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COMMERCIAL MOTOR VEHICLE USE: COMPLIANCE WITH APPLICABLE FEDERAL AND STATE RULES AND REGULATIONS IS CRITICAL

If you or your company use one or more commercial motor vehicles, it is critical to review and understand the numerous and complex federal and state rules and regulations which affect the commercial drivers and/or their employing motor carriers. This article will highlight some important aspects of federal and state laws and regulations governing the use of a commercial motor vehicle. The laws and related regulations are detailed and lengthy.

This article is not intended to serve as a precise statement of federal or Michigan law pertaining to the use of a commercial motor vehicle. The information contained within this article is general in nature and is not intended to serve as specific legal advice. The intent of this article is to make the reader aware that federal and state regulations regarding the use of commercial motor vehicles exist, and to encourage the reader to review the laws and regulations in great detail. The reader should seek specific legal consultation when developing a compliance program regarding the use of a commercial motor vehicle. It is the responsibility of motor carrier operators and drivers to know and comply with all applicable federal motor carrier safety regulations.

Please do not use this information as a substitute for the Federal Motor Carrier Safety Regulations. The FMCSRs are updated quarterly online at: www.fmcsa.dot.gov.

The Federal Motor Carrier Safety Administration (FMCSA) has produced "A Motor Carrier's Guide to Improving Highway Safety," which provides basic compliance guidance to the Federal Motor Carrier Safety Regulations (FMCSRs). However, that basic guidance is not intended to be a substitute for a comprehensive review and understanding of the regulations. To purchase a complete copy of the FMCSRs, Parts 300-399, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, telephone: (202) 512-1800 or at www.access.gpo.gov.

Introduction

The Commercial Motor Vehicle Safety Act of 1986 and Motor Carrier Safety Improvement Act of 1999

The *Commercial Motor Vehicle Safety Act*¹ ("CMVSA") was enacted in 1986 to improve highway safety by regulating the operation of commercial motor vehicles. The CMVSA places requirements on the commercial motor vehicle driver, the employing motor carrier and the States. The CMVSA sets

¹ 49 USC §31100 et seq

minimum national standards for the issuance of commercial driver's licenses ("CDL") by the individual states, and requires each state to adopt testing and licensing standards for commercial vehicle operators to establish the individual's ability to operate the type of vehicle he/she intends to drive.

Amending legislation, known as the *Motor Carrier Safety Improvement Act of 1999*² ("MCSIA") was passed for the purpose of reducing the number and severity of large-truck involved crashes through various measures - including more commercial motor vehicle and operator inspections and stronger enforcement measures against violators.

I. When is a Commercial Driver's License Required?

A. The Commercial Driver's License Program

Pursuant to the CMVSA, all persons who drive a commercial motor vehicle must have an appropriate and valid CDL.³ An employer may not knowingly allow a driver to operate a commercial motor vehicle in the United States if the driver:

- (i) does not have an appropriate and valid CDL;
- (ii) has a driver's license revoked, suspended, or canceled by any state, has lost the right to operate a commercial motor vehicle in any state, or has been disqualified from operating a commercial motor vehicle;
- (iii) has more than one driver's license;
- (iv) during any period in which the driver, or the commercial motor vehicle he or she is driving, or the motor carrier operation, is subject to an out-of-service order; or
- (v) is in violation of a federal, state, or local law or regulation pertaining to railroad-highway grade crossings.⁴

Companies hiring persons to drive commercial motor vehicles must ensure that all drivers have an appropriate, valid CDL at all times, regardless of the number of commercial vehicles used by the company and regardless of the geographic area in which the vehicles are operated.

A CDL is required to operate any commercial motor vehicle.⁵ Commercial motor vehicles are:

1. Vehicles with a weight rating ("GVWR")⁶ of 26,001 pounds or more;
2. Combination vehicles towing a trailer or other vehicles with a GVWR of 10,001 pounds or more when the gross combination weight rating (GCWR)⁷ is 26,001 pounds or more;

² 49 USC § 31100 et seq

³ 49 USC §31302

⁴ 49 CFR §383.37

⁵ 49 USC §31302

⁶ Gross Vehicle Weight Rating (GVWR) is the recommended maximum total weight of the vehicle and load as designed by the manufacturer.

⁷ Gross Combination Weight Rating (GCWR) is the maximum loaded weight of a combination vehicle as specified by the manufacturer.

