of this section.

(c) Paragraphs (a) (2), (3), and (4) do not apply to the possession or use of a substance administered to a driver by or under the instructions of a licensed medical practitioner, as defined in §382.107 of this subchapter, who has advised the driver that the substance will not affect the driver's ability to safely operate a motor vehicle.

(d) As used in this section, "possession" does not include possession of a substance which is manifested and transported as part of a shipment.

§392.5 Alcohol prohibition.

(a) No driver shall—

- (1) Use alcohol, as defined in §382.107 of this subchapter, or be under the influence of alcohol, within 4 hours before going on

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duty or operating, or having physical control of, a commercial motor vehicle; or

(2) Use alcohol, be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol, while on duty, or operating, or in physical control of a commercial motor vehicle; or

(3) Be on duty or operate a commercial motor vehicle while the driver possesses wine of not less than one-half of one per centum of alcohol by volume, beer *as defined in 26 U.S.C. 5052(a), of the Internal Revenue Code of 1954*, and distilled spirits *as defined in section 5002(a)(8), of such Code*. However, this does not apply to possession of wine, beer, or distilled spirits which are:

- (i) Manifested and transported as part of a shipment; or
- (ii) Possessed or used by bus passengers.
- (b) No motor carrier shall require or permit a driver to—
 - (1) Violate any provision of paragraph (a) of this section; or
 - (2) Be on duty or operate a commercial motor vehicle if, by the driver's general appearance or conduct or by other substantiating evidence, the driver appears to have used alcohol within the preceding 4 hours.

(c) Any driver who is found to be in violation of the provisions of paragraph (a) or (b) of this section shall be placed out-of-service immediately for a period of 24 hours.

(1) The 24-hour out-of-service period will commence upon issuance of an out-of-service order.

(2) No driver shall violate the terms of an out-of-service order issued under this section.

(d) Any driver who is issued an out-of-service order under this section shall:

(1) Report such issuance to his/her employer within 24 hours; and

(2) Report such issuance to a State official, designated by the State which issued his/her driver's license, within 30 days unless the driver chooses to request a review of the order. In this case, the driver shall report the order to the State official within 30 days of an affirmation of the order by either the Division Administrator or State Director for the geographical area or the Administrator.

(e) Any driver who is subject to an out-of-service order under this section may petition for review of that order by submitting a petition for review in writing within 10 days of the issuance of the order to the Division Administrator or State Director for the geographical area in which the order was issued. The Division Administrator or State Director may affirm or reverse the order. Any driver adversely affected by such order of the Division Administrator or State Director may petition the Administrator for review in accordance with 49 CFR 386.13.

§392.6 Schedules to conform with speed limits.

No motor carrier shall schedule a run nor permit nor require the operation of any commercial motor vehicle between points in such period of time as would necessitate the commercial vehicle being operated at speeds greater than those prescribed by the jurisdictions in or through which the commercial motor vehicle is being operated.

§392.7 Equipment, inspection and use.

No commercial motor vehicle shall be driven unless the driver is satisfied that the following parts and accessories are in good working order, nor shall any driver fail to use or make use of such parts and accessories when and as needed:

- Service brakes, including trailer brake connections.
- Parking (hand) brake.
- Steering mechanism.
- Lighting devices and reflectors.
- Tires.
- Horn.
- Windshield wiper or wipers.
- Rear-vision mirror or mirrors.
- Coupling devices.

§392.8 Emergency equipment, inspection, and use.

No commercial motor vehicle shall be driven unless the driver thereof is satisfied that the emergency equipment required by §393.95 of this subchapter is in place and ready for use; nor shall any driver fail to use or make use of such equipment when and as needed.

§392.9 Inspection of cargo, cargo securement devices and systems.

(a) **General.** A driver may not operate a commercial motor vehicle and a motor carrier may not require or permit a driver to operate a commercial motor vehicle unless—

(1) The commercial motor vehicle's cargo is properly distributed and adequately secured as specified in §§393.100 through 393.142 of this subchapter.

