

TITLE 49--TRANSPORTATION

SUBTITLE VI--MOTOR VEHICLE AND DRIVER PROGRAMS

PART B--COMMERCIAL

CHAPTER 311--COMMERCIAL MOTOR VEHICLE SAFETY

SUBCHAPTER III--SAFETY REGULATION

Sec. 31136. United States Government regulations

(a) Minimum Safety Standards.--Subject to section 30103(a) of this title, the Secretary of Transportation shall prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that--

(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely;

(2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely;

(3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and

(4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators.

(b) Eliminating and Amending Existing Regulations.--The Secretary may not eliminate or amend an existing motor carrier safety regulation related only to the maintenance, equipment, loading, or operation (including routing) of vehicles carrying material found to be hazardous under section 5103 of this title until an equivalent or more stringent regulation has been prescribed under section 5103.

(c) Procedures and Considerations.--(1) A regulation under this section shall be prescribed under section 553 of title 5 (without regard to sections 556 and 557 of title 5).

(2) Before prescribing regulations under this section, the Secretary shall consider, to the extent practicable and consistent with the purposes of this chapter--

(A) costs and benefits; and

(B) State laws and regulations on commercial motor vehicle safety, to minimize their unnecessary preemption.

(d) Effect of Existing Regulations.--If the Secretary does not prescribe regulations on commercial motor vehicle safety under this section, regulations on commercial motor vehicle safety prescribed by the Secretary before October 30, 1984, and in effect on October 30, 1984, shall be deemed in this subchapter to be regulations prescribed by the Secretary under this section.

(e) Exemptions.--The Secretary may grant in accordance with section 31315 waivers and exemptions from, or conduct pilot programs with respect to, any regulations prescribed under this section.

(f) Limitations on Municipality and Commercial Zone Exemptions and Waivers.--(1) The Secretary may not--

(A) exempt a person or commercial motor vehicle from a regulation related to commercial motor vehicle safety only because the operations of the person or vehicle are entirely in a municipality or commercial zone of a municipality; or

(B) waive application to a person or commercial motor vehicle of a regulation related to commercial motor vehicle safety only because the operations of the person or vehicle are entirely in a municipality or commercial zone of a municipality.

(2) If a person was authorized to operate a commercial motor vehicle in a municipality or commercial zone of a municipality in the United States for the entire period from November 19, 1987, through November 18, 1988, and if the person is otherwise qualified to operate a commercial motor vehicle, the person may operate a commercial motor vehicle entirely in a municipality or commercial zone of a municipality notwithstanding--

(A) paragraph (1) of this subsection;

(B) a minimum age requirement of the United States Government for operation of the vehicle; and

(C) a medical or physical condition that--

(i) would prevent an operator from operating a commercial motor vehicle under the commercial motor vehicle safety regulations in title 49, Code of Federal Regulations;

(ii) existed on July 1, 1988;

(iii) has not substantially worsened; and

(iv) does not involve alcohol or drug abuse.

(3) This subsection does not affect a State commercial motor vehicle safety law applicable to intrastate commerce.

(Pub. L. 103-272, Sec. 1(e), July 5, 1994, 108 Stat. 1003; Pub. L. 104-59, title III, Sec. 344, Nov. 28, 1995, 109 Stat. 610; Pub. L. 104-287, Sec. 5(60), Oct. 11, 1996, 110 Stat. 3394; Pub. L. 105-178, title IV, Sec. 4007(c), June 9, 1998, 112 Stat. 403.)

#### Historical and Revision Notes

| Revised Section<br>Source (Statutes at Large)        | Source (U.S. Code)    |
|--|-----------------------|
| 31136(a).....<br>Oct. 30, 1984, Pub. L. 98-554, Sec. | 49 App.:2505(a), (g). |
| 206(a)-(g), 98 Stat. 2834.                           |                       |
| 31136(b).....  | 49 App.:2505(b).      |
| 31136(c).....  | 49 App.:2505(c).      |
| 31136(d).....  | 49 App.:2505(d), (e). |
| 31136(e).....  | 49 App.:2505(f).      |
| 31136(f).....<br>Oct. 30, 1984, Pub. L. 98-554, Sec. | 49 App.:2505(h).      |
| 206(h), 98 Stat. 2835; restated Nov.                 |                       |
| 18, 1988, Pub. L. 100-690, Sec.                      |                       |

9102(a), 102 Stat. 4528.

