ACHIEVING COMPATIBILITY OF STATE AND FEDERAL SAFETY REQUIREMENTS

A Report to the Secretary of Transportation

Commercial Motor Vehicle Safety

Regulatory Review Panel

August 1990

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EXECUTIVE SUMMARY

The Commercial Motor Vehicle Safety Regulatory Review Panel (Safety Panel) has prepared this report in response to Sections 207, 208, and 209 of the Motor Carrier Safety Act of 1984 (Public Law 98-554). A major goal of the 1984 Act was to achieve compatibility between State and Federal safety requirements affecting interstate motor carrier operations. The 1984 Act required the Secretary of Transportation to establish the Safety Panel to analyze State and Federal motor carrier safety requirements. This report provides the Secretary with the results of the Safety Panel's review of safety requirements affecting interstate motor carrier operations.

BACKGROUND

State and Federal motor carrier safety programs have evolved in a decade of significant change within the motor carrier industry. With partial economic deregulation of the motor carrier industry in 1980, concerns arose that highway safety could decline amidst new competitive pressures and structural changes within the industry.

There followed several Federal initiatives directed at increasing the compatibility and uniformity of State requirements affecting interstate motor carriers: Congress established the Motor Carrier Safety Assistance Program (MCSAP) under the Surface Transportation Assistance Act of 1982 to address the need for a nationally uniform motor carrier safety program; the Department of Transportation conducted a comprehensive review of the uniformity of State motor carrier taxation and regulation as mandated under Section 19 of the Motor Carrier Act of 1980; and the Safety Panel was established to review the compatibility of Federal and State motor carrier safety regulations as required under the Motor Carrier Safety Act of 1984. These activities were followed by another major uniformity initiative, the Commercial Driver's License Program established under the Commercial Motor Vehicle Safety Act of 1986.

Against this backdrop of legislative actions aimed at uniformity, the Safety Panel has viewed its role and responsibility in a broader context of the need for greater compatibility of Federal and State safety requirements and improving the overall effectiveness of emerging State safety programs.

STUDY APPROACH

The Safety Panel initially inventoried and reviewed over 70,000 individual State motor carrier safety requirements affecting interstate carriers. Based on this initial comparison, the Safety Panel found that State and Federal safety requirements affecting interstate motor carrier operations have more in common than they do in diversity. Many of the

State safety requirements were found to cut across the motor carrier industry, affecting a larger portion of it than other, more singular requirements. The Safety Panel decided to concentrate on the broad, cross-cutting effects of the State safety requirements, particularly those considered less stringent, to identify and eliminate major differences.

STATUS OF STATE REQUIREMENTS

Currently, 35 States have safety requirements affecting interstate motor carriers that are compatible with Federal requirements. The remaining States have vehicle, industry, and/or driver requirements that are different from the Federal safety requirements.

Alaska, New Mexico, and the District of Columbia have not adopted any of the major Federal requirements. However, Alaska and the District of Columbia have indicated that they are preparing legislation to adopt compatible requirements. New Mexico enacted legislation in 1989 that provided authority to promulgate compatible requirements.

Last year, the Federal Highway Administration (FHWA) informed the Governors of all States and the Mayor of the District of Columbia of the areas of incompatibility that the Safety Panel identified. The analysis in this report reflects information received from the States, recent changes by State legislatures that bring their motor carrier safety laws into compatibility, and other information available to the Safety Panel through the MCSAP. The results of the analysis are presented in Chapter 2 and the specific findings for each State are summarized in Appendix A.

OPTIONS FOR ACHIEVING COMPATIBILITY

In the course of its review the Safety Panel considered four different approaches to achieve compatible State safety requirements:

(1) a continuous detailed review and preemption of individual requirements;
(2) a broad review of State requirements with preemption;
(3) modification of the MCSAP to include, as a condition of grant acceptance, an annual State review and certification of compatibility using guidelines recommended by the Safety Panel, coupled with deadlines for resolving major differences in requirements; and
(4) the formation of a working group to build a consensus among States to implement compatible requirements.

These options are reviewed in more detail in Chapter 3.

PREFERRED OPTION: THE MCSAP APPROACH

The Safety Panel recommends the MCSAP approach because it would provide program continuity and strengthen existing State regulatory review and certification processes. The Safety Panel recognizes that the process to eliminate differences must not be rigid, but specific deadlines for achieving compatibility are necessary to measure States' progress. The MCSAP requires a continuous, annual review of individual State requirements and agreements to adopt and enforce compatible safety requirements as a condition of grant acceptance.

The Safety Panel recommends that an annual, comparative review should be conducted by each State using the guidelines in this report. The FHWA would review and accept (or reject) the States' analysis and certification of compatibility. Where differences remain in a State's safety requirements, the State should enter into agreement with the FHWA to replace the incompatible requirements with compatible requirements.

The State regulatory review procedures would fulfill the process of continuous review of individual State requirements envisioned for the Safety Panel. The MCSAP, once reauthorized in 1991, would continue to be the primary mechanism for monitoring and insuring State compatibility with Federal safety requirements.

PREEMPTION OF STATE REQUIREMENTS

The Safety Panel recommends that July 1992 should be the effective date for preemption for those individual State requirements identified in this report. If States fail to make adequate progress within a specified time period, then the FHWA should preempt their requirements following the procedures outlined in Section 208 of the 1984 Act and deny MCSAP funding if compatibility is not achieved.

Preemption, as outlined in the 1984 Act, means that a State may not have in effect or enforce a law or regulation affecting interstate motor carrier operations that is incompatible with Federal safety requirements. Intrastate differences are not subject to preemption although MCSAP funding may be denied for incompatibility with separate guidelines established by the FHWA (the Safety Panel was mandated to examine only interstate regulations).

Key actions in the process of achieving compatibility will be the timing of preemption and the denial of MCSAP funds. Both actions would be triggered by a determination that a State has incompatible safety requirements. The actions and their timing will depend on the type of regulation being addressed, participation in MCSAP, the status of the

MCSAP agreements to eliminate differences in requirements, and the overall compatibility of the State's motor carrier regulations. Timing of these actions is discussed in detail in Chapter 3. The Safety Panel envisions that the FHWA would provide opportunity for notice and comment on preemption, issue a determination to preempt State requirements, and deny MCSAP funds if compatibility was not achieved through preemption.

The Safety Panel recommends that the FHWA establish procedures for States to review, analyze, and certify compatibility of safety requirements as envisioned under the 1984 Act. The FHWA would issue regulations to incorporate the continuous review activities outlined in the 1984 Act, and identify the preemptive procedures and deadlines to avoid preemption. Those States participating in MCSAP would comply with the procedures through the grant administration process. Those States not participating in MCSAP should review and analyze their regulations annually and submit the certification to their FHWA Division Office.

THE FUTURE OF MCSAP

The Safety Panel believes that MCSAP should be expanded in the next decade to satisfy this new role and become the focal point for all Federal motor carrier safety activities. The Safety Panel recommends that MCSAP should be reauthorized at a higher level of funding and then incrementally adjusted, compared to its current $60 million funding level.

The Safety Panel believes that the procedures recommended in this report will place greater reliance on MCSAP and the States to resolve intergovernmental motor carrier safety issues and will help strengthen the Federal-State partnership for motor carrier safety. As discussed in Chapter 4, the Safety Panel believes that States should expand the scope of their activities under MCSAP during the next decade to include all facets of motor carrier safety. The Safety Panel recommends that the Federal Government increase its financial commitment for MCSAP to help support this objective.

Before MCSAP, most States did not have comprehensive motor carrier safety programs, and the Federal Government held the dominant role in ensuring the safety of interstate motor carrier operations. The MCSAP was originally viewed as a program for roadside inspections, but now, State activities include safety and compliance reviews, drug interdiction, and commercial driver licensing. This expansion is primarily due to new national initiatives. In the months ahead, the transportation community will debate the future direction of the Nation's highway program. Motor carrier safety should remain a national transportation priority.

With the submission of this report to the Secretary of Transportation, the Safety Panel has completed its responsibilities under the 1984 Act.

CHAPTER 1

INTRODUCTION

PURPOSE AND SCOPE

A major goal of the Motor Carrier Safety Act of 1984 (Public Law 98-554) was to achieve greater uniformity among States' motor carrier safety requirements affecting interstate motor carrier operations. In 1985, the Secretary of Transportation established the Commercial Motor Vehicle Safety Regulatory Review Panel (Safety Panel) to assist the Federal Highway Administration (FHWA) in achieving this goal. The 1984 Act required the Secretary to establish the Safety Panel to review the compatibility of State motor carrier safety regulations with the Federal safety regulations.

This report provides the Secretary with the results of the Safety Panel's review of State and Federal motor carrier safety requirements. It includes information on the Safety Panel's approach for reviewing State requirements affecting interstate motor carrier operations and the status of the State requirements. It also describes the Safety Panel's recommendation for relying on existing State activities for adopting and enforcing compatible requirements under the Motor Carrier Safety Assistance Program (MCSAP) and achieving compliance by the few States not participating in MCSAP. The procedures and guidelines to be used to implement the recommendation are also described.

The 1984 Act provides the Secretary the authority to review and preempt State requirements. Effective October 30, 1989, a State may not have in effect or enforce a safety law or regulation affecting interstate motor carrier operations if the Secretary determines that the State requirement is incompatible with Federal safety requirements. The Secretary may extend the effective date to October 30, 1991, as allowed under Section 208(h) of the Motor Carrier Safety Act of 1984 and as amended by the Truck and Bus Safety and Regulatory Reform Act of 1988.

The Secretary must complete a two-tiered process for determining whether a State requirement affecting interstate motor carrier operations is incompatible with Federal safety requirements. First, the Secretary must determine whether each State motor carrier safety requirement:

(1) has the same effect as;
(2) is less stringent than; or
(3) is additional to or more stringent than Federal requirements.

A State safety requirement that has the same effect as Federal requirements is compatible. A State requirement that is less stringent is incompatible and may not remain in effect or be enforced.

A State requirement that is more stringent than a Federal requirement must meet a second test. The requirement may not be in effect or enforced, if the Secretary determines that:

(1) there is no safety benefit associated with the more stringent State law or regulation;
(2) the State law or regulation is incompatible with Federal requirements; or;
(3) enforcement of the State law or regulation would be an undue burden on interstate commerce.

The 1984 Act directed the Safety Panel to follow this same two-tiered process when reviewing State and Federal safety requirements. It also directed the Secretary to "give great weight to the corresponding determination made by the Safety Panel" (Section 208(c)(5)(a) of the Motor Carrier Safety Act of 1984). The Safety Panel has completed its review, and the results are presented in this report.

