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# Federal Motor Carrier Safety Regulations— General Requirements

The Federal Motor Carrier Safety Regulations (FMCSR) generally apply to interstate motor carriers; however, most states use significant parts of these regulations as the basis for their intrastate regulations. The “general” requirements of the FMCSR are contained in 49 CFR 390 and are summarized in this report, including an analysis of who must comply with the regulations.

## Introduction

The Federal Motor Carrier Safety Administration’s (FMCSA) primary mission is to prevent commercial motor vehicle-related fatalities and injuries. Among the FMCSA’s activities, which are intended to help ensure safety in motor carrier operations, is the development and enforcement of the Federal Motor Carrier Safety Regulations (FMCSR). Historically, the FMCSR were considered to be only Parts 390-399; however, additional regulations related to the Commercial Driver’s License (CDL) program, controlled substances and alcohol use and testing, and minimum financial responsibility requirements, as well as procedural issues, were added to the FMCSR. The FMCSR now include the regulations contained in 49 CFR Parts 350-399.

While the FMCSR generally apply to interstate motor carriers, most states use significant parts of these regulations as the basis for their intrastate regulations. It is important to remember that the FMCSR are considered minimum requirements and that there is nothing in the regulations that prohibits an employer from requiring and enforcing more stringent requirements related to the safety of the operation and employee safety and health.

The “general” requirements of the FMCSR are contained in 49 CFR 390 and are summarized in this report, including an analysis of who must comply with the regulations.

## Knowledge of and Compliance with FMCSR (390.3)

The FMCSR require that every motor carrier be knowledgeable of, and comply with, all regulations contained in the FMCSR that are applicable to that motor carrier’s operations. Also, every driver and employee of the motor carrier must be instructed regarding, and must comply with, all applicable regulations, and all motor vehicle equipment and required accessories must be maintained in compliance with all applicable performance and design criteria. Owner-operators meet both the definition of a motor carrier and driver and therefore, when applicable, must comply with the FMCSR.

The FMCSR define a motor carrier employee as anyone who directly affects commercial motor vehicle safety, including drivers, mechanics, and freight handlers.

## General Applicability (390.3)

The FMCSR apply to all employers, employees, and commercial motor vehicles that transport property or passengers in interstate commerce, as defined in the FMCSR, with the following exceptions:

- All school bus operations (defined as the use of a school bus to transport only school children and/or school personnel from home to school and from school to home).
- Transportation performed by the federal government, a state, or any political subdivision of a state, or an agency established under a compact between states, that has been approved by the United States Congress.
- The occasional transportation of personal property by individuals not for compensation, nor in the furtherance of a commercial enterprise.
- The transportation of human corpses or sick and injured persons.
- The operation of fire trucks and rescue vehicles while involved in emergency and related operations.
- The operation of commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver), not for direct compensation, provided the vehicle does not otherwise meet the definition of a commercial motor vehicle (e.g., a gross vehicle weight rating of 10,001 lb.. [4,537 kg] or more). However, motor carriers operating such vehicles are required to comply with §§ 390.15, *Assistance in Investigations and Special Studies*; 390.19, *Motor Carrier Identification Report*; and 390.21(a) and (b)(2), *Marking of CMVs*.

## Commercial Motor Vehicle

A commercial motor vehicle (CMV) means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle:

- Has a gross vehicle weight rating, or gross combination weight rating, or gross vehicle weight, or gross combination weight of 10,001 lb. (4,537 kg) or more; or
- Is designed or used to transport more than eight passengers (including the driver) for compensation; or
- Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
- Is used in transporting materials found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the secretary under 49 CFR, subtitle B, chapter I, subchapter C.

It should be noted that, for the purpose of commercial driver's license (CDL) regulations, the definition of a commercial motor vehicle is less restrictive for requiring a CDL license.

## Interstate Commerce

Interstate commerce means trade, traffic, or transportation:

- Between a place in a state and a place outside of such state (including a place outside of the United States).
- Between two places in a state through another state or a place outside of the United States.
- Between two places in a state as part of trade, traffic, or transportation originating or terminating outside the state or the United States.