3. Vehicles designed to transport 16 or more people (including the driver); and
4. Vehicles carrying hazardous materials in amounts requiring placards.⁸

There is a limited exception to the requirement of a CDL for certain military drivers. Additional exceptions may apply, as a state may, at its discretion, exempt farmers, firefighters, emergency response vehicle drivers, and drivers removing snow and ice.⁹

There are three CDL license classifications. The CDL of the driver of a vehicle must be for the appropriate group designation for the vehicle being operated:

1. Group A designation allows the driver to operate a combination of vehicles with GCWR of 26,001 pounds or more including a towed trailer or vehicle with a GVWR of more than 10,000 pounds, as well as Group B and Group C vehicles.¹⁰
2. Group B designation allows the driver to operate a single vehicle having a GVWR of 26,001 pounds or more, as well as Group C vehicles.¹¹
3. Group C designation allows the driver to operate any single vehicle or combination of vehicles that meets neither the definition of Group A, nor that of Group B, but that is designed to transport 16 or more passengers, or is used in the transportation of materials which require the motor vehicle to be placarded.¹²

Specialized endorsements are required for the operation of certain types of commercial motor vehicles:

1. T Endorsement authorizes the operation of double/triple trailers.
2. P Endorsement authorizes the operation of vehicles designed to carry 16 or more people (including the driver) or those which carry 15 or fewer people (including the driver) transporting children to or from school and/or home for compensation.
3. N Endorsement authorizes the operation of vehicles designed to haul liquids or liquified gases in bulk in permanently mounted tanks or portable tanks rated at 1,000 gallons or more.
4. H Endorsement authorizes the operation of vehicles which carry hazardous materials in amounts requiring placards.
5. X Endorsement authorizes the operation of tank vehicles which transport hazardous materials.¹³

B. What are the requirements to obtain a CDL?

1. Age 18 or older to drive a commercial motor vehicle within Michigan;¹⁴ 21 or older to drive a commercial motor vehicle across state lines or to drive a commercial motor

⁸ 49 USC §31301(4); 49 CFR §390.5

⁹ 49 CFR §383.3

¹⁰ 49 CFR §383.91(a)(1)

¹¹ 49 CFR §383.91(a)(2)

¹² 49 CFR §383.91(a)(3)

¹³ 49 CFR §383.153

¹⁴ 49 CFR § 391.11; MCL 480.12d

- vehicle that that transports hazardous materials in amounts requiring placards;¹⁵
2. Acceptable driving record;
 3. Medically and physically capable of operating a commercial motor vehicle without restrictions;
 4. Pass the required knowledge test(s) for the appropriate license classification(s) and/or endorsement(s);
 5. Pass the required road test(s) for the appropriate license classification(s) and/or endorsement(s).¹⁶

A CDL is normally valid for four years. Licenses can be revoked, however, on the occurrence of various violations, including alcohol and/or drug offenses and unsafe driving practices.

C. What are the obligations of companies which employ commercial motor vehicle drivers?

1. Develop a specialized job application

Under federal law, employers of commercial vehicle drivers must obtain a signed job application from each driver that includes the following information:

- a. Name and address of the employer.¹⁷
- b. Applicant's name, address, date of birth and social security number.¹⁸
- c. Addresses at which the applicant has resided during the 3 years preceding the date on which the application is submitted.¹⁹
- d. Date on which the application is submitted.²⁰
- e. The issuing state, number, and expiration date of each unexpired commercial motor vehicle operator's license or permit that has been issued to the applicant.²¹
- f. The nature and extent of the applicant's experience in the operation of motor vehicles, including the types of equipment (such as buses, trucks, truck tractors, semi trailers, full trailers, and pole trailers) which he/she has operated.²²
- g. A list of all motor vehicle accidents in which the applicant was involved during the 3 years preceding the date the application is submitted, specifying the date and nature of each accident and any fatalities or personal injuries it caused.²³
- h. A list of all violations of motor vehicle laws or ordinances (other than violations involving only parking) of which the applicant was convicted or forfeited bond or collateral during the 3 years preceding the date the application is submitted.²⁴
- i. A statement setting forth in detail the facts and circumstances of any denial,

¹⁵ 49 CFR §391.11

¹⁶ 49 CFR §391.21 and 49 CFR § 383.23; MCL 480.12d

¹⁷ 49 CFR §391.21(b)(1)

¹⁸ 49 CFR §391.21(b)(2)

¹⁹ 49 CFR §391.21(b)(3)

²⁰ 49 CFR §391.21(b)(4)

²¹ 49 CFR §391.21(b)(5)

²² 49 CFR §391.21(b)(6)