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In subsection (a), the text of 49 App.:2505(g) is omitted because 5:ch. 7 applies unless otherwise stated. Before clause (1), the words ``Not later than 18 months after October 30, 1984'' are omitted because the time period specified has expired. The words ``Subject to section 30103(a) of this title'' are added to alert the reader to that section.

In subsection (c)(1), the words ``except that the time periods specified in this subsection shall apply to the issuance of such regulations'' are omitted because the time periods referred to do not appear in subsection (c) as enacted. The reference was probably to the time periods in a prior version of subsection (c). See S. 2174, 98th Cong., 2d Sess., Sec. 6(b) (as reported by the Committee on Commerce, Science, and Transportation of the Senate on May 2, 1984, in S. Rept. 98-424).

In subsection (d), the text of 49 App.:2505(d) is omitted as obsolete.

In subsection (f)(2)(C)(i), the words ``an operator'' are substituted for ``such person'' because only a natural person can have a medical or physical condition.

#### Amendments

1998--Subsec. (e). Pub. L. 105-178 amended heading and text of subsec. (e) generally. Prior to amendment, subsec. (e) consisted of pars. (1) to (3) relating to waivers.

1996--Subsec. (e)(2)(A), (J), (3). Pub. L. 104-287 substituted ``November 28, 1995'' for ``the date of the enactment of this paragraph''.

1995--Subsec. (e)(1) to (3). Pub. L. 104-59 designated existing text as par. (1) and inserted heading, and added pars. (2) and (3).

#### Authority To Promulgate Safety Standards for Retrofitting

Pub. L. 106-159, title I, Sec. 101(f), Dec. 9, 1999, 113 Stat. 1752, provided that: ``The authority under title 49, United States Code, to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture is vested in the Secretary and may be delegated.''

#### Protection of Existing Exemptions

Pub. L. 105-178, title IV, Sec. 4007(d), June 9, 1998, 112 Stat. 404, provided that: ``The amendments made by this section [amending this section and section 31315 of this title] shall not apply to or otherwise affect a waiver, exemption, or pilot program in effect on the day before the date of enactment of this Act [June 9, 1998] under chapter 313 or section 31136(e) of title 49, United States Code.''

#### Application of Regulations to Certain Commercial Motor Vehicles

Pub. L. 105-178, title IV, Sec. 4008(b), June 9, 1998, 112 Stat. 404, provided that: ``Effective on the last day of the 1-year period beginning on the date of enactment of this Act [June 9, 1998], regulations prescribed under section 31136 of title 49, United States Code, shall apply to operators of commercial motor vehicles described in section 31132(1)(B) of such title (as amended by subsection (a)) to the extent that those regulations did not apply to those operators on the day before such effective date, except to the extent that the Secretary determines, through a rulemaking proceeding, that it is appropriate to exempt such operators of commercial motor vehicles from the application of those regulations.''

#### Improved Interstate School Bus Safety

Pub. L. 105-178, title IV, Sec. 4024, June 9, 1998, 112 Stat. 416, as amended by Pub. L. 107-110, title X, Sec. 1076(ii), Jan. 8, 2002, 115 Stat. 2094, provided that: ``Not later than 6 months after the date of enactment of this Act [June 9, 1998], the Secretary shall initiate a rulemaking proceeding to determine whether or not relevant commercial motor carrier safety regulations issued under section 31136 of title 49, United States Code, should apply to all interstate school transportation operations by local educational agencies (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801]).''

#### Federal Highway Administration Rulemaking

Pub. L. 104-88, title IV, Sec. 408, Dec. 29, 1995, 109 Stat. 958, provided that:

``(a) Advance Notice.--The Federal Highway Administration shall issue an advance notice of proposed rulemaking dealing with a variety of fatigue-related issues pertaining to commercial motor vehicle motor vehicle safety (including 8 hours of continuous sleep after 10 hours of driving, loading and unloading operations, automated and tamper-proof recording devices, rest and recovery cycles, fatigue and stress in longer combination vehicles, fitness for duty, and other appropriate regulatory and enforcement countermeasures for reducing fatigue-related incidents and increasing driver alertness) not later than March 1, 1996.

``(b) Rulemaking.--The Federal Highway Administration shall issue a notice of proposed rulemaking dealing with such issues within 1 year after issuance of the advance notice under subsection (a) is published and shall issue a final rule dealing with those issues within 2 years after the last day of such 1-year period.''