## Guidance

As determining whether a motor carrier is regulated under the FMCSR sometimes falls into a gray area, the FMCSA provides some guidance on the applicability of the regulations where frequent questions have arisen. See the Appendix to this report for the guidance provided by the FMCSA.

## Definitions (390.5)

An extensive list of definitions of terms used in the FMCSR is provided in 49 CFR 390.5. Rather than provide the complete list of the definitions in this report, definitions will be provided, as needed, in reports addressing the specific topics covered by the FMCSR.

## Accident Records and Information (390.15)

A motor carrier must make all records and information pertaining to an accident available to an authorized representative or special agent of the FMCSA, an authorized state or local enforcement agency representative, or authorized third-party representative (e.g., potential employer) upon request, or as part of any investigation, within such time as the request or investigation may specify. A motor carrier also must give an authorized representative all reasonable assistance in the investigation of any accident, including providing a full, true, and correct answer to any question of the inquiry. Copies of all accident reports required by state or other governmental entities or insurers must be kept on file by the motor carrier for at least three years.

### Accident Register

Motor carriers must maintain, for a minimum period of three years after an accident occurs,

an accident register containing at least the following information on each accident:

- Date of accident.
- City or town in which, or most near where, the accident occurred, and the state in which the accident occurred.
- Driver name.
- Number of injuries.
- Number of fatalities.
- Whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicles involved in the accident, were released.

### Accident Definition (390.5)

Accident is defined as an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce that results in any of the following:

- A fatality.
- Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident. An incident where a person discovers that he or she is injured after leaving the scene of the incident and receives medical attention at that time does not meet the definition of an accident. An individual who is transported to a hospital for observation or "check up" after an occurrence, but who does not receive active medical intervention for injuries directly related to the occurrence, would not make the occurrence an "accident" for purposes of the FMCSR.
- One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

The term accident does not include an occurrence involving only boarding and alighting from a stationary motor vehicle, or an occurrence involving only the loading or unloading of cargo.

## Motor Carrier Identification and Vehicle Marking (390.19 & 390.21)

Every motor carrier that conducts operations in interstate commerce must file a Motor Carrier Identification Report (MCS-150) with the FMCSA and mark each self-propelled CMV to identify the motor carrier. Details of these requirements are contained in Commercial Vehicle Report CV-15-01, *Motor Carrier Identification and Vehicle Marking*.

## Records and Documents (390.29 & 390.31)

A motor carrier with multiple offices or terminals may maintain records and documents required by the FMCSR at its principal place of business, a regional office, or driver work-reporting location, unless otherwise specified in the regulations. Records and documents maintained at a regional office or driver work-reporting location must be made available for inspection, upon request by a special agent or authorized representative of the FMCSA, at the motor carrier's principal place of business, or other location specified by the agent or representative, within 48 hours after a request is made. Saturdays, Sundays, and federal holidays are excluded from the computation of the 48-hour period of time.

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All records and documents must be preserved in their original form, except that the records and documents can be suitably photographed and the microfilm retained in lieu of the original record or maintained through the use of computer technology, except for those records and documents requiring a signature, provided the motor carrier can produce, upon demand, a computer printout of the required data.

## References

1. Federal Motor Carrier Safety Administration. *Federal Motor Carrier Safety Regulations*, 49 CFR Part 390. Washington, DC: U.S. Department of Transportation. September 30, 2008. <http://www.fmcsa.dot.gov/regulations/title49/part/390>

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## FMCSR—Guidance

The following questions and answers were prepared by the FMCSA to help in determining applicability of the FMCSR.

**Question 1:**

Does the government exception in §390.3(f)(2) apply to motor carriers doing business with the government?

**Guidance:**

*No. The exception applies only when the government is the motor carrier.*

**Question 2:**

Are the FMCSRs applicable to drivers and CMVs which transport tools, equipment, and supplies across state lines in a CMV?

**Guidance:**

*Yes, the FMCSRs are applicable to drivers and CMVs in interstate commerce which transport property. The property in this situation is the tools, equipment, and supplies.*

**Question 3:**

Are the operations of a church which provides bus tours to the general public for compensation subject to the FMCSRs as a for-hire motor carrier?