²³ 49 CFR §391.21(b)(7)

²⁴ 49 CFR §391.21(b)(8)

revocation, or suspension of any license, permit, or privilege to operate a motor vehicle that has been issued to the applicant, or a statement that no such denial, revocation, or suspension has occurred.²⁵

- j. A list of the names and addresses of the applicant's employers during the 3 years preceding the date the application is submitted, the dates he or she was employed by that employer, the reason for leaving the employ of that employer, and whether the applicant was subject to the federal motor carrier safety regulations while employed by that previous employer.²⁶
- k. A list of the names and addresses of the applicant's employers during the 7-year period preceding the 3 years required above for which the applicant was an operator of a commercial motor vehicle, together with the dates of employment and the reasons for leaving such employment.²⁷
- l. The following certification and signature line, which must appear at the end of the application form and be signed and dated by the applicant: "*[this certifies that this application was completed by me and that all entries on it and information in it are true and complete to the best of my knowledge.*"²⁸

2. Conduct a thorough background investigation

The Act also requires employers to conduct a background investigation of each driver prior to hire. The investigation must include:

- a. Inquiry into the driver's driving record during the preceding 3 years to the appropriate agency of every State in which the driver held a motor vehicle operator's license or permit during those 3 years;²⁹
- b. Investigation of the driver's safety performance history with Department of Transportation regulated employers during the preceding three years, including obtaining copies of driver records for those years.³⁰ The investigation must include general safety/accident information and information related to the driver's history of violations of the alcohol and controlled substances prohibitions of the Act. If no driving record exists from a state or states the employer must document a good faith effort to obtain such information, and certify that no record exists for the driver in that state.³¹

The investigation may consist of personal interviews, telephone interviews, letters, or any other method the employer deems appropriate. The employer must make a written record of each previous employer contacted, or the good faith efforts to do so, including the previous employer's name and address, the date the previous employer was contacted, or the attempts made, and the information received about the driver from the previous employer. Failures to contact a previous employer, or of

²⁵ 49 CFR §391.21(b)(9)

²⁶ 49 CFR §391.21(b)(10)

²⁷ 49 CFR §391.21(b)(11); MCL 480.12e

²⁸ 49 CFR §391.21(b)(12)

²⁹ 49 CFR §391.23(a)(1)

³⁰ 49 CFR §391.23(a)(2)

³¹ 49 CFR §391.23 (b);

them to provide the required safety performance history information, must also be documented.³² Employers are also to report failures of previous employers to respond to an investigation to the Federal Motor Carrier Safety Administration. For drivers with no previous employment experience working for a Department of Transportation regulated employer during the preceding three years, documentation that no investigation was possible must be placed in the driver history investigation file.

Before an application is submitted, the employer must inform the applicant that the information he/she provides may be used and the applicant's previous employers will be contacted for the purpose of investigating the applicant's safety performance history information. The employer must also notify the driver in writing of his/her due process rights regarding information received as a result of the investigation.³³

3. Implement a controlled substance and alcohol use testing program

Regulations issued by the Federal Motor Carrier Safety Administration also require employers of commercial motor vehicle drivers to implement a controlled substance and alcohol use testing program. Testing is required:

- a. Pre-employment as part of the pre-hire medical screening, prior to the first time a driver performs safety-sensitive functions (i.e. driving).
- b. Post-accident – after accidents when the driver's performance could have contributed to the accident (as determined by a citation for a moving traffic violation) and after all fatal accidents.
- c. Reasonable suspicion – when a trained supervisor or company official observes behavior or appearance that is characteristic of controlled substance abuse and/or alcohol misuse.
- d. Random – on a random unannounced basis just before, during or just after performance of safety-sensitive functions.
- e. Return-to-duty and follow-up – when an individual who has violated the prohibited controlled substance and/or alcohol conduct standards returns to performing safety-sensitive duties.³⁴

The regulations include very specific procedural and record keeping requirements for substance abuse alcohol testing programs.³⁵ ***The Federal Motor Carrier Safety Administration (“FMCSA”) conducts periodic inspections and audits of employers’ programs.*** Additionally, selected employers are required to prepare and submit an annual calendar year summary report to the Federal Motor Carrier Safety Administration³⁶.