BACKGROUND

With enactment of the Motor Carrier Act of 1980, Congress largely deregulated the motor carrier industry from an economic standpoint. It opened entry into the industry and eliminated many other restrictions and requirements on interstate motor carrier operations. The industry became more competitive, and concerns arose that highway safety might be degraded as competition increased and the industry's structure changed.

Congress established the MCSAP under the Surface Transportation Assistance Act of 1982. It is a Federally-funded program administered by the States. Under MCSAP, States inspect vehicles and driver records, train their personnel in the safety requirements, and promote public awareness about commercial motor vehicle laws and safety. The States provide a 20 percent match for the Federal funds and, as a minimum, must fund their motor carrier activities comparable to 1981 and 1982 State spending levels. States conduct approximately 1.3 million roadside inspections annually, compared to 159,000 inspections during the first year of MCSAP in 1984.

The 1982 Act requires a State to adopt and assume responsibility for enforcing safety requirements compatible with the Federal safety regulations as a condition for MCSAP funding. The MCSAP represents one of several initiatives in the 1980's directed at increasing the compatibility

and uniformity of State requirements affecting motor carriers. The Department of Transportation and the Interstate Commerce Commission completed a study, under Section 19 of the Motor Carrier Act of 1980, which:

- *identified differences in State requirements for fuel, sales and ad valorem taxes and other fees imposed on motor carriers;*
- *examined alternatives to the requirements; and*
- *recommended ways to reduce the burden imposed on interstate motor carriers.*

As an outgrowth of the study, the FHWA funded a comprehensive effort by the National Governors' Association (NGA) to develop uniform motor carrier regulation and taxation procedures for adoption by the States. In 1984, the NGA established the Working Group on State Motor Carrier Procedures. Its work led to the NGA's adoption of eight recommendations on how the States could reduce administrative burdens on motor carriers.

Since their adoption in 1985, the NGA has concentrated its efforts on working with States to implement four key recommendations:

- *form State motor carrier advisory committees;*
- *join the International Registration Plan (IRP);*
- *participate in base State fuel tax agreements; and*
- *establish a one-stop operation for handling all the State's requirements for taxation, registration, and operating authority of motor carriers.*

Progress has been mixed. Forty-one States have formed motor carrier advisory committees, 42 are participating in the IRP, 3 are participating in the Regional Fuel Tax Agreement, 15 are participating in the International Fuel Tax Agreement, and 15 have one-stop operations.

The regulatory review activities of the Safety Panel under the Motor Carrier Safety Act of 1984 emerged as the next uniformity initiative. The 1984 Act required the Safety Panel to review the compatibility of State motor carrier safety regulations with the Federal safety regulations. While the Section 19 study and the NGA Working Group concentrated on the differences among State taxation, economic and registration requirements, the Safety Panel (like MCSAP) concentrated on the differences among State safety requirements.

These initiatives--MCSAP, the Section 19 study, the Working Group, and the Safety Panel--were followed by another major uniformity initiative of the 1980's, the Commercial Driver's License Program. Under the Commercial Motor Vehicle Safety Act of 1986, the FHWA established minimum Federal standards for States to follow when testing and licensing commercial drivers. The program was developed to ensure that each driver

of a commercial motor vehicle has only one driver's license and is qualified to operate his or her vehicle. All drivers must be tested and licensed under the new standards by April 1992.

In completing its review of the compatibility of State and Federal safety requirements, the Safety Panel has viewed its role and responsibility in the broader context of need for greater uniformity among State requirements. Uniform, compatible safety requirements are important to facilitate interstate commerce, improve the efficiency of safety enforcement activities, and reduce the burden on interstate motor carriers. The results of the Safety Panel's work as documented in this report are intended to complement other initiatives underway.

STUDY APPROACH

The first task in this study was to identify State safety laws and regulations affecting interstate motor carrier operations. Shortly after enactment of the 1984 Act, the FHWA requested the States to submit copies of their laws and regulations to the FHWA (see Table 1). The FHWA used the information provided by the States to compile a detailed inventory of State safety requirements affecting interstate motor carrier operations. The data base contained approximately 70,000 records of State requirements with the corresponding Federal safety requirements.

The Federal Motor Carrier Safety Regulations addressed by the Safety Panel are delineated in ten major parts of Title 49 of the Code of Federal Regulations (C.F.R.), 49 C.F.R. 390-399. The Federal safety requirements may be grouped into vehicle and driver standards.

Vehicle Standards

Generally, all for-hire and private motor carriers operating in interstate or foreign commerce must comply with the Federal safety requirements.

A truck or bus operating in interstate or foreign commerce on a public highway is subject to the Federal safety requirements if the vehicle:

- *has a gross vehicle weight rating or a gross combination weight rating over 10,000 pounds;*
- *is designed to transport 15 or more passengers (including the driver); or*
- *is used to transport hazardous materials in a quantity requiring placarding under Federal hazardous materials regulations.*

TABLE 1

KEY DATES--ACTIVITIES OF THE SAFETY PANEL

October 30, 1984	President Reagan signs the Motor Carrier Safety Act of 1984, directing the Secretary of Transportation to establish the Safety Panel.
January 10, 1985	The FHWA requests appropriate laws and regulations from States.
April 30, 1985	State laws and regulations are due to the Secretary and Safety Panel from the States.
June 18, 1985	Secretary of Transportation Elizabeth Dole signs the charter establishing the Safety Panel.
September 5, 1985	The Safety Panel meets. Secretary Dole administers oath of office to panel members. The FHWA staff reviews: (1) Safety Panel's responsibilities, (2) the Safety Panel's charter, and (3) proposed research contract to compile and analyze State laws and regulations.
January 21 & 22, 1986	The Safety Panel meets. Research contract is underway.
April 30, 1986	The FHWA and consultant complete analysis of 70,000 State safety requirements.
July 1 & 2, 1986	The Safety Panel meets. The FHWA and consultant discuss progress in preparing abstracts of State motor carrier laws and regulations.
July 14, 1987	The charter for the Safety Panel is renewed.
July 28 & 29, 1987	The Safety Panel meets. The consultant presents abstracts of State laws and regulations. The Safety Panel directs the FHWA to: (1) concentrate on "less stringent" requirements which have broad, cross-cutting effects on State safety requirements, and

	(2) summarize the major differences in each State. (See Appendix B.)
December 2, 1987	The Safety Panel meets. The Panel approves analysis of State requirements and directs the FHWA to prepare letters to Governors with findings.
May 5, 1988	The Safety Panel meets. The Panel decides to integrate safety regulatory review activities into MCSAP. (See Appendix B.)
February 24, 1989	The FHWA sends a letter to each Governor and Mayor of the District of Columbia reporting its initial findings. Approximately one-half of the States have requirements that are compatible with Federal safety requirements. Where differences exist among the other States, the Panel requests the States' views on specific recommended changes in the requirements.
June 15 and 16, 1989	The Safety Panel meets. The FHWA staff summarizes responses to letters and the Panel reviews the working draft of the report to the Secretary.
June 16, 1989	The charter for the Safety Panel is renewed.
October 25, 1989	The Safety Panel sends the draft report to each State Governor and the Mayor of the District of Columbia.
August 1990	The Safety Panel completes the final report.

The FHWA establishes regulations for parts and accessories necessary for safe operation of commercial motor vehicles in interstate commerce. A motor carrier cannot operate any commercial motor vehicle unless it is in safe and proper working condition and has the required parts and accessories. The requirements include standards for axles, brake and steering systems, frame and frame assemblies, tires, lights, and other parts and accessories. Buses are required to meet special standards and features for the safe transportation of passengers.

Drivers are required to ensure that the vehicle is in a safe operating condition before driving it. Also, every driver must prepare a post-trip inspection report listing any defects which must be corrected. Carriers are required to properly maintain and routinely inspect vehicles and to maintain appropriate records.

Driver Standards

More than 5.5 million people drive trucks and buses in interstate and foreign commerce. Federal safety regulations require interstate drivers of these vehicles to be in good physical health, at least 21 years of age, able to operate the vehicle safely, and to maintain a safe driving record.

Federal safety requirements prohibit a commercial motor vehicle driver from:

- *being under the influence of alcohol;*
- *having an alcoholic substance in the vehicle (except as cargo);*
- *consuming alcohol while on duty; and*
- *consuming alcohol or being under the influence of alcohol within 4 hours before going on duty.*

Federal requirements also prohibit a driver from being on duty while using controlled substances such as an amphetamine, a narcotic drug, a formulation of an amphetamine, or a derivation of a narcotic drug.

Interstate drivers and motor carriers must comply with the Federal hours-of-service requirements. For example, a driver may not operate a commercial motor vehicle after he or she has driven for 10 hours, or has been on duty for 15 hours (following 8 consecutive hours off duty). A driver must keep a record (or log) of duty status for each 24-hour period.

The Safety Panel did not consider State requirements which do not correspond with the Federal safety regulations, such as those requirements traditionally under States' purview including registration, tariffs, permits, application fees, penalties and violations, and general traffic procedures. Congress did not direct the Safety Panel to review the compatibility of State

and Federal hazardous material requirements. The Safety Panel also did not address the Commercial Driver's License requirements in 49 C.F.R. 383 which contain separate deadlines and standards for State compliance.

It is difficult to judge whether a particular State safety requirement has the same effect as, is less stringent than, or is more stringent than a Federal requirement. The judgment is based on the applicability of the requirement and its relationship to the scope and definition of other requirements.

Based on the initial comparison of each State requirement affecting interstate commerce with the corresponding Federal safety requirement in the data base, the Safety Panel found that:

- *43 percent of the State requirements had the same effect as the Federal safety requirements;*
- *34 percent were less stringent;*
- *6 percent were more stringent; and*
- *17 percent of the regulations had no comparable Federal requirement or applied <u>only</u> to intrastate carriers (thus were <u>not</u> subject to the Safety Panel's review).*

While the Safety Panel was pleased to find that 43 percent of the State requirements were compatible with the Federal requirements, the review proved to be a laborious exercise. Compiling the inventory resulted in some multiple counting of the effects of major differences. For example, if the State adopted the Federal safety requirements to apply only to for-hire carriers, the exclusion of private carriers permeated through all the individual requirements. Thus, many of the requirements and exemptions were found to cut across the motor carrier industry, affecting a larger portion of it.

Upon reviewing the results in July 1987, the Safety Panel decided it would concentrate its efforts on the broad, cross-cutting effects of the State safety requirements and exemptions, particularly those considered less stringent than the Federal requirements, to identify and eliminate major differences. The Safety Panel requested the FHWA staff to summarize the differences and identify specific changes needed in each State.