#### Exemptions From Requirements Relating to Commercial Motor Vehicles and Their Operators

Section 345 of Pub. L. 104-59 provided that:

``(a) Exemptions.--

``(1) Transportation of agricultural commodities and farm supplies.--Regulations prescribed by the Secretary under sections 31136 and 31502 of title 49, United States Code, regarding maximum driving and on-duty time for drivers used by motor carriers shall not apply to drivers transporting agricultural commodities or farm

supplies for agricultural purposes in a State if such transportation is limited to an area within a 100 air mile radius from the source of the commodities or the distribution point for the farm supplies and is during the planting and harvesting seasons within such State, as determined by the State.

((2) Transportation and operation of ground water well drilling rigs.--Such regulations shall, in the case of a driver of a commercial motor vehicle who is used primarily in the transportation and operation of a ground water well drilling rig, permit any period of 7 or 8 consecutive days to end with the beginning of an off-duty period of 24 or more consecutive hours for the purposes of determining maximum driving and on-duty time.

((3) Transportation of construction materials and equipment.--Such regulations shall, in the case of a driver of a commercial motor vehicle who is used primarily in the transportation of construction materials and equipment, permit any period of 7 or 8 consecutive days to end with the beginning of an off-duty period of 24 or more consecutive hours for the purposes of determining maximum driving and on-duty time.

((4) Drivers of utility service vehicles.--Such regulations shall, in the case of a driver of a utility service vehicle, permit any period of 7 or 8 consecutive days to end with the beginning of an off-duty period of 24 or more consecutive hours for the purposes of determining maximum driving and on-duty time.

((5) Snow and ice removal.--A State may waive the requirements of chapter 313 of title 49, United States Code, with respect to a vehicle that is being operated within the boundaries of an eligible unit of local government by an employee of such unit for the purpose of removing snow or ice from a roadway by plowing, sanding, or salting. Such waiver authority shall only apply in a case where the employee is needed to operate the vehicle because the employee of the eligible unit of local government who ordinarily operates the vehicle and who has a commercial drivers license is unable to operate the vehicle or is in need of additional assistance due to a snow emergency.

((b) Preemption.--Nothing contained in this section shall require the preemption of State laws and regulations concerning the safe operation of commercial motor vehicles as the result of exemptions from Federal requirements provided under this section.

((c) Review by the Secretary.--The Secretary may conduct a rulemaking proceeding to determine whether granting any exemption provided by subsection (a) (other than paragraph (2)) is not in the public interest and would have a significant adverse impact on the safety of commercial motor vehicles. If, at any time as a result of such a proceeding, the Secretary determines that granting such exemption would not be in the public interest and would have a significant adverse impact on the safety of commercial motor vehicles, the Secretary may prevent the exemption from going into effect, modify the exemption, or revoke the exemption. The Secretary may develop a program to monitor the exemption, including agreements with carriers to permit the Secretary to examine insurance information maintained by an insurer on a carrier.

((d) Report.--The Secretary shall monitor the commercial motor vehicle safety performance of drivers of vehicles that are subject to an exemption under this section. If the Secretary determines that public safety has been adversely affected by an exemption granted under this section, the Secretary shall report to Congress on the determination.

((e) Definitions.--In this section, the following definitions

apply:

((1) 7 or 8 consecutive days.--The term `7 or 8 consecutive days' means the period of 7 or 8 consecutive days beginning on any day at the time designated by the motor carrier for a 24-hour period.

((2) 24-hour period.--The term `24-hour period' means any 24 consecutive hour period beginning at the time designated by the motor carrier for the terminal from which the driver is normally dispatched.

((3) Ground water well drilling rig.--The term `ground water well drilling rig' means any vehicle, machine, tractor, trailer, semi-trailer, or specialized mobile equipment propelled or drawn by mechanical power and used on highways to transport water well field operating equipment, including water well drilling and pump service rigs equipped to access ground water.

((4) Transportation of construction materials and equipment.--The term `transportation of construction materials and equipment' means the transportation of construction and pavement materials, construction equipment, and construction maintenance vehicles, by a driver to or from an active construction site (a construction site between initial mobilization of equipment and materials to the site to the final completion of the construction project) within a 50 air mile radius of the normal work reporting location of the driver. This paragraph does not apply to the transportation of material found by the Secretary to be hazardous under section 5103 of title 49, United States Code, in a quantity requiring placarding under regulations issued to carry out such section.

((5) Eligible unit of local government.--The term `eligible unit of local government' means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law which has a total population of 3,000 individuals or less.