³² 49 CFR §391.23 (c)(2)

³³ 49 CFR §391.23(i)(1)

³⁴ 49 CFR §391.51

³⁵ 49 CFR §382.401

³⁶ 49 CFR §382.401

Employers are responsible for implementing and conducting the testing programs.³⁷ Employers may do so using their own employees, contracting for the services with an outside vendor or joining together with other employers in a consortium that provides services to all member companies. Regardless of the way an employer elects to meet its obligations, the employer remains responsible for the actions of its officials, representatives, and agents in carrying out the requirements of the Department of Transportation regulations.³⁸

Employers should note that Department of Transportation regulations require that laboratories meet specific standards to participate in a Department of Transportation substance abuse/alcohol testing program. A laboratory located in the U.S. is only permitted to participate in US Department of Transportation drug testing only if it has been certified by the US Department of Health and Human Services under the National Laboratory Certification Program. A foreign laboratory must similarly be approved for participation by the Department of Transportation.³⁹

A driver who has a controlled substance/alcohol test result indicating positive for a controlled substance or a higher than allowed blood-alcohol concentration (.04 or higher) must be removed from safety-sensitive duty after a medical review officer has interviewed the driver and determined that the positive test resulted from the unauthorized use of a controlled substance.⁴⁰

Drivers who violate the controlled substance/alcohol misuse rules are to be referred to a substance abuse professional for evaluation. Any treatment or rehabilitation is to be provided in accordance with the employer's policy or labor/management agreements. The employer is not required to provide rehabilitation, pay for treatment, or reinstate the driver to his/her safety-sensitive position.⁴¹

If an employer elects to return a driver to duty, the driver cannot be returned to safety sensitive duties until he/she has been evaluated by a substance abuse professional, has complied with recommended rehabilitation and has a negative result on a return-to-duty substance abuse test.

Employers must provide employees with detailed information about alcohol misuse, the employers' policy, the testing requirements, and how and where drivers can get help for alcohol abuse.⁴² Supervisors of safety-sensitive drivers must attend at least one hour of training on alcohol misuse symptoms and indicators used in making determinations for reasonable suspicion testing.

³⁷ 49 CFR §382.103

³⁸ 49 CFR §40.13

³⁹ 49 USC 31306

⁴⁰ 49 CFR §382.205

⁴¹ 49 USC 31306

⁴² 49 CFR §382.601

4. Driver qualification file

Under the law, employers must maintain a qualification file for each regularly employed driver. The file must include:

- Application for employment.
- Responses of previous employers to driving record and employment inquiries.
- Responses of state agencies to driving record inquiries or notation of good faith effort to obtain (within 30 days).
- Annual review of driving record including violations submitted by driver.
- Annual driver's certification of violation.
- Driver's road test and certificate.
- Original or legible copy of medical examinations and medical examiner's certificate.
- Legible copy of driver's license.
- Any other matter that relates to the driver's qualification or ability to drive a commercial motor vehicle safely.⁴³

Driver qualification files and records must be kept at the company's principal place of business for the entire time the driver is employed and three years after termination of employment. After three years, medical examinations, medical certifications, annual review of driving record, including record qualifications submitted by the driver may be removed from the driver qualification file.⁴⁴

5. Penalties

Federal law imposes serious penalties for violations of the law. An employer who allows a driver to operate a commercial motor vehicle without an appropriate, valid CDL is subject to a civil penalty of between \$2,750 and \$11,000 per violation.⁴⁵ In cases where the employer's actions are knowing and willful, criminal penalties of a \$5,000 fine and/or 90 days imprisonment may be imposed.⁴⁶

An employer which fails to comply with the controlled substance and alcohol testing requirements is subject to a civil penalty of up to \$10,000.00 per violation.⁴⁷ Knowing and willful violations are punishable by a fine of up to \$25,000.00 and/or imprisonment for up to one year.

⁴³ 49 CFR §391.51

⁴⁴ 49 CFR § 391.51

⁴⁵ 49 USC § 521(b); 49 CFR §383.53

⁴⁶ 49 USC §521(b)

⁴⁷ 49 USC 521(b); 49 CFR §382.507

Recordkeeping and reporting violations can result in a civil fine of \$500 per day for each offense with the total of all penalties assessed for a single violation not to exceed \$5,000.00.⁴⁸ Knowing falsification, destruction, or mutilation to a required report of record may result in a civil penalty of \$5,000.00 for each violation.⁴⁹

II. When is Registration with the Federal Motor Carrier Safety Administration Required?

If your organization is utilizing commercial motor vehicles, it may be required to register with the Federal Motor Carrier Safety Administration. This could mean obtaining a “USDOT Number,” “Interstate Operating Authority” (also known as "MC," "FF," or "MX" number) --- or either one separately.