In February 1989, the FHWA sent a letter to the Governors of all States and the Mayor of the District of Columbia informing them of areas where incompatibility between the State requirements and the Federal safety requirements may exist and asked for their comments on these initial findings. This was followed in October 1989 with the transmittal of the draft report to all Governors and the Mayor of the District of Columbia. The Safety Panel used this information to summarize the status of the State requirements presented in Chapter 2.

CHAPTER 2

STATUS OF STATE REQUIREMENTS

In the 1980's, many States adopted safety requirements affecting interstate motor carrier operations that are compatible with Federal safety requirements. In 1984, the first year of MCSAP, 12 States had motor carrier safety requirements that were compatible with Federal standards. Now, 35 States have safety requirements affecting interstate motor carrier operations that are compatible with Federal safety requirements.

Three national maps illustrate the status of State requirements. Figure 1 illustrates the overall status of State requirements. Figures 2 and 3 highlight those areas where State motor carrier safety requirements affecting interstate motor carrier operations are not compatible with Federal safety requirements.

This analysis reflects the responses from the Governors to the Safety Panel's letters, informing them of areas of incompatibility. It also reflects recent changes by State legislatures to bring their interstate motor carrier safety laws and regulations into compatibility and other information available to the FHWA through MCSAP (see Appendix A for information).

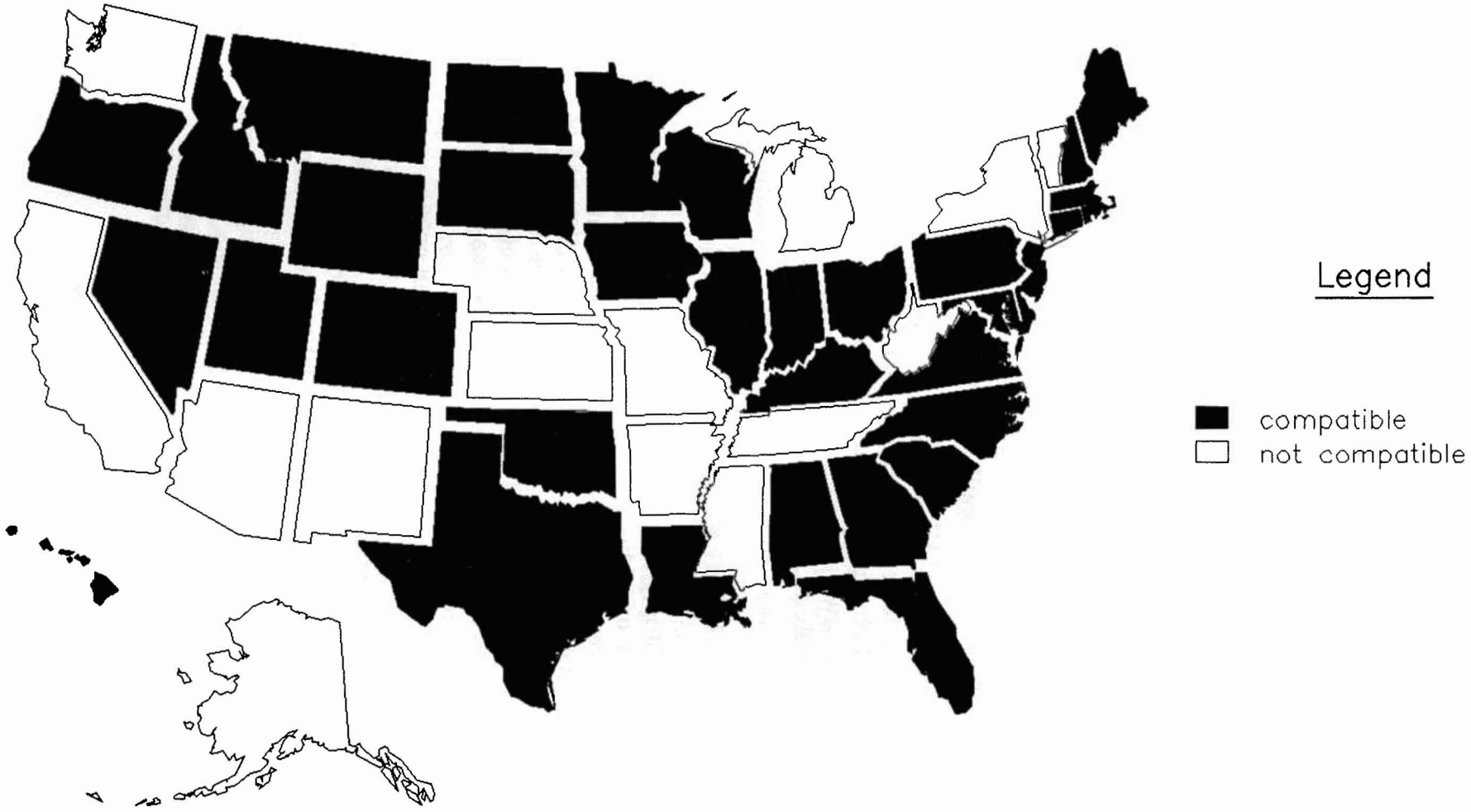
COMPATIBILITY OF STATE REQUIREMENTS *(Figure 1)*

Thirty-five States have safety requirements affecting interstate motor carrier operations that are compatible with the Federal safety requirements. The majority of these States have adopted and enforced all the Federal safety requirements (49 C.F.R. 390-399). Several States in this group have not adopted requirements for the Notification and Reporting of Accidents (Part 394), Transportation of Migrant Workers (Part 398), and Employee Safety and Health Standards (Part 399).

The remaining States have one or more safety requirements affecting interstate motor carrier operations that are not compatible with the Federal motor carrier safety requirements. These States have different exemptions (by industry or type of vehicle) and/or various driver-related exemptions that are different from the Federal safety requirements.

Delaware and Virginia have a weight threshold higher than the 10,000-pound threshold specified in the Federal regulations as their only area of incompatibility. Several States also have a weight threshold which is different from the 10,000-pound limit specified in the Federal safety

INTERSTATE MOTOR CARRIER SAFETY REQUIREMENTS
FIGURE 1 - COMPATIBILITY OF STATE REQUIREMENTS



requirements in addition to other areas of incompatibility. The Safety Panel gave States latitude on the compatibility of their weight threshold requirements pending the outcome of the FHWA's current rulemaking on the weight threshold used in defining a commercial motor vehicle. If the FHWA decides not to change the weight threshold after reviewing public comments, States with different weight exemptions may be considered not compatible.

Alaska, New Mexico, and the District of Columbia have not yet adopted the Federal safety requirements (49 C.F.R. 390-399), and do not have laws, rules, regulations, standards, or orders that are compatible with the Federal safety requirements. However, Alaska and the District of Columbia have notified the FHWA officials that they are preparing legislation to adopt compatible safety requirements. In July 1989, New Mexico enacted legislation that provided it with the authority to promulgate requirements comparable to the Federal safety requirements. New Mexico is promulgating safety regulations under the 1989 legislation.

STATE VEHICLE AND INDUSTRY EXEMPTIONS *(Figure 2)*

Twelve States do not have or enforce safety requirements for certain portions of interstate motor carrier operations within the State. In some cases, State legislatures have not enacted legislation that provides a State agency the authority to regulate specific industry segments. This creates a gap in the State agency's authority to regulate interstate motor carrier operations. In other cases, a State agency has provided an exemption in its regulations. Generally, the exemptions are provided for both the drivers and vehicles in various industries.

Buses

For-hire interstate bus operators are subject to Federal safety requirements. A bus is defined in the Federal safety regulations as a vehicle designed to transport more than 15 passengers and operated in interstate commerce on a public highway.

Michigan does not have safety laws or regulations for exclusively interstate passenger carrier operations; i.e., nonresident interstate buses engaged in regular-route, charter, or tour operations.

Farm and/or Forestry

Federal safety requirements define a commercial motor vehicle as a vehicle operating in interstate commerce on a public highway that has a gross vehicle weight rating or a gross combination weight rating over

INTERSTATE MOTOR CARRIER SAFETY REQUIREMENTS
FIGURE 2 - STATE VEHICLE AND INDUSTRY EXEMPTIONS

10,000 pounds, is designed to transport more than 15 passengers, or is used to transport hazardous materials in a quantity requiring placarding under the Federal hazardous materials regulations. Vehicles transporting farm and/or forest products that meet the definition of a commercial motor vehicle are subject to the Federal safety requirements.

Federal regulations also state that a driver of a commercial motor vehicle must be in good health, at least 21 years of age, able to drive the vehicle safely, and have a safe driving record (49 C.F.R. 391). A driver of a vehicle transporting farm and/or forest products that meets the definition of a commercial motor vehicle is subject to the safety requirements.

Kansas has no gross vehicle weight or distance restrictions on farm-vehicle drivers.

Mississippi exempts from the Federal safety requirements vehicles owned, leased, or operated by farmers, groups of farmers, incorporated farmers, or cooperative associations engaged in the transportation of agricultural commodities. Mississippi does not regulate vehicles used exclusively to carry products and supplies to and from farms or to and from dairies for farm and dairy purposes. In addition, Mississippi does not have legislative authority to regulate charter bus operations and exempts other operations.

Missouri exempts from the safety requirements vehicles weighing 42,000 pounds or less if the vehicles are designated for farm use (by the letter "F" on the license plate). Missouri exempts trailers if they are towed by vehicles with an "F" plate (except vehicles transporting fertilizer) and vehicles transporting propane tanks weighing 50 pounds or less. Missouri provides exemptions from the safety requirements for vehicles weighing 60,000 pounds or less that transport solid waste. Missouri does not regulate vehicles weighing 12,000 pounds or less.

Nebraska exempts from the Federal safety requirements farm trucks weighing 32,000 pounds or less, and liquid petroleum and liquid petroleum gas tanks with a capacity less than 3,500 gallons. Nebraska does not regulate vehicles transporting fertilizers and agricultural chemicals, and distribution equipment in units with a capacity of 3,500 gallons or less. Nebraska also exempts from selected safety requirements drivers of farm-registered vehicles.

Tennessee exempts from the safety requirements vehicles and their drivers which transport materials for farm purposes.

Straight Trucks and Other Vehicles

These vehicles and their drivers are subject to the Federal safety requirements if they meet the definition for a commercial motor vehicle.

Arizona allows the carrier to declare vehicle weight when registering it rather than using the manufacturer's gross vehicle weight rating referenced in the Federal requirements. Arizona also does not regulate vehicles weighing 20,000 pounds or less.

Arkansas exempts wreckers from all safety requirements and pole trailers from brake requirements during daylight hours. Arkansas exempts from the safety requirements vehicles and their drivers involved in transportation of gravel, rocks, dirt, bituminous mix materials, rip-rap, quarried and crushed stone, and similar materials. Arkansas also exempts from the safety requirements private carriers of certain agricultural products, prefabricated homes, and school children.