(2) The commercial motor vehicle's tailgate, tailboard, doors, tarpaulins, spare tire and other equipment used in its operation, and the means of fastening the commercial motor vehicle's cargo, are secured; and

(3) The commercial motor vehicle's cargo or any other object does not obscure the driver's view ahead or to the right or left sides (except for drivers of self-steer dollies), interfere with the free movement of his/her arms or legs, prevent his/her free and ready access to accessories required for emergencies, or prevent the free and ready exit of any person from the commercial motor vehicle's cab or driver's compartment.

(b) **Drivers of trucks and truck tractors.** Except as provided in paragraph (b)(4) of this section, the driver of a truck or truck tractor must—

(1) Assure himself/herself that the provisions of paragraph (a) of this section have been complied with before he/she drives that commercial motor vehicle;

(2) Inspect the cargo and the devices used to secure the cargo within the first 50 miles after beginning a trip and cause any adjustments to be made to the cargo or load securement devices as necessary, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from the commercial motor vehicle; and

(3) Reexamine the commercial motor vehicle's cargo and its load securement devices during the course of transportation and make any necessary adjustment to the cargo or load securement devices, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from, the commercial motor vehicle. Reexamination and any necessary adjustments must be made whenever—

(i) The driver makes a change of his/her duty status; or

(ii) The commercial motor vehicle has been driven for 3 hours; or

(iii) The commercial motor vehicle has been driven for 150 miles, whichever occurs first.

(4) The rules in this paragraph (b) do not apply to the driver of a sealed commercial motor vehicle who has been ordered not

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to open it to inspect its cargo or to the driver of a commercial motor vehicle that has been loaded in a manner that makes inspection of its cargo impracticable.

§392.9a Operating authority.

(a) **Registration required.** A motor vehicle providing transportation requiring registration under 49 U.S.C. 13902 may not be operated without the required registration or operated beyond the scope of its registration.

(b) **Penalties.** Every motor vehicle providing transportation requiring registration under 49 U.S.C. 13902 shall be ordered out-of-service if determined to be operating without registration or beyond the scope of its registration. In addition, the motor carrier may be subject to penalties in accordance with 49 U.S.C. 14901.

(c) **Administrative Review.** Upon the issuance of the out-of-service order under paragraph (b) of this section, the driver shall comply immediately with such order. Opportunity for review shall be provided in accordance with section 554 of title 5, United States Code not later than 10 days after issuance of such order.

§392.9b [Removed.]

Subpart B — Driving of Vehicles

§392.10 Railroad grade crossings; stopping required.

(a) Except as provided in paragraph (b) of this section, the driver of a commercial motor vehicle specified in paragraphs (1) through (6) of this section shall not cross a railroad track or tracks at grade unless he/she first: Stops the commercial motor vehicle within 50 feet of, and not closer than 15 feet to, the tracks; thereafter listens and looks in each direction along the tracks for an approaching train; and ascertains that no train is approaching. When it is safe to do so, the driver may drive the commercial motor vehicle across the tracks in a gear that permits the commercial motor vehicle to complete the crossing without a change of gears. The driver must not shift gears while crossing the tracks.

(1) Every bus transporting passengers,

(2) Every commercial motor vehicle transporting any quantity of a Division 2.3 chlorine,

(3) Every commercial motor vehicle which, in accordance with the regulations of the Department of Transportation, is required to be marked or placarded with one of the following markings:

(i) Division 1.1

(ii) Division 1.2, or Division 1.3

(iii) Division 2.3 Poison gas

(iv) Division 4.3

(v) Class 7

(vi) Class 3 Flammable

(vii) Division 5.1

(viii) Division 2.2

(ix) Division 2.3 Chlorine

(x) Division 6.1 Poison

(xi) Division 2.2 Oxygen

(xii) Division 2.1

(xiii) Class 3 Combustible liquid

(xiv) Division 4.1

(xv) Division 5.1

(xvi) Division 5.2

(xvii) Class 8

(xviii) Division 1.4

(4) Every cargo tank motor vehicle, whether loaded or empty, used for the transportation of any hazardous material as defined in the Hazardous Materials Regulations of the Department of Transportation, Parts 107 through 180 of this title.

(5) Every cargo tank motor vehicle transporting a commodity which at the time of loading has a temperature above its flash point as determined by §173.120 of this title.