**Guidance:**

*Yes, the church is a for-hire motor carrier of passengers subject to the FMCSRs.*

**Question 4:**

Are the FMCSRs applicable to the rail movement of trailers and intermodal container chassis that previously or subsequently were moved by highway by a motor carrier in interstate commerce?

**Guidance:**

*No. They are only subject when being moved as a motor vehicle by highway by a motor carrier.*

**Question 5:**

Are personnel involved in road testing CMVs across a state line subject to the FMCSRs?

**Guidance:**

*Yes, any driver (including mechanics, technicians, driver trainees and other personnel) operating a CMV in interstate commerce must be in compliance with the FMCSRs.*

**Question 6:**

How does one distinguish between intra- and interstate commerce for the purposes of applicability of the FMCSRs?

**Guidance:**

*Interstate commerce is determined by the essential character of the movement, manifested by the shipper's fixed and persistent intent at the time of shipment, and is ascertained from all of the facts and circumstances surrounding the transportation. When the intent of the transportation being performed is interstate in nature, even when the route is within the boundaries of a single state, the driver and CMV are subject to the FMCSRs.*

**Question 7:**

Are Red Cross vehicles/drivers subject to the FMCSRs?

**Guidance:**

*Red Cross vehicles/drivers used to provide emergency relief under the provisions of §390.23 are not subject to the FMCSRs while providing the relief. However, these vehicles/drivers would be subject when operating at other times, provided they are used in interstate commerce and the vehicles meet the definition of a CMV.*

**Question 8:**

May a motor carrier require fingerprinting as a pre-employment condition?

**Guidance:**

*The FMCSRs do not require or prohibit fingerprinting as a condition of employment. §390.3(d) allows employers to enforce more stringent requirements.*

**Question 9:**

Are the FMCSRs applicable to drivers/vehicles operated by a state or local educational institution which is a political subdivision of the state?

**Guidance:**

*§390.3(f)(2) specifically exempts transportation performed by a state or a political subdivision including any agency of a state or locality from the FMCSRs. The drivers, however, may be subject to the CDL requirements and/or state laws that are similar to the FMCSRs.*

**Question 10:**

Are the FMCSRs applicable to drivers/vehicles operated by a transit authority owned and operated by a state or a political subdivision of the state?

**Guidance:**

*§390.3(f)(2) specifically exempts transportation performed by the federal government, a state, or any political subdivision of a state from the FMCSRs. However, this exemption does not apply to the CDL requirements in part 383. Also, if governmental entities engage in interstate charter transportation of passengers, they must comply with accident report retention requirements of part 390.*

**Question 11:**

Is the interstate transportation of students, teachers, and parents to school events such as athletic contests and field trips performed by municipalities subject to the FMCSRs? If a fee is charged to defer the municipality's expenses, does this affect the applicability of the regulations?

**Guidance:**

*§390.3(f)(2) specifically exempts transportation performed by the federal government, a state, or any political subdivision of a state from the FMCSRs. Charging a fee to defer governmental costs does not affect this exemption. However, this exemption does not apply to the CDL requirements in part 383. Also, if governmental entities engage in interstate charter transportation of passengers, they must comply with accident report retention requirements of part 390.*

**Question 12:**

What is the applicability of the FMCSRs to school bus operations performed by Indian Tribal Governments?

**Guidance:**

*Transportation performed by the federal government, states, or political subdivisions of a state is generally excepted from the FMCSRs. This general exception includes Indian Tribal Governments,*

which for purposes of §390.3(f) are equivalent to a state governmental entity. When a driver is employed and a bus is operated by the governmental entity, the operation would not be subject to the FMCSRs, with the following exceptions: The requirements of part 383 as they pertain to commercial driver licensing standards are applicable to every driver operating a CMV, and the accident report retention requirements of part 390 are applicable when the governmental entity is performing interstate charter transportation of passengers.