California has not adopted safety requirements for two-axle straight trucks transporting non-hazardous materials. This variance is being reconsidered pending the outcome of the FHWA's weight threshold rulemaking. Also, California has no requirements pertaining to the exhaust system discharge location on a commercial motor vehicle.

Vermont exempts carriers of non-hazardous materials from the safety requirements. Vermont passed legislation to allow adoption of Federal safety regulations for all cargoes including non-hazardous materials. Pending the results of public hearings, this legislation will become effective and will be fully implemented.

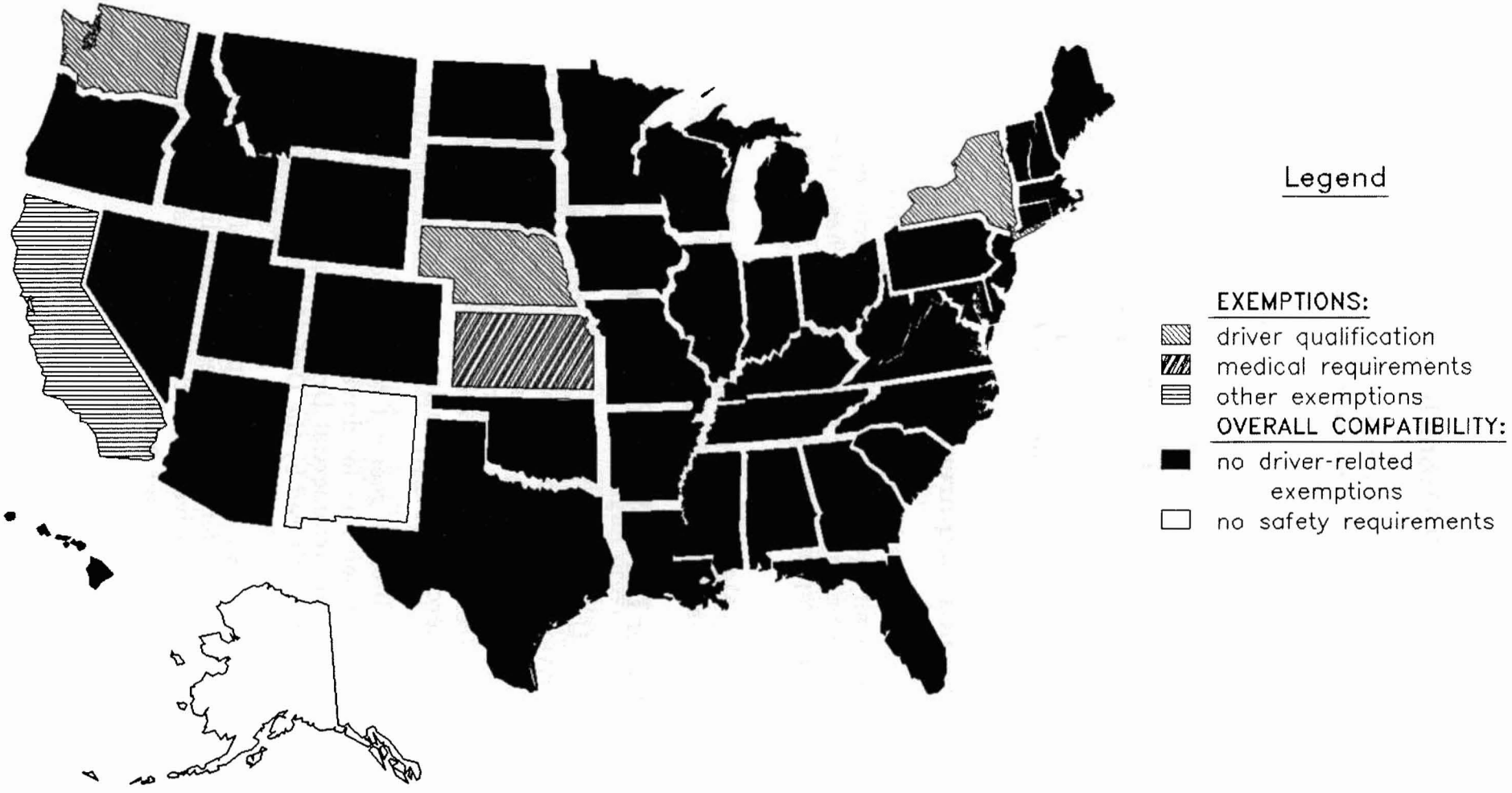
Washington does not require driver vehicle inspection reports from for-hire motor carriers if no defects are found. Also, Washington has not adopted requirements defining the types of vehicles governed by the Federal safety requirements (49 C.F.R. 390).

West Virginia exempts from the safety requirements straight trucks of private carriers transporting excavating equipment and for-hire carriers transporting U.S. mail or newspapers.

STATE DRIVER-RELATED EXEMPTIONS *(Figure 3)*

Five States have various driver-related exemptions which vary from the Federal safety requirements.

INTERSTATE MOTOR CARRIER SAFETY REQUIREMENTS
FIGURE 3 - STATE DRIVER-RELATED EXEMPTIONS



Driver Qualification Requirements

Federal safety requirements specify that a driver of a vehicle meeting the definition of a commercial motor vehicle is subject to the driver qualification requirements.

Nebraska provides exemptions for drivers of farm-registered vehicles from all driver qualification requirements and from a driver's record-of-duty status.

New York exempts from the driver qualification requirements drivers of vehicles transporting non-hazardous materials.

Washington exempts from the driver qualification requirements private utility companies and for-hire carriers operating under their own permit.

Medical Requirements

Federal safety requirements state that an individual is considered not physically qualified to drive a commercial motor vehicle if he or she is an insulin-using diabetic or epileptic or has a cardiovascular disease known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

Kansas does not prohibit insulin-using diabetics, epileptics, and persons with cardiovascular diseases from driving commercial vehicles.

Other Driver-Related Exemptions

Under Federal safety requirements, a motor carrier must maintain a driver qualification file with information on each driver's medical certificate, license to operate a commercial motor vehicle, and other information on the driver qualifications or employment. Federal safety requirements prohibit unauthorized drivers and passengers from using commercial motor vehicles.

California does not require motor carriers to maintain driver qualification files for drivers operating in interstate commerce, although under the Commercial Driver's License program, driver qualifications are closely monitored by the Department of Motor Vehicles, which transmits information directly to the carrier. California does not prohibit unauthorized drivers and passengers from being in a commercial motor vehicle. California also does not establish a ceiling of 2 hours added driving time during adverse weather conditions and allows dispatch when adverse weather conditions are known to exist.

OVERALL OBSERVATIONS ON THE STATUS OF STATE REQUIREMENTS

Based on the Safety Panel's review of State and Federal safety requirements affecting interstate motor carrier operations, it finds:

1. *States made progress in the 1980's to adopt and enforce safety requirements affecting interstate motor carrier operations that are compatible with Federal safety requirements.*

   Thirty-five States have safety requirements affecting interstate motor carrier operations that are compatible with the Federal safety requirements.

2. *Alaska, New Mexico, and the District of Columbia do not have motor carrier safety requirements that are compatible with Federal safety requirements.*

   However, Alaska and the District of Columbia have notified FHWA officials that they are preparing legislation to adopt compatible safety requirements. In July 1989, New Mexico enacted legislation that provided it with the authority to promulgate requirements comparable to the Federal safety requirements. New Mexico is promulgating safety regulations under the 1989 legislation.

3. *Twelve States do not have or enforce safety requirements for certain portions of interstate motor carrier operations in the State.*

   These States provide exemptions for or do not have the authority to regulate certain vehicles and industries. Michigan provides exemptions for chartered buses. Five States (Kansas, Mississippi, Missouri, Nebraska, and Tennessee) provide exemptions for farm and/or forestry-related operations. Six States (Arizona, Arkansas, California, Vermont, Washington, and West Virginia) exempt straight trucks and other vehicles from the safety requirements.

4. *Five States (California, Kansas, Nebraska, New York, and Washington) provide exemptions for interstate motor carrier operations from various driver-related requirements.*

   These States have different driver qualification, medical, and other driver-related requirements.

5. *The process to eliminate differences between State and Federal safety requirements will not happen overnight due to the frequency of States' legislative sessions.*

For example, Mississippi officials introduced a bill in 1989 to give the State the authority to regulate chartered buses. It did not pass, but State officials expect to reintroduce it during Mississippi's next legislative session. Most legislatures meet for approximately 3 to 5 months each year. Seven States (Arkansas, Kentucky, Montana, Nevada, North Dakota, Oregon, and Texas) meet every other year.

ACHIEVING COMPATIBILITY: WHERE DO WE GO FROM HERE?

It is difficult to judge whether a particular State safety requirement has the same effect as, is less stringent than, or is more stringent than a Federal requirement. Both the analysis of State safety requirements and the objective of achieving compatibility are complicated by several factors:

- *there are thousands of individual State safety requirements affecting interstate motor carrier operations that have varying degrees of differences in comparison to Federal requirements;*
- *State and Federal Governments continuously change their safety requirements to respond to changes in public policy and technology affecting vehicle design, operating practices, and enforcement techniques;*
- *the motor carrier industry is composed of a diverse group of entities with varying degrees of importance to the economy of States and localities;*
- *States can have levels of interest in motor carrier safety different from the Federal Government;*
- *States adopt the Federal safety requirements differently;*
- *different State agencies administer the motor carrier safety requirements; and*
- *there are limited resources available for motor carrier safety.*

Of these seven factors, the first two present the greatest difficulty to conducting a continuous, rigorous analysis of motor carrier safety requirements. Many State safety requirements have subtle differences in comparison to the Federal requirements. A detailed comparison of State and Federal requirements to identify areas of incompatibility has been an enormous undertaking. An inventory of requirements provides a benchmark for comparative analysis, a one-time glimpse of a changing set of requirements.

Changes in the requirements are often driven by the other five factors cited above. A diverse motor carrier industry competing within a State and lobbying for its special needs affects the way the requirements are adopted or changed. State agencies often have authority to change or interpret requirements administratively, and enforcement activities may be scattered among several organizations within a State. Changes to safety

requirements generally are the result of new technology for enforcement or vehicle design, more complete knowledge of accidents and their causes, improvements in safety-related data, new research results, or larger public policy issues; recent examples include front brakes being required, on-board recorders, and drug testing.

Each State, like the Federal Government, balances its interest and emphasis on motor carrier safety with other needs and policies. State governments do not always embrace national uniformity because a State's sphere of influence and concern rests primarily within its borders. The States are more inclined to act on matters that directly affect their citizens. The independence in State actions and perspectives will continue to influence the resolution of the uniformity issue. Many States believe that discretion and exceptions beyond Federal requirements are necessary even though motor carrier safety regulations affecting interstate operations are already established.