(6) Every cargo tank motor vehicle, whether loaded or empty, transporting any commodity under exemption in accordance with the provisions of Subpart B of Part 107 of this title.

(b) A stop need not be made at:

(1) A streetcar crossing, or railroad tracks used exclusively for industrial switching purposes, within a business district, as defined in §390.5 of this chapter,

(2) A railroad grade crossing when a police officer or crossing flagman directs traffic to proceed,

(3) A railroad grade crossing controlled by a functioning highway traffic signal transmitting a green indication which, under local law, permits the commercial motor vehicle to proceed across the railroad tracks without slowing or stopping.

(4) An abandoned railroad grade crossing which is marked with a sign indicating that the rail line is abandoned,

(5) An industrial or spur line railroad grade crossing marked with a sign reading "Exempt." Such "Exempt" signs shall be erected only by or with the consent of the appropriate State or local authority.

§392.11 Railroad grade crossings; slowing down required.

Every commercial motor vehicle other than those listed in §392.10 shall, upon approaching a railroad grade crossing, be driven at a rate of speed which will permit said commercial motor vehicle to be stopped before reaching the nearest rail of such crossing and shall not be driven upon or over such crossing until due caution has been taken to ascertain that the course is clear.

§392.12 [Removed and reserved.]

§392.13 [Removed and reserved.]

§392.14 Hazardous conditions; extreme caution.

Extreme caution in the operation of a commercial motor vehicle shall be exercised when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke, adversely affect visibility or traction. Speed shall be reduced when such conditions exist. If conditions become sufficiently dangerous, the operation of the commercial motor vehicle shall be discontinued and shall not be resumed until the commercial motor vehicle can be safely operated. Whenever compliance with the foregoing provisions of this rule increases hazard to passengers, the commercial motor vehicle may be operated to the nearest point at which the safety of passengers is assured.

§392.15 [Removed and reserved.]

§392.16 Use of seat belts.

A commercial motor vehicle which has a seat belt assembly installed at the driver's seat shall not be driven unless the driver has properly restrained himself/herself with the seat belt assembly.

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§392.18 [Removed and reserved.]

Subpart C — Stopped Vehicles

§392.20 [Removed and reserved.]

§392.21 [Removed and reserved.]

§392.22 Emergency signals; stopped commercial motor vehicles.

(a) **Hazard warning signal flashers.** Whenever a commercial motor vehicle is stopped upon the traveled portion of a highway or the shoulder of a highway for any cause other than necessary traffic stops, the driver of the stopped commercial motor vehicle shall immediately activate the vehicular hazard warning signal flashers and continue the flashing until the driver places the warning devices required by paragraph (b) of this section. The flashing signals shall be used during the time the warning devices are picked up for storage before movement of the commercial motor vehicle. The flashing lights may be used at other times while a commercial motor vehicle is stopped in addition to, but not in lieu of, the warning devices required by paragraph (b) of this section.

(b) Placement of warning devices—

(1) **General rule.** Except as provided in paragraph (b)(2) of this section, whenever a commercial motor vehicle is stopped upon the traveled portion or the shoulder of a highway for any cause other than necessary traffic stops, the driver shall, as soon as possible, but in any event within 10 minutes, place the warning devices required by §393.95 of this subchapter, in the following manner:

(i) One on the traffic side of and 4 paces (approximately 3 meters or 10 feet) from the stopped commercial motor vehicle in the direction of approaching traffic;

(ii) One at 40 paces (approximately 30 meters or 100 feet) from the stopped commercial motor vehicle in the center of the traffic lane or shoulder occupied by the commercial motor vehicle and in the direction of approaching traffic; and

(iii) One at 40 paces (approximately 30 meters or 100 feet) from the stopped commercial motor vehicle in the center of the traffic lane or shoulder occupied by the commercial motor vehicle and in the direction away from approaching traffic.

(2) **Special rules—(i) Fusees and liquid-burning flares.** The driver of a commercial motor vehicle equipped with only fusees or liquid-burning flares shall place a lighted fusee or liquid-burning flare at each of the locations specified in paragraph (b)(1) of this section. There shall be at least one lighted fusee or liquid-burning flare at each of the prescribed locations, as long as the commercial motor vehicle is stopped. Before the stopped commercial motor vehicle is moved, the driver shall extinguish and remove each fusee or liquid-burning flare.

