

601 KAR 1:005. Safety administrative regulation.

RELATES TO: KRS 138.665, 174.400 - 174.425, 281.600, 281.730, 281.750, 281.880, Chapter 281A, 49 C.F.R. Parts 40, 107, 130, 171 - 173, 175, 177, 178, 180, 350, 381 - 385, 390-397, 1572

STATUTORY AUTHORITY: KRS 174.410(2), 281.600, 281.730, 281.750, 281.880 - 281.888, 49 C.F.R. 40, Parts 130, 171 - 173, 175, 177, 178, 180, 382 - 384, 385, 390 - 397, 1572

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.410(2) requires the Secretary of the Transportation Cabinet, in consultation with the Secretary of the Energy and Environment Cabinet and the Secretary of the Cabinet for Health and Family Services, to adopt the Federal Hazardous Materials Transportation Regulations, 49 C.F.R. (1978), in order to effectively carry out the intent of KRS 174.400 through 174.425 relating to the transportation of hazardous materials by air or highway. KRS 174.410(3) requires the Transportation Cabinet and the Justice and Public Safety Cabinet to cooperate with and assist the Energy and Environment Cabinet in the implementation and enforcement of the transportation provisions of any state hazardous waste regulations promulgated pursuant to KRS Chapter 224. KRS 281.600 authorizes the Transportation Cabinet to promulgate administrative regulations relating to safety requirements for motor vehicles and the method of operation, including adoption of any federal motor carrier safety regulations. This administrative regulation establishes requirements for motor carriers operating in Kentucky. This administrative regulation establishes requirements related to exemptions from medical examination for private motor carriers of passengers that are more stringent than the requirements in 49 C.F.R. 391.68(c), which allows these carriers to avoid medical examination. Kentucky does not allow these medical waivers.

Section 1. Definitions.

- (1) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.
- (2) "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier, is using a vehicle:
 - (a)
 1. To transport agricultural products from his or her farm;
 2. To transport farm machinery or farm supplies to his or her farm; or
 3. Generally thought of as farm machinery; and
 - (b) That is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with this administrative regulation.
- (3) "Hazardous material" is defined in 49 C.F.R. 390.5.

Section 2. Governing Federal Regulations. A commercial motor vehicle and its operator meeting the definitions established in 49 C.F.R. 390.5 operating for-hire or in private carriage, interstate, or intrastate, including commercial motor vehicles and its operators as established in Section 3 of this administrative regulation, shall be governed by the following Motor Carrier Safety Regulations and Transportation Security Administration Regulations adopted and issued by the United States Department of Transportation:

- (1) 49 C.F.R. 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs;
- (2) 49 C.F.R. 382, Controlled Substances and Alcohol Use and Testing;
- (3) 49 C.F.R. 383, Commercial Driver's License Standards; Requirements and Penalties;
- (4) 49 C.F.R. 384, State Compliance with Commercial Driver's License Program;
- (5) 49 C.F.R. 385, Safety Fitness Procedures;
- (6) 49 C.F.R. 390, General;

- (7) 49 C.F.R. 391, Qualifications of Drivers;
- (8) 49 C.F.R. 392, Driving of Commercial Motor Vehicles;
- (9) 49 C.F.R. 393, Parts and Accessories Necessary for Safe Operation;
- (10) 49 C.F.R. 395, Hours of Service of Drivers;
- (11) 49 C.F.R. 396, Inspection, Repair and Maintenance;
- (12) 49 C.F.R. 397, Transportation of Hazardous Materials; Driving and Parking Rules; and
- (13) 49 C.F.R. 1572, Credentialing and Security Threat Assessments.