States adopt the Federal safety requirements differently. Some States adopt the Federal safety regulations intact as of a particular date or with all future amendments. Other States adopt selected portions of the Federal safety regulations or provide specific exemptions when enacting legislation or issuing their motor carrier safety regulations. In some cases, the State provides an exemption because the industry or group is already exempt from other State requirements. A few States adopt regulations "not in conflict" with State requirements or, if a conflict does exist, enforce the "more stringent" requirement. States also periodically readopt the requirements and sometimes may change the form or scope of their adoption.

The results of the Safety Panel's analysis presented earlier depict the effects of the differences in the States' adoption of the safety requirements. Failure to adopt specific parts of the Federal safety regulations or to establish weight classifications has generally been a State agency decision, so the agency could change the requirement administratively (without legislation). Farm and industry exemptions generally are the result of State statute, so a legislative change usually is needed. Sometimes products are important to the State's economy and may be protected by strong influences within State legislatures. When one State develops a new exemption or requirement and alters the status quo, it may precipitate changes in other States. Thus, a unique solution to a problem within one State disrupts efforts nationally and can threaten a balance established through such programs as MCSAP.

When examining thousands of ever-changing, detailed requirements to identify their differences, it is easy to overlook a more significant attribute of the aggregate set of regulations--their commonality. As apparent from

the results of the Safety Panel's analysis presented earlier, State and Federal safety requirements affecting interstate motor carrier operations have more in common than they do in diversity.

OPTIONS FOR ACHIEVING COMPATIBILITY

The Safety Panel has examined four different approaches to achieve compatible State safety requirements. It assessed the four options with the following objectives in mind:

- *to provide to interstate motor carriers and safety enforcement officials a uniform set of safety standards applicable nationwide;*
- *to enhance the effectiveness of the enforcement of motor carrier safety requirements;*
- *to ensure a continuous regulatory review of State safety requirements affecting interstate motor carrier operations in a cost-effective manner;*
- *to minimize Federal intrusion into State affairs and preserve the interests of State and Federal Governments in improving highway safety; and*
- *to complement other uniformity initiatives.*

This portion of the report reviews the four options:

Option 1: Detailed Review
Option 2: Broad Review
Option 3: MCSAP Approach
Option 4: Working Group

The Safety Panel selected the MCSAP Approach for further examination (see Chapter 3).

Option 1: Detailed Review

Under this option, the Safety Panel and the Secretary would review, line by line, all State and Federal safety requirements affecting interstate motor carriers; i.e., 70,000 State requirements in the data base. The Safety Panel and the Secretary would continually review all of the requirements. The Safety Panel would review every change in State requirements whenever a State modifies its requirements and submits them to the Safety Panel. The Safety Panel and the Secretary would complete the two-tiered analysis for each requirement, and the Secretary would decide whether each State requirement should remain in effect and be enforced. The State could request the Secretary to waive his determination if it wanted its requirement to remain in effect.

The Safety Panel embarked on a line-by-line review of the State requirements initially, but found it to be unworkable due to the large number of requirements and their subtle variations. It is both a labor and resource intensive process, and it is doubtful whether the Secretary and the Safety Panel could keep pace with the changes in State and Federal safety requirements. While this approach may be considered comprehensive, it would duplicate existing administrative procedures under MCSAP. If taken to the extreme, the Secretary would have to decide on the compatibility of thousands of detailed requirements.

The Safety Panel would also annually review changes in State and Federal safety requirements. It could undermine the progress made under MCSAP and disrupt further efforts to achieve uniformity. States could react negatively to punitive Federal action by withdrawing from MCSAP. The level of overall safety enforcement activities by States could decline.

Option 2: Broad Review

The Safety Panel completed a "snapshot review" of broad, cross-cutting requirements which has proved more manageable. This approach would provide a means of managing the large quantity of regulations without sacrificing the goal of overall State compatibility. The Safety Panel and the Secretary would focus on the broader issues that make numerous States incompatible (rather than all individual State requirements) and would attempt to resolve major differences between Federal and State requirements. This approach could include punitive action if the States do not make adequate progress or are unresponsive to the Safety Panel's recommendations.

However, it would simplify the safety regulatory review process presented under Option 1. By focusing on the broad effects of requirements, it would be more discriminative than Option 1 and perhaps less arduous. States could react negatively to punitive Federal actions. As in Option 1, a continuous effort to review and preempt State requirements would duplicate MCSAP program management activities and would risk a negative impact on MCSAP achievements in compatibility.

Option 3: MCSAP Approach

This option would merge the most advantageous features of Option 2 with the current administrative program requirements of MCSAP. It would include a State review and certification component. It would preserve the option to determine that a State requirement may not be in effect or enforced. Under this option, the Safety Panel would build on the

review of broad-based, crosscutting requirements and the results of the letters sent to the Governors by using MCSAP as a means of pursuing the Safety Panel's recommended changes in State requirements.

A continuous, annual regulatory review would be done by States under MCSAP. Currently, the FHWA requires a State to demonstrate a good-faith effort to adopt and enforce both interstate and intrastate requirements that are compatible with Federal safety regulations as a condition of MCSAP grants. Using this option, the FHWA would consider only the State's interstate requirements for purposes of implementing the conditions of the Motor Carrier Safety Act of 1984.

One of the existing conditions for MCSAP funding is that the State must certify that it has adopted or will adopt commercial motor carrier and highway hazardous materials safety rules and regulations which are compatible with the Federal safety regulations and the Federal Hazardous Materials Regulations. States must submit to the FHWA a copy of the State law or regulation adopting the Federal safety regulations or a copy of compatible State rules, including current amendments and any State exceptions or exemptions to the rules (49 C.F.R. 350.15).

This provision would be strengthened by identifying guidelines for States to use to review the compatibility of their safety requirements affecting interstate motor carrier operations and Federal safety requirements. The good-faith effort would be strengthened by establishing deadlines to resolve major areas of incompatibility within the framework of each individual State's legislative calendar to help provide State officials flexibility in meeting the deadlines.

This approach would convert the review of individual requirements from a regulatory process into a program initiative and assign responsibility for completing the review of specific requirements to State officials who have regulatory knowledge specific to individual States. This option is appealing because it consolidates the continuous review procedures now required separately under the 1984 Act and MCSAP, thereby reducing the resource requirements that would otherwise be dedicated to it. It would complement MCSAP by expanding its overall authority and improve the effectiveness of the review and certification process. It could allow additional time to correct major areas of incompatibility without sacrificing current program initiatives or major gains in uniformity already achieved through MCSAP.

Option 4: Working Group

The Safety Panel would assume a new role under this option. Working as a forum for the States to achieve compatibility, the Safety Panel would provide a leadership function in building consensus among the States to

implement compatible requirements. This option would be similar to the role played by the NGA Working Group on State Motor Carrier Procedures in achieving uniformity of State motor carrier registration and taxation provisions. To achieve the consensus-building objective, the Safety Panel would expand its representation of State officials or otherwise seek the direct participation of more States in its activities. Continuous review of State requirements by the Safety Panel would be on a regular basis. It would emphasize consensus building among State and Federal officials.

While this approach would provide a mechanism for discussing and evaluating major differences among Federal and State requirements, the time horizon for doing so would be considerable. A working group would be both resource and time consuming, duplicating MCSAP grant administration procedures. It could eventually lead to greater compatibility since solutions to compatibility issues would be generated by State officials. It is the least intrusive option since preemption is subordinated. To implement the option, changes could be needed to the Motor Carrier Safety Act of 1984 in order to redefine the Safety Panel's structure, membership and responsibilities.

PREFERRED OPTION

In May 1988, the Safety Panel reviewed these four options and decided to use Option 3 (MCSAP approach) to achieve compatibility in State and Federal requirements. States have made significant progress in achieving compatible interstate motor carrier safety requirements under MCSAP. State and Federal safety requirements have more in common than they do in diversity. States are required to certify the compatibility of their safety requirements as a condition for a MCSAP grant. Option 3 will strengthen the State regulatory review and certification processes under MCSAP.

CHAPTER 3

STRATEGY FOR ACHIEVING COMPATIBILITY

The Safety Panel recommends that the States should have the major responsibility for reviewing the compatibility of State and Federal safety requirements affecting interstate motor carriers. The States should analyze and certify the compatibility of their requirements annually to the FHWA, modeled after the certification that States complete under MCSAP. A State participating in MCSAP should analyze its requirements and complete the certification as part of the MCSAP grant application. The Safety Panel believes that the FHWA also should require non-MCSAP States to analyze their requirements and certify their compatibility annually to the FHWA to meet the requirements of the 1984 Act.

The Safety Panel recommends that the States, through a MCSAP good-faith effort, should work aggressively to eliminate incompatible requirements described in Appendix A no later than July 1992. The Safety Panel also recommends that the FHWA should take the necessary steps to preempt incompatible safety requirements that are not removed or replaced within the deadlines.

This chapter summarizes the States' current responsibilities under MCSAP and the guidelines all States should follow in analyzing the compatibility of their safety requirements affecting interstate motor carriers. It presents the Safety Panel's recommended timetable for States to achieve compatibility and describes the procedures that the FHWA would use to preempt incompatible safety requirements as directed by the Motor Carrier Safety Act of 1984. It also discusses the Safety Panel's views on the relationship between preemption and the denial of MCSAP funding as well as the Federal actions necessary to implement these recommendations.

MCSAP PROGRAM

Background

The Surface Transportation Assistance Act of 1982 authorized the MCSAP, providing funds for States to enforce motor carrier safety requirements compatible with Federal requirements. As a condition for MCSAP funds, a State must certify it has motor carrier safety and

hazardous materials rules and regulations that are compatible with Federal requirements or demonstrate its efforts to adopt and enforce compatible requirements.

Currently, 48 States and 4 territories are actively participating in MCSAP. They inspect vehicles and driver records, train their personnel in the safety requirements, and promote public awareness about commercial vehicle laws and safety. The FHWA distributes approximately $47 million a year to the States in MCSAP grants by a formula based on road mileage, vehicle miles of travel, number of commercial vehicles, population, and fuel consumption.

State Responsibilities

To receive MCSAP funds, a State develops a State Enforcement Plan delineating its program of motor carrier safety activities and identifying the State office(s) responsible for administering and enforcing the safety requirements. States submit their plans to the FHWA along with a certification that they have compatible intrastate and interstate safety requirements. The FHWA reviews the documents prior to the beginning of the fiscal year in October. If a State does not have compatible requirements, the FHWA requires a State to demonstrate a good-faith effort to correct the areas of incompatibility. Once negotiations are completed, the FHWA and State sign a grant agreement.