(ii) **Daylight hours.** Except as provided in paragraph (b)(2)(iii) of this section, during the period lighted lamps are not

required, three bidirectional reflective triangles, or three lighted fusees or liquid-burning flares shall be placed as specified in paragraph (b)(1) of this section within a time of 10 minutes. In the event the driver elects to use only fusees or liquid-burning flares in lieu of bidirectional reflective triangles or red flags, the driver must ensure that at least one fusee or liquid-burning flare remains lighted at each of the prescribed locations as long as the commercial motor vehicle is stopped or parked.

(iii) **Business or residential districts.** The placement of warning devices is not required within the business or residential district of a municipality, except during the time lighted lamps are required and when street or highway lighting is insufficient to make a commercial motor vehicle clearly discernable at a distance of 500 feet to persons on the highway.

(iv) **Hills, curves, and obstructions.** If a commercial motor vehicle is stopped within 500 feet of a curve, crest of a hill, or other obstruction to view, the driver shall place the warning signal required by paragraph (b)(1) of this section in the direction of the obstruction to view a distance of 100 feet to 500 feet from the stopped commercial motor vehicle so as to afford ample warning to other users of the highway.

(v) **Divided or one-way roads.** If a commercial motor vehicle is stopped upon the traveled portion or the shoulder of a divided or one-way highway, the driver shall place the warning devices required by paragraph (b)(1) of this section, one warning device at a distance of 200 feet and one warning device at a distance of 100 feet in a direction toward approaching traffic in the center of the lane or shoulder occupied by the commercial motor vehicle. He/she shall place one warning device at the traffic side of the commercial motor vehicle within 10 feet of the rear of the commercial motor vehicle.

(vi) **Leaking, flammable material.** If gasoline or any other flammable liquid, or combustible liquid or gas seeps or leaks from a fuel container or a commercial motor vehicle stopped upon a highway, no emergency warning signal producing a flame shall be lighted or placed except at such a distance from any such liquid or gas as will assure the prevention of a fire or explosion.

§392.24 Emergency signals; flame-producing.

No driver shall attach or permit any person to attach a lighted fusee or other flame-producing emergency signal to any part of a commercial motor vehicle.

§392.25 Flame producing devices.

No driver shall use or permit the use of any flame-producing emergency signal for protecting any commercial motor vehicle transporting Division 1.1, Division 1.2, or Division 1.3 explosives; any cargo tank motor vehicle used for the transportation of any Class 3 or Division 2.1, whether loaded or empty; or any commercial motor vehicle using compressed gas as a motor fuel. In lieu thereof, emergency reflective triangles, red electric lanterns, or red emergency reflectors shall be used, the placement of which shall be in the same manner as prescribed in §392.22(b).

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Subpart D — Use of Lighted Lamps and Reflectors

§392.30 [Removed and reserved.]

§392.31 [Removed and reserved.]

§392.32 [Removed and reserved.]

§392.33 Obscured lamps or reflectors.

No commercial motor vehicle shall be driven when any of the required lamps or reflectors are obscured by the tailboard, by any part of the load, by dirt, or otherwise.

Subpart E — License Revocation: Duties of Driver

§392.40 [Removed and reserved.]

§392.41 [Removed and reserved.]

§392.42 [Removed.]

Subpart F — Fueling Precautions

§392.50 Ignition of fuel; prevention.

No driver or any employee of a motor carrier shall:

(a) Fuel a commercial motor vehicle with the engine running, except when it is necessary to run the engine to fuel the commercial motor vehicle;

(b) Smoke or expose any open flame in the vicinity of a commercial motor vehicle being fueled;

(c) Fuel a commercial motor vehicle unless the nozzle of the fuel hose is continuously in contact with the intake pipe of the fuel tank;

(d) Permit, insofar as practicable, any other person to engage in such activities as would be likely to result in fire or explosion.

§392.51 Reserve fuel; materials of trade.

Small amounts of fuel for the operation or maintenance of a commercial motor vehicle (including its auxiliary equipment) may be designated as materials of trade (see 49 CFR 171.8).