((6) Utility service vehicle.--The term `utility service vehicle' means any commercial motor vehicle--

((A) used in the furtherance of repairing, maintaining, or operating any structures or any other physical facilities necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, and television cable or community antenna service;

((B) while engaged in any activity necessarily related to the ultimate delivery of such public utility services to consumers, including travel or movement to, from, upon, or between activity sites (including occasional travel or movement outside the service area necessitated by any utility emergency as determined by the utility provider); and

((C) except for any occasional emergency use, operated primarily within the service area of a utility's subscribers or consumers, without regard to whether the vehicle is owned, leased, or rented by the utility.

((f) Effective Date.--Subsection (a) of this section shall take effect on the 180th day following the date of the enactment of this Act [Nov. 28, 1995]; except that paragraphs (1) and (2) of subsection (a) shall take effect on such date of enactment.'

Winter Home Heating Oil Delivery State Flexibility Program

Pub. L. 104-59, title III, Sec. 346, Nov. 28, 1995, 109 Stat. 615,

as amended by Pub. L. 105-178, title I, Sec. 1211(j), June 9, 1998, 112 Stat. 192; Pub. L. 105-206, title IX, Sec. 9003(d)(3), July 22, 1998, 112 Stat. 839, provided that:

((a) In General.--After notice and opportunity for comment, the Secretary shall develop and implement a pilot program for the purpose of evaluating waivers of the regulations issued by the Secretary pursuant to sections 31136 and 31502 of title 49, United States Code, relating to maximum on-duty time, and sections 31102 and 31104(j) of such title, relating to the Motor Carrier Safety Assistance Program, to permit any period of 7 or 8 consecutive days to end with the beginning of an off-duty period of 24 or more consecutive hours for the purposes of determining maximum on-duty time for drivers of motor vehicles making intrastate home heating oil deliveries that occur within 100 air miles of a central terminal or distribution point of the delivery of such oil. The Secretary may approve up to 5 States to participate in the pilot program during the winter heating season in the 6-month period beginning on November 1, 1996.

((b) Approval Criteria.--The Secretary shall select States to participate in the pilot program upon approval of applications submitted by States to the Secretary. The Secretary shall act on a State's application within 30 days after the date of its submission. The Secretary may only approve an application of a State under this section if the Secretary finds, at a minimum, that--

((1) a substantial number of the citizens of the State rely on home heating oil for heat during winter months;

((2) current maximum on-duty time regulations may endanger the welfare of these citizens by impeding timely deliveries of home heating oil;

((3) the State will ensure an equal to or greater level of safety with respect to home heating oil deliveries than the level of safety resulting from compliance with the regulations referred to in subsection (a);

((4) the State will monitor the safety of home heating oil deliveries while participating in the program;

((5) employers of deliverers of home heating oil that will be covered by the program will agree to make all safety data developed from the pilot program available to the State and to the Secretary;

((6) the State will only permit employers of deliverers of home heating oil with satisfactory safety records to be covered by the program; and

((7) the State will comply with such other criteria as the Secretary determines are necessary to implement the program consistent with this section.

((c) Participation in Program.--Upon approval of an application of a State under this section, the Secretary shall permit the State to participate in the pilot program for an initial period of 15 days during the winter heating season of the State (as determined by the Governor and the Secretary). If, after the last day of such 15-day period, the Secretary finds that a State's continued participation in the program is consistent with this section and has resulted in no significant adverse impact on public safety and is in the public interest, the Secretary shall extend the State's participation in the program for periods of up to 30 additional days during such heating season.

((d) Suspension From Program.--The Secretary may suspend a State's participation in the pilot program at any time if the Secretary finds--

((1) that the State has not complied with any of the criteria for participation in the program under this section;

``(2) that a State's participation in the program has caused a significant adverse impact on public safety and is not in the public interest; or

``(3) the existence of an emergency.

``(e) Review by Secretary.--Within 90 days after the completion of the pilot program, the Secretary shall initiate a rulemaking to determine, based in part on the results of the program, whether to--

``(1) permit a State to grant waivers of the regulations referred to in subsection (a) to motor carriers transporting home heating oil within the borders of the State, subject to such conditions as the Secretary may impose, if the Secretary determines that such waivers by the State meet the conditions in section 31136(e) of title 49, United States Code; or

``(2) amend the regulations referred to in subsection (a) as may be necessary to provide flexibility to motor carriers delivering home heating oil during winter periods of peak demand.

``(f) Definition.--In this section, the term `7 or 8 consecutive days' has the meaning such term has under section 345 of this Act [set out above].''

#### Section Referred to in Other Sections

This section is referred to in sections 31132, 31141, 31142, 31146, 31315, 31502 of this title.