GUIDELINES FOR STATE REVIEW AND CERTIFICATION

Purpose and Scope

The Safety Panel recommends that each State should annually analyze and review its safety requirements affecting interstate motor carriers using the guidelines in the Motor Carrier Safety Act of 1984. For States participating in MCSAP, this would occur when the State Enforcement Plan is prepared. A State would identify all of its interstate motor carrier safety requirements which have the "same effect" as Federal requirements, are "less stringent" than Federal requirements, or are "more stringent or additional" than Federal requirements. A State would determine if its "more stringent" requirements have a "safety benefit," do not create "an undue burden on interstate commerce," and are otherwise compatible with Federal safety requirements.

Based on its experience in reviewing State and Federal safety requirements, the Safety Panel recommends that a State's analysis should focus on the broad applicability of the safety requirements and their effect on motor carrier safety. The documentation should be simple and brief.

The analysis should examine the State's overall motor carrier safety program and its enforcement activities, describe any differences in the State and Federal safety requirements, discuss the changes it intends to make, and identify specific steps that State officials will take toward achieving compatible requirements (with a timetable of key deadlines). The State's analysis would provide the basis for identifying and correcting areas of incompatibility. The analysis results would be included in the grant agreement.

Guidelines for Analysis

The guidelines recommended by the Safety Panel are designed to provide some flexibility in interpreting safety requirements and definitions affecting interstate motor carrier operations. This is necessary because some States have written their own laws rather than adopting, in whole, the Federal safety requirements. The State, in preparing its review, should consider all related State laws and their effect on enforcement of the motor carrier safety regulations.

1. The requirements and definitions should include:

Applicability

The requirements should apply to common, contract, and private carriers of property and for-hire carriers of passengers.

Definitions

The descriptions of items should be consistent with those in the Federal safety regulations. A commercial motor vehicle is a vehicle operating in interstate commerce on a public highway, that: (1) has a gross vehicle weight rating or gross combination weight rating over 10,000 pounds (the FHWA does not expect a State to modify its weight threshold pending the outcome of a rulemaking on the weight threshold used to define a commercial motor vehicle), (2) is designed to transport more than 15 passengers, or (3) is used to transport hazardous materials in a quantity requiring placarding under Federal regulations.

Driver Qualifications

- *require a driver to be in good physical health, at least 21 years of age, able to operate a vehicle safely, and maintain a good driving record;*
- *prohibit drug and alcohol abuse;*
- *require a motor carrier to ensure that a driver is medically qualified; and*

- *require a motor carrier to establish an anti-drug program with testing of drivers prior to employment, periodically, based on reasonable cause, after reportable accidents, and by random selection.*

Driving of Commercial Motor Vehicles

- *prohibit possession, use, or driving under the influence of controlled substances (while on duty); and*
- *establish 0.04 percent as the level of alcohol in the blood at which a driver is considered under the influence of alcohol.*

Parts and Accessories Necessary for Safe Operation

- *require operational lights and reflectors;*
- *require systematically arranged and installed wiring; and*
- *require brakes working at an acceptable performance level.*

Hours of Service

- *prohibit a motor carrier from allowing or requiring any driver to drive:*
  - *more than 10 hours following 8 consecutive hours off duty,*
  - *after being on duty 15 hours,*
  - *after being on duty more than 60 hours in any 7 consecutive days, or*
  - *after being on duty more than 70 hours in any 8 consecutive days; and*
- *require a driver to keep a record-of-duty status for each 24-hour period. The driver and motor carrier must retain the records.*

Inspection and Maintenance

- *prohibit a motor vehicle from being operated when it is likely to cause an accident or a breakdown;*
- *require the driver to ensure that a vehicle can be safely operated;*
- *require the driver to prepare a post-trip inspection report listing any defects which must be corrected;*
- *require an annual commercial motor vehicle inspection; and*
- *require a motor carrier to maintain vehicle maintenance and inspection records.*

Hazardous Materials

The standards require a motor carrier or a person operating a commercial motor vehicle transporting hazardous materials to follow the safety and hazardous materials requirements.

2. Determining whether State requirements affecting interstate motor carriers are "less stringent" than the Federal requirements.

   "Less stringent" requirements represent either gaps in the State requirements in relation to the Federal ones (as summarized under number 1) or State requirements which are less restrictive than the Federal requirements:

   - *an example of a gap is when a State does not have the authority to regulate the safety of for-hire carriers of passengers or has the authority but chooses to exempt the carrier; and*
   - *an example of a less restrictive State requirement is when a State allows a person under 21 years of age to operate a commercial motor vehicle interstate.*

3. Determining whether State requirements affecting interstate motor carriers are "more stringent" than the Federal requirements.

   "More stringent" requirements are more restrictive or inclusive in relation to the Federal ones (as summarized under number 1). For example, a requirement that a driver must have 2 days off after working 5 consecutive days. The State would demonstrate that its more stringent requirements:

   - *have a "safety benefit," result in fewer accidents or reduce the risk of accidents;*
   - *do not create "an undue burden on interstate commerce," e.g., do not delay, interfere with, or increase the cost or the administrative burden for a motor carrier transporting property or passengers in interstate commerce; and*
   - *are otherwise compatible with Federal safety requirements.*

A State must adopt and enforce, in a consistent manner, the requirements referenced in the guidelines for the FHWA to accept the State's certification that it has compatible safety requirements affecting interstate motor carrier operations. The requirements are considered of equal importance.

PREEMPTION OF STATE REQUIREMENTS

Preemption means that a State may not have in effect or enforce a State law or regulation that is incompatible with Federal safety requirements. The shortcoming of preemption, as defined in the 1984 Act, is that it simply makes the State requirement unenforceable, but does not require a State to replace it with compatible requirements. A benefit of the MCSAP approach is that it provides a mechanism to replace incompatible requirements.

The Safety Panel recommends that upon reaching agreement with the FHWA to resolve the difference, the State could have up to 3 years to adopt and enforce compatible requirements. If the State has not adopted compatible requirements as agreed, the FHWA could preempt the incompatible State requirements, deny continued MCSAP funding, or both.

The Safety Panel further recommends that all incompatible requirements shown in Appendix A be subject to preemption no later than July 1992. States are encouraged to replace the preempted requirements pertaining to interstate motor carrier safety with requirements that are substantially similar to and consistent with Federal requirements. The States are encouraged to enforce compatible requirements.

The Process of Preemption

The FHWA would follow the procedures for preemption in Section 208 of the 1984 Act as summarized below.

- *The Secretary will review the State requirements, decide which requirement may warrant preemption, and complete a rulemaking to preempt the requirement(s). A preemption determination will consider whether:*
  - *the State safety regulation has the same effect as, is less stringent than, or is additional to or more stringent than the Federal requirement; and*
  - *additional or more stringent regulations have a safety benefit, are incompatible with Federal requirements, or create an undue burden on interstate commerce.*
- *Through the rulemaking the Secretary will consider public comment on whether to preempt the State requirement.*
- *The Secretary will issue a notice of determination on preemption of the regulation and notify the State, in writing, of the determination.*
- *Any person, business, or State may petition the Secretary for a waiver from a determination and the waiver shall be granted as expeditiously as possible if the petitioner demonstrates to the satisfaction of the Secretary that the waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles.*
- *The Secretary may grant or deny the waiver after affording the petitioner an opportunity for a hearing on the record.*
- *The Secretary may consolidate rulemaking procedures.*
- *Upon the Secretary's decision on a determination on preemption or a petition, any person, business, or State may seek judicial review by the U.S. District Court of Appeals for the District of Columbia or the circuit in which such entity resides or has its principal place of business.*

- *A U.S. District Court of Appeals may uphold or overrule the Secretary's determination, grant or deny the petition, or grant appropriate relief.*
- *Any decision by a U.S. District Court of Appeals is subject to review by the U.S. Supreme Court.*

Time of Preemption and MCSAP Decisions

The Safety Panel recommends that the States should remove or replace current incompatible requirements no later than July 1992. The FHWA should preempt incompatible requirements which are not corrected by July 1992. The FHWA would provide notice and opportunity for comment on proposed preemption actions, consider the comments it receives, and notify the State(s) whether the requirements are preempted. The Safety Panel recognizes that the FHWA's determination of incompatibility through the preemption process may trigger a decision to deny MCSAP funding. The Safety Panel recommends that the FHWA use the following criteria and deadlines for preemption and deciding whether to continue MCSAP funding.

Present Areas of Incompatibility

If a State does not correct present areas of incompatibility by July 1992, then the FHWA should preempt the State requirements. Appendix A contains a list of all incompatible requirements affecting interstate motor carrier operations identified by the Safety Panel. Other incompatible requirements may exist which were not identified or have been put into place since this report was published. The Safety Panel recommends that the FHWA initiate preemption parallel to the MCSAP agreement process, so preemption will become effective by the recommended deadlines (if a State fails to resolve the differences). The Safety Panel also recommends that the FHWA withhold MCSAP funding upon preemption, unless the preemption creates compatibility. If preemption does not result in compatibility, the State should adopt compatible requirements before the FHWA restores MCSAP funding.

New Federal Requirements

When the FHWA establishes new safety requirements in the Federal regulations, the Safety Panel recommends that the FHWA allow the States up to 3 years from the effective date of the new Federal requirement to adopt and enforce compatible requirements affecting interstate motor carrier operations. The FHWA should stipulate the deadline when issuing future Federal safety requirements.

New State Requirements (Less Stringent)

If a State changes an existing compatible requirement making it less stringent than a Federal safety requirement, then the FHWA should preempt the State requirement. The MCSAP funding should be immediately jeopardized.

New State Requirements (More Stringent)

If a State changes an existing compatible requirement making it more stringent than a Federal safety requirement, then the State must determine under a "second tier test" why the requirement should not be preempted. If the FHWA does not accept the State's determination, then the FHWA should preempt the State requirement and withhold MCSAP funding upon preemption (unless the preemption creates compatibility).

Non-MCSAP States

The Safety Panel recommends that the FHWA follow the principles outlined above when deciding the timing of preemption. That is, these States should adopt compatible requirements within 3 years from the effective date of a new Federal requirement; if the State changes an existing compatible requirement making it less stringent than a Federal safety requirement, then the FHWA should preempt the State requirement; if a State changes an existing compatible requirement making it more stringent than a Federal safety requirement, then the State must determine under a "second tier test" why the requirement should not be preempted. If the FHWA does not accept the State's determination, then the FHWA should preempt the State requirement.