(a) The aggregate gross weight of all materials of trade on a motor vehicle may not exceed 200 kg (440 pounds).

(b) Packaging for gasoline must be made of metal or plastic and conform to requirements of 49 CFR Parts 171, 172, 173, and 178 or requirements of the Occupational Safety and Health Administration contained in 29 CFR 1910.106.

(c) For Packing Group II (including gasoline), Packing Group III (including aviation fuel and fuel oil), or ORM-D, the material is limited to 30 kg (66 pounds) or 30 L (8 gallons).

(d) For diesel fuel, the capacity of the package is limited to 450 L (119 gallons).

(e) A Division 2.1 material in a cylinder is limited to a gross weight of 100 kg (220 pounds). (A Division 2.1 material is a

flammable gas, including liquefied petroleum gas, butane, propane, liquefied natural gas, and methane).

§392.52 [Removed and reserved.]

Subpart G — Prohibited Practices

§392.60 Unauthorized persons not to be transported.

(a) Unless specifically authorized in writing to do so by the motor carrier under whose authority the commercial motor vehicle is being operated, no driver shall transport any person or permit any person to be transported on any commercial motor vehicle other than a bus. When such authorization is issued, it shall state the name of the person to be transported, the points where the transportation is to begin and end, and the date upon which such authority expires. No written authorization, however, shall be necessary for the transportation of:

(1) Employees or other persons assigned to a commercial motor vehicle by a motor carrier;

(2) Any person transported when aid is being rendered in case of an accident or other emergency;

(3) An attendant delegated to care for livestock.

(b) This section shall not apply to the operation of commercial motor vehicles controlled and operated by any farmer and used in the transportation of agricultural commodities or products thereof from his/her farm or in the transportation of supplies to his/her farm.

§392.61 [Removed and reserved.]

§392.62 Safe operation, buses.

No person shall drive a bus and a motor carrier shall not require or permit a person to drive a bus unless—

(a) All standees on the bus are rearward of the standee line or other means prescribed in §393.90 of this subchapter;

(b) All aisle seats in the bus conform to the requirements of §393.91 of this subchapter; and

(c) Baggage or freight on the bus is stowed and secured in a manner which assures—

(1) Unrestricted freedom of movement to the driver and his proper operation of the bus;

(2) Unobstructed access to all exits by any occupant of the bus; and

(3) Protection of occupants of the bus against injury resulting from the falling or displacement of articles transported in the bus.

§392.63 Towing or pushing loaded buses.

No disabled bus with passengers aboard shall be towed or pushed; nor shall any person use or permit to be used a bus with passengers aboard for the purpose of towing or pushing any disabled motor vehicle, except in such circumstances where the hazard to passengers would be increased by observance of the foregoing provisions of this section, and then only in traveling to the nearest point where the safety of the passengers is assured.

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§392.64 Riding within closed commercial motor vehicles without proper exits.

No person shall ride within the closed body of any commercial motor vehicle unless there are means on the inside thereof of obtaining exit. Said means shall be in such condition as to permit ready operation by the occupant.

§392.65 [Removed and reserved.]

§392.66 Carbon monoxide; use of commercial motor vehicle when detected.

(a) No person shall dispatch or drive any commercial motor vehicle or permit any passengers thereon, when the following conditions are known to exist, until such conditions have been remedied or repaired:

- (1) Where an occupant has been affected by carbon monoxide;
- (2) Where carbon monoxide has been detected in the interior of the commercial motor vehicle;
- (3) When a mechanical condition of the commercial motor vehicle is discovered which would be likely to produce a hazard to the occupants by reason of carbon monoxide.

(b) [Reserved]

§392.67 Heater, flame-producing; on commercial motor vehicle in motion.

No open flame heater used in the loading or unloading of the commodity transported shall be in operation while the commercial motor vehicle is in motion.

§392.68 [Removed and reserved.]

§392.69 [Removed and reserved.]

§392.71 Radar Detectors; use and/or possession.

(a) No driver shall use a radar detector in a commercial motor vehicle, or operate a commercial motor vehicle that is equipped with or contains any radar detector.

(b) No motor carrier shall require or permit a driver to violate paragraph (a) of this section.