**Question 13:**

A motor carrier dispatches an empty CMV from state A into adjoining state B in order to transport cargo or passengers between two points in state B, and then to return empty to state A. Does the transportation of cargo or passengers within state B constitute interstate commerce?

**Guidance:**

Yes. The courts and the ICC developed a test that clarifies the legal status of intrastate portions of interstate trips. The character of the intrastate leg depends on the shipper's fixed and persistent intent when the transportation began. The fixed and persistent intent in this case was to move property—the vehicle itself—across state lines and between two points in state B where it was used to haul cargo or passengers. The transportation within state B, therefore, constitutes interstate commerce. In some cases the motor carrier may be the shipper.

**Question 14:**

What is the applicability of the FMCSRs to motor carriers owning and operating school buses that contract with a municipality to provide pupil transportation services?

**Guidance:**

For the purposes of the FMCSRs, parts 390-399, "school bus operation" means the use of a school bus to transport school children and/or school personnel from home to school and from school to home. A "school bus" is a passenger motor vehicle designed to carry more than 10 passengers in addition to the driver, and used primarily for school bus operations (see §390.5). School bus operations and transportation performed by government entities are specifically exempted from the FMCSRs under §390.3(f).

However, anyone operating school buses under contract with a school is a for-hire motor carrier. When a nongovernment, for-hire motor carrier transports children to school-related functions other than "school bus operation" such as sporting events, class trips, etc., and operates across state lines, its operation must be conducted in accordance with the FMCSRs. This applies to motor carriers that operate CMVs as defined under part 390 which includes vehicles which have a GVWR of 10,001 lb. (4,537 kg) or more or are designed or used to carry passengers for compensation, except six-passenger taxicabs not operating on fixed routes.

In certain instances, carriers providing school bus transportation are not subject to the Bus Regulatory Reform Act of 1982 and the minimum financial responsibility requirements (part 387) issued under this Act. Transportation of school children and teachers that is organized, sponsored, and paid for by the school district is not subject to part 387. Therefore, school bus contractors must comply with the FMCSRs for interstate trips such as sporting events and class trips but are not required by federal regulations to carry a specific level of insurance coverage.

For those operations provided by school bus contractors that are subject to the FMCSRs, the motor carriers must keep driver and vehicle records as required by the regulations. This would include driver qualifications records (part 391), driver records of duty status (part 395), accident report retention (part 390), and inspection, repair, and maintenance records (part 396) for the drivers and vehicles that are used on the trips that are subject to the FMCSRs. These records are not required under the FMCSRs for the other vehicles in the motor carrier's fleet that are not subject to the regulations.

**Question 15:**

May drivers be coerced into employing loading or unloading assistance (lumpers)?

**Guidance:**

No. The Motor Carrier Act of 1980 made it illegal to coerce someone into unwanted loading or unloading and require payment for it (49 U.S.C. 14103, previously 49 U.S.C. 11109). The Federal Highway Administration (FHWA) is responsible for the enforcement of regulations forbidding coercion in the use of lumpers.

**Question 16:**

- a. Are vehicles which, in the course of interstate transportation over the highway, are off the highway, loading, unloading, or waiting, subject to the FMCSRs during these times?
- b. Are vehicles and drivers used wholly within terminals and on premises or plant sites subject to the FMCSRs?

**Guidance:**

a. Yes. b. No.

**Question 17:**

What protection is afforded a driver for refusing to violate the FMCSRs?

**Guidance:**

Section 405 of the STAA—Surface Transportation Assistance Act of 1982 (49 U.S.C. 31105) states, in part, that no person shall discharge, discipline, or in any manner discriminate against an employee with respect to the employee's compensation, terms, conditions, or privileges of employment for refusing to operate a vehicle when such operation constitutes a violation of any federal rule, regulation, standard, or order applicable to CMV safety. In such a case, a driver may submit a signed complaint to the Occupational Safety and Health Administration.

**Question 18:**

Are persons who operate CMVs for the personal conveyance of their friends or family members "private motor carriers of passengers (nonbusiness)" as defined in §390.5?