Section 3. The following hazardous materials transportation regulations adopted and issued by the United States Department of Transportation shall govern the transportation of hazardous materials within Kentucky if, as established in Section 2 of this administrative regulation, the commercial motor vehicle and its operator meet the definitions established in 49 C.F.R. 390.5 operating for-hire or in private carriage, interstate, or intrastate, and transportation of hazardous material is by air or highway:

- (1) 49 C.F.R. Part 107. Hazardous Material Program Procedures;
- (2) 49 C.F.R. Part 130. Oil Spill Prevention and Response Plans;
- (3) 49 C.F.R. Part 171. General information, Regulations, and Definitions;
- (4) 49 C.F.R. Part 172. Hazardous Materials Table, Special Provisions, Hazardous Materials communications, Emergency Response information, Training Requirements, and Security Plans;
- (5) 49 C.F.R. Part 173. Shippers-general requirements for Shipments and Packagings;
- (6) 49 C.F.R. Part 175. Carriage by Aircraft;
- (7) 49 C.F.R. Part 177. Carriage by Public Highway;
- (8) 49 C.F.R. Part 178. Specifications for Packagings; and
- (9) 49 C.F.R. Part 180, Continuing Qualification and Maintenance of Packagings.

Section 4. Exemptions and Exceptions. The exemptions and exceptions to compliance with the provisions of Section 2 of this administrative regulation shall be as established in this section.

- (1)
 - (a) A motor vehicle operated by the federal government, a state government, a county government, a city government, or a board of education shall not be required to comply with the federal regulations adopted in this administrative regulation, except as required by paragraphs (b) and (c) of this subsection.
 - (b) An operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of having:
 - 1. Passed the medical examination established in 49 C.F.R. 391; or
 - 2. Received a medical waiver as established in 601 KAR 11:040 and subsection (3) of this section for intrastate operators or as established in 49 C.F.R. 381 for interstate operators.
 - (c) The operator of a vehicle established in paragraph (a) of this subsection shall meet the requirements of 49 C.F.R. 382 relating to drug and alcohol testing.
- (2) Except for a transporter of hazardous materials subject to the requirements of 601 KAR 1:025, a motor vehicle operator who is operating a vehicle in intrastate commerce shall not be required to be twenty-one (21) years of age as established in 49 C.F.R. 391.11(b)(1), but shall be at least eighteen (18) years of age.
- (3) Medical waivers for intrastate drivers.
 - (a) A commercial vehicle driver who operates a commercial vehicle exclusively in intrastate commerce within Kentucky may apply for a medical waiver of the requirements of 49 C.F.R. 391 under the provisions of 601 KAR 11:040.
 - (b) If a medical waiver is issued, the waiver shall be in the possession of the commercial driver any time the driver is operating a commercial motor vehicle.

(4) Except for a farm-to-market agricultural transportation motor vehicle with a gross vehicle weight rating of 26,000 pounds or less, a motor carrier that operates exclusively in intrastate commerce shall:

(a) Apply for an intrastate USDOT number using the Application for USDOT Number, Form MCS-150, by visiting the Federal Motor Carrier Safety Administration at www.fmcsa.dot.gov; and

(b) Display the assigned intrastate motor carrier identification number and the name of the motor carrier in the same manner as required pursuant to 49 C.F.R. 390.21, except the identification number shall be preceded by the letters "USDOT" and followed by the letters "KY."

(5) Exception to 49 C.F.R. 391.68(c). A Kentucky licensed commercial driver operating a passenger transportation vehicle on behalf of a private motor carrier of passengers shall not be exempt from the sections of 49 C.F.R. 391.41 and 391.45 requiring a driver to be medically examined and to have a medical examiner's certificate on his or her person.

Section 5. Out-of-service Criteria.

(1) The basic safety criteria to be followed by the Kentucky State Police or other individual certified through KSP to complete commercial vehicle inspections in determining if a commercial motor vehicle driver is declared unqualified or if a commercial motor vehicle is placed out-of-service shall be the North American Uniform Out-of-service Criteria issued by the Commercial Vehicle Safety Alliance.