Federal Actions

The Safety Panel recommends that the FHWA establish procedures for States to review, analyze, and certify compatibility of safety requirements as envisioned under the 1984 Act. The FHWA should issue a Notice of Proposed Rulemaking which will incorporate the continuous review activities outlined in the 1984 Act and identify the preemptive procedures. A State would follow the procedures and guidelines as outlined in the rulemaking when analyzing its requirements. States participating in MCSAP should comply with the procedures during the grant application process. Those States not participating in MCSAP should review and analyze their regulations annually and submit the certification to the FHWA Division Office. Intrastate differences are not subject to preemption, although MCSAP funding may be denied for incompatibility with separate intrastate guidelines established by the FHWA (the Safety Panel was mandated to examine only interstate regulations).

The Secretary's authority to preempt State requirements became effective October 30, 1989; however, the Safety Panel has not identified any State requirement which should be preempted immediately. The Safety Panel recognizes that the States have worked actively and cooperatively through MCSAP to achieve compatible requirements. The FHWA has entered into agreements with States to eliminate incompatible State requirements. While the Safety Panel believes that this process should continue, it should be modified in the short term to include a more rigorous State review of safety requirements imposed on interstate motor carriers, coupled with deadlines for achieving compatibility and preemptive action if differences cannot be resolved through MCSAP expeditiously. The Safety Panel recommends that the effective date for preemption should be no later than July 1992.

CHAPTER 4

FUTURE OF THE MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

Based on its experience and the recommendations contained in this report, the Safety Panel expects the States to strengthen their role in motor carrier safety in the future. An expanded MCSAP program, including the analysis and certification activities discussed in Chapter 3, should serve as the impetus. The Motor Carrier Safety Act of 1984 directed the Safety Panel to evaluate the need for additional Federal assistance to the States to enable the States to enforce the Federal regulations and to determine other methods to further improve motor carrier safety. The Safety Panel believes the Federal Government should expand its financial commitment to motor carrier safety through the MCSAP. This chapter presents the Safety Panel's view of the future of the MCSAP and the changing roles of the State and Federal Governments in managing the program.

The MCSAP was initially authorized in the Surface Transportation Assistance Act of 1982. The goals of the program are to reduce commercial motor vehicle accidents and adopt improved, uniform safety regulations by encouraging the development and implementation of State motor carrier safety programs. The MCSAP has been reauthorized through 1991 under the Commercial Motor Vehicle Safety Act of 1986.

Until recently, the State activities funded under MCSAP have focused primarily on roadside vehicle inspections. States have increasingly been conducting carrier safety reviews. The safety review, another integral part of the Federal program, assesses a carrier's safety management controls (primarily through a records review), ensures that the carrier is complying with the Federal safety requirements, and assigns the carrier a safety compliance rating. An FHWA safety specialist completes an on-site safety review at the carrier's principal place of business. The FHWA then assigns the carrier a safety compliance rating of "satisfactory," "conditional," or "unsatisfactory." A compliance review is performed if the carrier receives an unsatisfactory safety rating, in response to a written complaint, or upon a carrier's request.

Thirty States conducted reviews in 1989, where only one State conducted reviews in 1984. This progression, to a larger State role in these activities, is an outgrowth of the States taking a stronger interest in motor carrier safety and greater Federal resources available to States to conduct the work. Increasingly, the Federal/State partnership is expanding

through more emphasis on education and training of State officials regarding all aspects of State and Federal motor carrier safety regulatory functions.

THE MCSAP IN THE 1990's

The MCSAP is financed by the Highway Trust Fund. In fiscal years 1990 and 1991, $60 million is authorized to implement the program, although $47 million is the actual amount available due to the funding of the Commercial Driver's License grant program. States are required to provide a 20 percent matching share of the total MCSAP program amount. The program authorization will expire after 1991.

The Safety Panel has a vested interest in assuring that the MCSAP continues well into the 1990's. The Safety Panel believes that the procedures recommended in this report are not only necessary to fulfill the requirements of the 1984 Act, but will be instrumental in moving the State and Federal Governments toward a more efficient and effective motor carrier safety program by providing a common basis for enforcement. Moreover, the new procedures will reinforce the trend towards shared intergovernmental responsibility for motor carrier safety. Significant progress has been made in developing comprehensive State motor carrier programs using MCSAP grants.

The Safety Panel recommends that the MCSAP should be continued well beyond 1991, so that the continuous review and analysis requirements of the 1984 Act are met. Further, the Safety Panel believes that the scope of the MCSAP should continue to be expanded to encompass all areas of motor carrier safety and that Federal spending should be reauthorized at a higher level of funding and then incrementally adjusted to support this approach.

The Safety Panel believes that, without an expanded financial commitment to the operational aspects of the highway system such as motor carrier safety, States may be unwilling to take on added responsibilities. The growth in support for motor carrier safety and the MCSAP program that occurred during the 1980's could erode, particularly if highway capital investment is increased in the next decade but investment in the operational aspects is not. In the months ahead, the transportation community will debate the future direction of the Nation's highway program. Motor carrier safety should remain a national transportation priority.

APPENDIX A

SUMMARY OF

SAFETY PANEL'S FINDINGS:

COMPATIBILITY OF

STATE REQUIREMENTS

SUMMARY OF SAFETY PANEL'S FINDINGS: COMPATIBILITY OF STATE REQUIREMENTS

State	Safety Panel's Findings	Governors' Responses to Safety Panel's Findings in the Draft Report (October 1989)
Alabama	AL: compatible with major requirements.	AL: Governor Hunt replied (11/20/89). Alabama legislature passed legislation to implement Commercial Motor Vehicle Safety Act during the 1989 session. The bill was signed into law May 17, 1989 (effective October 1, 1990).
Alaska	AK: has not adopted compatible safety requirements.	AK: Governor Cowper replied (12/05/89). Alaska is preparing legislation to adopt compatible safety requirements.
Arizona	AZ: 1) exempts vehicles under a declared weight of 20,000 pounds 1/; 2) allows the carrier to declare vehicle weight (loaded) when registering it (rather than using manufacturer's gross vehicle weight rating referenced in the Federal requirements); and 3) exempts trucks with 3 or more axles from the requirement that the vehicle be equipped with brakes acting on all wheels, i.e. steering axle brakes.	AZ: Governor Mofford replied (12/14/89). Arizona supports increase in gross weight rating to 26,000 pounds (re: FHWA notice of 02/17/89), and will take no action to change its threshold until the FHWA decides whether to modify the Federal threshold.
Arkansas	AR: 1) exempts wreckers from all requirements (and pole trailers from brake requirements during daylight hours); 2) exempts wreckers and vehicles involved in transportation of gravel, rocks, dirt, bituminous materials, rip-rap, quarried stone, crushed stone, and similar materials; and 3) exempts private carriers of shellfish and unprocessed agricultural commodities, ordinary livestock, commercial fertilizers, prefabricated homes, and school children.	AR: 2/
California	CA: 1) has not adopted requirements for two-axle straight trucks transporting nonhazardous materials; 2) does not require motor carriers to maintain driver qualification files; 3) does not establish a ceiling of 2 hours added driving time during adverse weather conditions and allows dispatch when adverse weather conditions are known to exist; 4) does not prohibit unauthorized drivers or passengers; and 5) has no requirement on the exhaust system discharge location.	CA: Commissioner Hannigan, California Highway Patrol, replied (12/12/89). California has agreed to seek changes to the incompatible requirements identified by the Safety Panel; however, the FHWA does not expect California to modify its two-axle straight truck requirements until the FHWA's evaluation and the outcome of the weight threshold rulemaking. The FHWA is reviewing California's Commercial Driver's License requirements to determine what driver qualification files must be maintained by a motor carrier.
Colorado	CO: compatible with major requirements.	CO:
Connecticut	CT: compatible with major requirements.	CT: Governor O'Neill replied (11/21/89). Supports the Safety Panel's findings.

1/ The Safety Panel does not expect a State to modify its weight threshold, pending the outcome of the FHWA's rulemaking on the weight threshold used for defining a commercial motor vehicle.

2/ The State responded to the Safety Panel's February 24,1989 letter, reporting its initial findings.

SUMMARY OF SAFETY PANEL'S FINDINGS: COMPATIBILITY OF STATE REQUIREMENTS

State	Safety Panel's Findings	Governors' Responses to Safety Panel's Findings in the Draft Report (October 1989)
Delaware	DE: compatible with major requirements, although Delaware exempts vehicles under 26,000 pounds 1/.	DE:
Florida	FL: compatible with major requirements.	FL: Governor Martinez replied (12/05/89). Agrees that Florida has compatible interstate requirements.
Georgia	GA: compatible with major requirements.	GA: Governor Harris replied (11/28/89). Supports the Safety Panel's findings.
Hawaii	HI: compatible with major requirements.	HI: Governor Waihee replied (11/28/89). Supports the Safety Panel's findings.
Idaho	ID: compatible with major requirements.	ID:
Illinois	IL: compatible with major requirements.	IL: Governor Thompson replied (11/22/89). Supports the Safety Panel's findings.
Indiana	IN: compatible with major requirements.	IN:
Iowa	IA: compatible with major requirements.	IA: Director Rensink, Iowa Department of Transportation, replied (11/15/89). Agrees that Iowa has compatible requirements.
Kansas	KS: 1) allows insulin-using diabetics and individuals with cardiovascular diseases to drive commercial motor vehicles; and 2) has no gross vehicle weight or distance restrictions on farm-vehicle drivers.	KS: Governor Hayden replied (11/21/89). Kansas Corporation Commission will draft legislation to address variances. Kansas has agreed (under FY 1990 Motor Carrier Safety Assistance Program grant) to seek changes to incompatible requirements identified by the Safety Panel.
Kentucky	KY: compatible with major requirements.	KY: Governor Wilkinson replied (12/14/89). Agrees that Kentucky has compatible requirements.
Louisiana	LA: compatible with major requirements.	LA: Commander Spencer, Louisiana Transportation and Environmental Safety Section, replied (11/01/89). Supports the Safety Panel's findings.
Maine	ME: compatible with major requirements.	ME: Governor McKernan replied (11/09/89). Supports the Safety Panel's findings.
Maryland	MD: compatible with major requirements.	MD: Governor Schaefer replied (12/12/89). Supports the Safety Panel's findings.
Massachusetts	MA: compatible with major requirements.	MA:
Michigan	MI: does not have authority to regulate passenger carriers.	MI: Governor Blanchard replied (11/21/89). Michigan expects to introduce legislation in 1990 session of the Michigan legislature to provide authority to regulate passenger carriers.
Minnesota	MN: compatible with major requirements.	MN:

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SUMMARY OF SAFETY PANEL'S FINDINGS: COMPATIBILITY OF STATE REQUIREMENTS