A. What is a “USDOT Number”?

Companies that operate commercial vehicles in *interstate* commerce or who transport passengers or haul cargo in interstate commerce must be registered with the FMCSA and must have a USDOT Number. Also, commercial *intrastate* hazardous materials carriers who haul quantities requiring a safety permit must register for a USDOT Number.⁵⁰ The USDOT Number is an identification number which facilitates monitoring a company’s safety information during audits, compliance reviews, crash investigations, and inspections.

In some states, including Michigan, all registrants of commercial motor vehicles are required to obtain a USDOT Number as a necessary condition for commercial vehicle registration.

An entity applying for a USDOT Number will be automatically enrolled in the FMCSA New Entrant Safety Assurance Program. This program requires new entrants to pass a safety audit and maintain acceptable roadside safety performance over an initial 18-month period before they are given permanent registration status.⁵¹

B. What is “Interstate Operating Authority”

In general, companies that operate as “for hire” carriers (for a fee or other compensation) that transport passengers or federally regulated commodities, or arrange for their transport, in interstate commerce are also required to have interstate operating authority.⁵²

FMCSA operating authority can also be referred to as an "MC," "FF," or "MX" number, depending on what authority is granted. A company might be required to obtain numerous operating authorities to support its planned business operations. Operating Authority dictates the type of operation a company may run, the cargo it may carry, and the geographical area in which it may legally operate.

⁴⁸ 49 USC § 521(b)(2)(B)

⁴⁹ 49 USC §521

⁵⁰ 49 U.S.C. § 13902

⁵¹ 49 CFR 385.1 et seq

⁵² 49 U.S.C. §13501; 49 CFR 365.101

C. What is a Safety Audit?

The New Entrant Safety Assurance Program requires new entrants to pass a safety audit and maintain acceptable roadside safety performance over an initial 18-month period before they are given permanent registration status.

The safety audit typically begins 3-6 months after new entrant registration is granted, and is conducted by a State or Federal Auditor. It is generally conducted at the carrier's principle place of business. The audit consists of a review of the carrier's safety management system. The areas of review include, but are not limited to, the following:

- Driver Qualifications;
- Driver Duty Status;
- Vehicle Maintenance;
- Accident Register; and
- Controlled Substances and Alcohol use and testing requirements.

Applicants should review the **Educational and Technical Assistance (ETA)** for additional specific information. It is available at www.fmcsa.dot.gov/safety-security/eta/index.htm. Carriers without Internet access may to contact (800) 327-6868 to purchase a copy of the ETA package.

The carrier will be notified in writing that the "new entrant" designation will be removed from their registration at the end of the 18-month safety-monitoring period, if the new entrant has passed a safety audit, or has not been deemed "unfit" following a compliance review; and does not have any outstanding civil penalties. 📌

D. What is a Compliance Review?

A compliance review is an on-site examination of the motor carrier's records and operations to determine whether the carrier meets the safety fitness standard. The review may include an examination of various aspects of the motor carrier's operations, including:

- Driver's hours of service
- Driver qualification
- Vehicle inspection and maintenance
- Financial responsibility
- Accidents
- Hazardous materials
- Other safety and transportation records
- Roadside vehicle out-of-service rate.
- Alcohol and controlled substance drug testing

A compliance review is intended to identify potential safety violations, to investigate complaints, or to respond to a carrier's request for a change in safety rating. The results of the review may result in the initiation of an enforcement action.

A motor carrier who violates the FMCSRs may be subject to civil penalties.

E. Are there financial responsibility requirements?

Motor carriers of property operating commercial motor vehicles in interstate, foreign, or intrastate commerce, and for-hire carriers of passengers operating in interstate or foreign commerce must carry the minimum amount of insurance required by law.

Additionally, any motor carrier of property, household goods, or passengers engaged in interstate, intrastate, and/or foreign operations and with annual revenues of \$3 million dollars or more must file annual and/or quarterly reports with the Bureau of Transportation Statistics, as required by 49 CFR 1420.

Conclusion

Companies that use commercial motor vehicles in the operation of their business must ensure that they are aware of and follow the detailed and specific regulatory requirements associated with the operation of commercial motor vehicles. A system must be established to ensure that the company hires only duly qualified persons with commercial driver's licenses to operate commercial motor vehicle and comply with the applicable federal and/or state rules and regulations regarding registration, operating authority, and other requirements as set forth in federal and/or state law.

Additional information may be obtained by contacting an attorney or the Federal Motor Carrier Safety Administration at (800) 832 5660 or on the web at www.fmcsa.dot.gov.