

(b)(1) If a commercial motor vehicle is subject to a mandatory State inspection program which is determined by the Administrator to be as effective as § 396.17, the motor carrier or intermodal equipment provider must meet the requirement of § 396.17 through that State's inspection program. Commercial motor vehicle inspections may be conducted by State personnel, at State authorized commercial facilities, or by the motor carrier or intermodal equipment provider itself under the auspices of a State authorized self-inspection program.

(2) Should the FMCSA determine that a State inspection program, in whole or in part, is not as effective as § 396.17, the motor carrier or intermodal equipment provider must ensure that the periodic inspection required by § 396.17 is performed on all commercial motor vehicles under its control in a manner specified in § 396.17.

[73 FR 76825, Dec. 17, 2008]

§ 396.25 Qualifications of brake inspectors.

(a) Motor carriers and intermodal equipment providers must ensure that all inspections, maintenance, repairs or service to the brakes of its commercial motor vehicles, are performed in compliance with the requirements of this section.

(b) For purposes of this section, *brake inspector* means any employee of a motor carrier or intermodal equipment provider who is responsible for ensuring that all brake inspections, maintenance, service, or repairs to any commercial motor vehicle, subject to the motor carrier's or intermodal equipment provider's control, meet the applicable Federal standards.

(c) No motor carrier or intermodal equipment provider may require or permit any employee who does not meet the minimum brake inspector qualifications of paragraph (d) of this section to be responsible for the inspection, maintenance, service or repairs of any brakes on its commercial motor vehicles.

(d) The motor carrier or intermodal equipment provider must ensure that each brake inspector is qualified as follows:

(1) Understands the brake service or inspection task to be accomplished and can perform that task; and

(2) Is knowledgeable of and has mastered the methods, procedures, tools and equipment used when performing an assigned brake service or inspection task; and

(3) Is capable of performing the assigned brake service or inspection by reason of experience, training, or both as follows:

(i) Has successfully completed an apprenticeship program sponsored by a State, a Canadian Province, a Federal agency or a labor union, or a training program approved by a State, Provincial or Federal agency, or has a certificate from a State or Canadian Province that qualifies the person to perform the assigned brake service or inspection task (including passage of Commercial Driver's License air brake tests in the case of a brake inspection); or

(ii) Has brake-related training or experience or a combination thereof totaling at least one year. Such training or experience may consist of:

(A) Participation in a training program sponsored by a brake or vehicle manufacturer or similar commercial training program designed to train students in brake maintenance or inspection similar to the assigned brake service or inspection tasks; or

(B) Experience performing brake maintenance or inspection similar to the assigned brake service or inspection task in a motor carrier or intermodal equipment provider maintenance program; or

(C) Experience performing brake maintenance or inspection similar to the assigned brake service or inspection task at a commercial garage, fleet leasing company, or similar facility.

(e) No motor carrier or intermodal equipment provider may employ any person as a brake inspector unless the evidence of the inspector's qualifications, required under this section, is maintained by the motor carrier or intermodal equipment provider at its principal place of business, or at the location at which the brake inspector is employed. The evidence must be maintained for the period during which the

Pt. 397

49 CFR Ch. III (10–1–11 Edition)

brake inspector is employed in that capacity and for one year thereafter. However, motor carriers and intermodal equipment providers do not have to maintain evidence of qualifications to inspect air brake systems for such inspections performed by persons who have passed the air brake knowledge and skills test for a Commercial Driver's License.

[73 FR 76825, Dec. 17, 2008]

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES

Subpart A—General

Sec.

- 397.1 Application of the rules in this part.
- 397.2 Compliance with Federal motor carrier safety regulations.
- 397.3 State and local laws, ordinances, and regulations.
- 397.5 Attendance and surveillance of motor vehicles.
- 397.7 Parking.
- 397.9 [Reserved]
- 397.11 Fires.
- 397.13 Smoking.
- 397.15 Fueling.
- 397.17 Tires.
- 397.19 Instructions and documents.

Subpart B [Reserved]

Subpart C—Routing of Non-Radioactive Hazardous Materials

- 397.61 Purpose and scope.
- 397.63 Applicability.
- 397.65 Definitions.
- 397.67 Motor carrier responsibility for routing.
- 397.69 Highway routing designations; preemption.
- 397.71 Federal standards.
- 397.73 Public information and reporting requirements.
- 397.75 Dispute resolution.
- 397.77 Judicial review of dispute decision.

Subpart D—Routing of Class 7 (Radioactive) Materials

- 397.101 Requirements for motor carriers and drivers.
- 397.103 Requirements for State routing designations.

Subpart E—Preemption Procedures

- 397.201 Purpose and scope of the procedures.
- 397.203 Standards for determining preemption.

- 397.205 Preemption application.
- 397.207 Preemption notice.
- 397.209 Preemption processing.
- 397.211 Preemption determination.
- 397.213 Waiver of preemption application.
- 397.215 Waiver notice.
- 397.217 Waiver processing.
- 397.219 Waiver determination and order.
- 397.221 Timeliness.
- 397.223 Petition for reconsideration.
- 397.225 Judicial review.

AUTHORITY: 49 U.S.C. 322; 49 CFR 1.73. Subpart A also issued under 49 U.S.C. 5103, 31136, 31502, and 49 CFR 1.53. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

SOURCE: 36 FR 4876, Mar. 13, 1971, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 397 appear at 66 FR 49874, Oct. 1, 2001.

Subpart A—General

§ 397.1 Application of the rules in this part.

(a) The rules in this part apply to each motor carrier engaged in the transportation of hazardous materials by a motor vehicle which must be marked or placarded in accordance with § 177.823 of this title and to—

(1) Each officer or employee of the motor carrier who performs supervisory duties related to the transportation of hazardous materials; and

(2) Each person who operates or who is in charge of a motor vehicle containing hazardous materials.

(b) Each person designated in paragraph (a) of this section must know and obey the rules in this part.

[36 FR 4876, Mar. 13, 1971, as amended at 36 FR 16067, Aug. 19, 1971; 53 FR 18058, May 19, 1988; 60 FR 38749, July 28, 1995]

§ 397.2 Compliance with Federal motor carrier safety regulations.

A motor carrier or other person to whom this part is applicable must comply with the rules in parts 390 through 397, inclusive, of this subchapter when he/she is transporting hazardous materials by a motor vehicle which must be marked or placarded in accordance with § 177.823 of this title.

[37 FR 18080, Sept. 7, 1972]