State	*Safety Panel's Findings*	*Governors' Responses to Safety Panel's Findings in the Draft Report (October 1989)*
Mississippi	MS: 1) exempts chartered buses and transporters of U.S. mail; 2) has commercial zone exemption for all carriers; 3) exempts vehicles owned, leased, or operated by farmers, groups of farmers, incorporated farmers, or cooperative associations that transport agricultural commodities; 4) exempts vehicles used exclusively to carry products and supplies to and from farms or to and from dairies for farm and dairy purposes; 5) exempts vehicles which haul fertilizer, feed, and insecticides in bags, containers, or in bulk to dealers, farms, or dairies; 6) exempts vehicles that exclusively distribute newspapers; and 7) exempts vehicles engaged exclusively in hauling gravel or other unmanufactured road building materials or vehicles engaged in hauling manufactured road building materials.	MS: 1/
Missouri	MO: 1) exempts vehicles under 12,000 pounds 2/; 2) exempts vehicles 60,000 pounds or less transporting solid waste; 3) exempts vehicles 42,000 pounds or less when they are designated for farm use (by letter F on license plate); and 4) exempts trailers when towed by vehicles with F plate (except vehicles transporting fertilizer) and transporting propane tanks 50 pounds or less.	MO: Governor Ashcroft replied (01/02/90). Missouri Department of Public Safety intends to introduce legislation to eliminate all interstate variances.
Montana	MT: compatible with major requirements.	MT: Director of Highways Larsen replied (11/13/89). Agrees that Montana has compatible requirements.
Nebraska	NE: 1) exempts farm trucks 32,000 pounds or less, liquid petroleum or liquid petroleum gas tanks less than 3,500 gallons, vehicles transporting fertilizers and agricultural chemicals, and distribution equipment in units with a capacity of 3,500 gallons or less; and 2) exempts drivers of farm registered vehicles from: a. all of Part 391 (Driver's Qualifications); b. Section 395.8 (Driver's Record of Duty Status); and c. Section 396.11 (Driver Vehicle Inspection Reports).	NE:

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2/ The Safety Panel does not expect a State to modify its weight threshold, pending the outcome of the FHWA's rulemaking on the weight threshold used for defining a commercial motor vehicle.

SUMMARY OF SAFETY PANEL'S FINDINGS: COMPATIBILITY OF STATE REQUIREMENTS

State	Safety Panel's Findings	Governors' Responses to Safety Panel's Findings in the Draft Report (October 1989)
Nevada	NV: compatible with major requirements.	NV: Director Teglia, Nevada Department of Motor Vehicle and Public Safety, replied (11/09/89). Supports the Safety Panel's findings.
New Hampshire	NH: compatible with major requirements.	NH:
New Jersey	NJ: compatible with major requirements.	NJ:
New Mexico	NM: has not adopted compatible safety requirements.	NM: 1/
New York	NY: 1) has not adopted driver qualification requirements for drivers of vehicles transporting nonhazardous materials; 2) requires at least 24 consecutive hours off in a calendar week and prohibits driving after 60 hours driving time in a calendar week (Sunday - Saturday); and 3) requires drivers to indicate on record-of-duty status the time that the driver crosses the State line.	NY: 1/
North Carolina	NC: compatible with major requirements.	NC: Governor Martin replied (11/29/89). Supports the Safety Panel's findings.
North Dakota	ND: compatible with major requirements.	ND: Governor Sinner replied (11/22/89). Supports the Safety Panel's findings.
Ohio	OH: compatible with major requirements.	OH: Director Leland, Ohio Transportation Department, replied (11/07/89). Supports the Safety Panel's findings.
Oklahoma	OK: compatible with major requirements.	OK:
Oregon	OR: compatible with major requirements.	OR:
Pennsylvania	PA: compatible with major requirements.	PA: Secretary of Transportation Yerusalim replied (11/07/89). Agrees that Pennsylvania has compatible requirements.
Rhode Island	RI: compatible with major requirements.	RI: Governor DiPrete replied (11/30/89). Supports the Safety Panel's findings.
South Carolina	SC: compatible with major requirements.	SC:
South Dakota	SD: has compatible safety requirements, but is not participating in the Motor Carrier Safety Assistance Program.	SD: Governor Mickelson replied (11/14/89). Agrees that South Dakota has compatible requirements.
Tennessee	TN: exempts farm vehicles from all requirements.	TN:
Texas	TX: compatible with major requirements.	TX:
Utah	UT: compatible with major requirements.	UT:
Vermont	VT: does not have safety requirements for nonhazardous material carriers.	VT: Commissioner Patch, Department of Motor Vehicles, replied (12/05/89). Governor Kunin signed legislation (Senate Bill #70) on May 30, 1989 to amend Vermont's laws to allow adoption of Federal regulations for carriers transporting all cargoes (not just hazardous materials). The law will become effective pending the results of public hearings.

1/ The State responded to the Safety Panel's February 24,1989 letter, reporting its initial findings.

SUMMARY OF SAFETY PANEL'S FINDINGS: COMPATIBILITY OF STATE REQUIREMENTS

State	*Safety Panel's Findings*	*Governors' Responses to Safety Panel's Findings in the Draft Report (October 1989)*
Virginia	VA: compatible with major requirements, although Virginia exempts vehicles under 26,000 pounds 1/.	VA: Governor Baliles replied (11/07/89).
Washington	WA: 1) exempts private utility companies from driver qualification requirements; 2) exempts for-hire carriers operating under their own permit from driver qualification requirements; 3) does not require driver vehicle inspection reports from for-hire motor carriers if no defects are found; 4) the Federal date for grandfathering Section 391.61 (Driver Employment Date) has not been met; and 5) has not adopted Part 390 (General Requirements).	WA:
West Virginia	WV: exempts straight trucks of private carriers transporting excavating equipment, and for-hire carriers transporting U.S. mail or newspapers.	WV: 2/
Wisconsin	WI: compatible with major requirements.	WI: 2/
Wyoming	WY: compatible with major requirements.	WY: Governor Sullivan replied (11/13/89). Supports the Safety Panel's findings.
District of Columbia	DC: has not adopted compatible safety requirements.	DC: The District of Columbia received development grants during FY 1986-87 and FY 1990. The District of Columbia has agreed (under FY 1990 Motor Carrier Safety Assistance Program grant) to adopt compatible requirements.

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2/ The State responded to the Safety Panel's February 24,1989 letter, reporting its initial findings.

APPENDIX B

RESOLUTIONS OF THE

SAFETY PANEL

COMMERCIAL MOTOR VEHICLE SAFETY REGULATORY REVIEW PANEL

Resolution on the Analysis of the States' Adoption Provisions

The Safety Panel requests the Federal Highway Administration to further examine the provisions which States have used for adopting the Federal Motor Carrier Safety Regulations. The "adoption provisions" should be evaluated to determine if they have the broad effect of making those States' laws and regulations more or less stringent than the Federal regulations.

The FHWA is requested to present its analysis to the Safety Panel in a written narrative which clearly and concisely explains the problems which exist in each State. Because of the nature of these "adoption provisions," it is not anticipated that this analysis will focus on individual regulatory requirements, but rather only address those provisions which affect a multiplicity of requirements.

This analysis should not be limited to simply the "adoption provisions" if there are other broad statutory or organizational issues within the State that affect their governance of the motor carrier industry. These may include limits on the authority of some agencies in the State or conflicts that may appear among State agencies. The analysis should explain and clarify these relationships within the State regulatory framework.

The analysis should be in such a form that it could be provided to States for their review and consideration. As such, it should include recommendations for actions that would correct the problem in the State. The FHWA is encouraged to work with the States in the development of this analysis; however, no analysis should be considered final until it is presented and approved by vote of the Panel.

The Panel recognizes the magnitude of this task, but urges that FHWA move to secure the resources that are necessary to address all States by the end of 1987. The Panel believes that its work will be severely impaired if this analysis is not completed expeditiously.

Adopted July 29, 1987
Washington, D.C.

COMMERCIAL MOTOR VEHICLE SAFETY REGULATORY REVIEW PANEL

Resolution on Providing States with the Preliminary Findings of the Safety Panel

In 1985, the Commercial Motor Vehicle Safety Regulatory Review Panel was formed to address the important issue of uniformity among States laws and regulations affecting truck and bus safety. The Motor Carrier Safety Act of 1984 directs the Safety Panel to evaluate all State laws and regulations to determine if they are more, less or of equal stringency to counterpart Federal Motor Carrier Safety Regulations. It should be noted that the Panel's charge affects those laws and regulations pertaining to interstate motor carrier operations, and does not include States' requirements over intrastate activities.

The preliminary analysis of over 70,000 State requirements indicates that nearly 26,000 or 36 percent are "less stringent" than the corresponding Federal regulations. According to the Act, these State requirements which are determined to be "less stringent" could be preempted.

State provisions which were enacted to adopt all or part of the Federal regulations have caused the greatest concern thus far in the Panel's review. Adoption provisions can be very simple, providing for the full adoption of the Federal regulations and all subsequent amendments. However, the Panel has found that such simple and complete adoptions are rare among the States.

Many States adopted the Federal regulations as of a specific date and, therefore, they do not include any subsequent changes made to the Federal regulations. Other have adopted these regulations with certain exceptions or waivers, such as only applying to for-hire carriers and not applying to private carriers. The provisions are further complicated by the existence in many States of multiple agencies with responsibilities for motor carrier safety. In some States, one agency has adopted one set of regulations while another agency has adopted a different version.

There is no doubt that a great deal of confusion and frustration could be avoided by revising these adoption provisions. By being aware of this, the Panel sincerely hopes that States will begin examining their adoption provisions and take whatever action is needed to remedy these problems. The Panel also believes that the efforts to compile a comprehensive description of each State's regulatory and statutory provisions relating to motor carriers need to be continued. To assist the panel, the FHWA has been asked to work with the States to further examine these provisions and provide each Governor with the Panel's preliminary findings.

Adopted July 29, 1987
Washington, D.C.

COMMERCIAL MOTOR VEHICLE SAFETY REGULATORY REVIEW PANEL

Resolution on Endorsing the MCSAP Approach

The Safety Panel endorses the concepts embodied in Option 3 of FHWA's April 18, 1988, draft paper entitled "Options for Achieving Compatibility of State and Federal Motor Carrier Safety Requirements." The Safety Panel makes this endorsement with the belief that it is the most practical and effective means of achieving the objective of the Motor Carrier Safety Act of 1984.

Further, the members believe there is a continuing role for the Panel to provide oversight of this process to assure that compatibility is, in fact, achieved.

With this guidance, the Panel directs the FHWA to further develop this option for the Panel's consideration and bring to it the plans necessary for implementing the option.

Adopted May 5, 1988
Washington, D.C.

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