(2)

(a) If a commercial motor vehicle is being operated in interstate or intrastate commerce with improper or invalid registration, without registration, in violation of any safety regulation or requirement, or with a current federal Out-Of-Service Order issued by the Federal Motor Carrier Safety Administration, a North American Standard (NAS) certified inspector authorized by the Kentucky State Police may place the vehicle out-of-service until the defect or condition is corrected.

(b) Refusal of the vehicle operator to grant permission for a law enforcement officer or inspector to conduct a safety inspection of the vehicle shall be cause for the officer or inspector to hold the vehicle in place or move the vehicle to a safe location, as established by 49 C.F.R. 396.7, until the permission is granted.

(c) Operation of a vehicle in violation of the out-of-service notice affixed to it shall constitute a separate violation of this administrative regulation.

(3)

(a) If a commercial motor vehicle driver is unqualified to drive and is placed out-of-service but the commercial motor vehicle is not placed out-of-service, the motor carrier may provide a different driver for the commercial motor vehicle.

(b) The commercial motor vehicle driver placed out-of-service shall not again operate a commercial motor vehicle until once again qualified.

(c) Refusal of the commercial motor vehicle driver to grant permission for a law enforcement officer or inspector to conduct a safety inspection regarding the actual driver shall be cause for suspension of the certificate or permit of the motor carrier as established by KRS 281.755.

(d) Operating a commercial motor vehicle in violation of an out-of-service order shall constitute a separate violation of this administrative regulation.

Section 6. Persons Allowed to Perform Physical Examinations. A physical examination required pursuant to state or federal law shall be conducted by a "medical examiner" as defined by 49 C.F.R. 390.5.

Section 7. Random Alcohol Testing Rate. A commercial motor vehicle employer shall randomly test a percentage of the average number of driver positions employed by the

employer. The applicable percentage shall be determined by the Federal Motor Carrier Safety Administration's Administrator annually established in 49 C.F.R. 382.305.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for USDOT Number," or "Form MCS-150," by the Federal Motor Carrier Safety Administration, revised November 14, 2019, available at www.fmcsa.dot.gov; and

(b) "North American Uniform Out-Of-Service Criteria" updated annually, effective April 1 of each year, by the Commercial Vehicle Safety Alliance.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Motor Carriers, 2nd Floor, Transportation Cabinet Office Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. (DMT-19; 1 Ky.R. 1037; eff. 6-11-1975; 2 Ky.R. 501; eff. 6-12-1976; 13 Ky.R. 535; 895; 1071; eff. 11-11-1986; 14 Ky.R. 1094; eff. 1-4-1988; 15 Ky.R. 45; 816; eff. 10-4-1988; 1695; 2072; eff. 3-7-1989; 15 Ky.R. 2435; 16 Ky.R. 161; eff. 8-1-1989; 1242; 1595; eff. 3-8-1990; 2735; eff. 8-9-1990; 17 Ky.R. 2504; 2978; eff. 6-4-1991; 19 Ky.R. 225; 885; eff. 10-8-1992; 1411; eff. 1-21-1993; 20 Ky.R. 840; eff. 11-16-1993; 3307; 21 Ky.R. 343; eff. 7-13-1994; 3070; eff. 8-1-1995; 22 Ky.R. 1716; 2029; 2293; eff. 6-6-1996; 23 Ky.R. 2257; 2817; 2-10-1997; 24 Ky.R. 1932; 2392; eff. 6-15-1998; 25 Ky.R. 2190; 2565; eff. 5-4-1999; 29 Ky.R. 178; 707; eff. 9-16-2002; 30 Ky.R. 1831; 2024; 2143; eff. 3-3-2004; 31 Ky.R. 214; eff. 9-7-2004; 1016; 1240; eff. 1-21-2005; 32 Ky.R. 960; 1241; eff. 1-18-2006; Crt eff. 11-26-2019; 47 Ky.R. 2101; eff. 8-3-2021.)