**Guidance:**

No. Nonbusiness private motor carriers of passengers (PMCPs) do not include individuals providing personal conveyance of passengers for recreational purposes. A nonbusiness PMCP must be engaged in some group activity. For example, organizations that are exempt under the Internal Revenue Code (26 U.S.C. 501) and provide transportation for their members would generally be considered nonbusiness PMCPs: Religious, charitable, scientific, and educational organizations, scouting groups, sports clubs, fraternal societies or lodges, etc.

**Question 19:**

"Unless otherwise specifically provided," §390.3(f)(2) exempts certain government entities and their drivers from compliance with 49 CFR Chapter III, Subchapter B, i.e., parts 350- 399. Which parts are covered by this exemption and which are "otherwise specifically" excluded?

**Guidance:**

Government employers and drivers are exempt from compliance with parts 325, 385, 387, and 390-399. However, they must comply with the drug and alcohol testing requirements in part 382 and the CDL requirements in part 383. Parts 350, 355, 384, 386, 388, and 389 do not directly regulate CMV operators, public or private, and the question of an exemption therefore does not arise.

**Question 20:**

Do the FMCSRs apply to Indian Tribal Governments?

**Guidance:**

*Under §390.3(f)(2), transportation performed by the federal government, states, or political subdivisions of a state is generally exempt from the FMCSRs. Indian Tribal Governments are considered equivalent to a state governmental entity for purposes of this exemption. Thus, when a driver is employed by and is operating a CMV owned by a governmental entity, neither the driver, the vehicle, nor the entity is subject to the FMCSRs, with the following exceptions:*

1. *The requirements of part 383 relating to CMV driver licensing standards;*
2. *The drug testing requirements in part 382;*
3. *Alcohol testing when an employee is performing, about to perform, or just performed safety-sensitive functions. For the purposes of alcohol testing, safety-sensitive functions are defined in §382.107 as any of those on-duty functions set forth in §395.2 On-Duty time, paragraphs (1) through (6), (generally, driving and related activities) and;*
4. *The accident report retention requirements of §390.15 are applicable when the governmental entity is performing interstate charter transportation of passengers.*

**Question 21:**

Does the exemption in §390.3(f)(3) for the “occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise” apply to persons who occasionally use CMVs to transport cars, boats, horses, etc., to races, tournaments, shows or similar events, even if prize money is offered at these events?

**Guidance:**

*The exemption would apply to this kind of transportation, provided: (1) The underlying activities are not undertaken for profit, i.e., (a) prize money is declared as ordinary income for tax purposes, and (b) the cost of the underlying activities is not deducted as a business expense for tax purposes; and, where relevant; (2) corporate sponsorship is not involved. Drivers must confer with their state of licensure to determine the licensing provisions to which they are subject.*

**Question 22:**

If, after December 18, 1995, a Mexico-based driver is found operating beyond the boundaries of the four border states allowed by the North American Free Trade Agreement (NAFTA), is that driver in violation of the FMCSRs? If so, which one?

**Guidance:**

*No. Driving beyond the four border states is not, in and of itself, a violation of the FMCSRs.*

**Question 23:**

Is transportation within the boundaries of a state between a place in an Indian Reservation and a place outside such reservation interstate commerce?

**Guidance:**

*No, such transportation is considered to be intrastate commerce. An Indian reservation is geographically located within the area of a state. Enforcement on Indian reservations is inherently federal, unless such authority has been granted to the states by Congressional enactment, accepted by the states where appropriate, and consented to by the Indian tribes.*

**Question 24:**

To what extent does the FHWA have jurisdiction to regulate the qualifications and hours of service of CMV drivers engaged in interstate or foreign commerce if the drivers only occasionally operate in interstate or foreign commerce?

**Guidance:**

*The FHWA published an interpretation in the Federal Register on July 23, 1981 (46 FR 37902) on this subject. The FHWA must show that the driver or motor carrier has engaged in interstate or foreign commerce within a reasonable period of time prior to its assertion of jurisdiction under 49 U.S.C. 31136 and 31502.*

*The FHWA must show that the driver or motor carrier has actually operated in interstate commerce within a reasonable period of time prior to its assertion of jurisdiction. Mere solicitation of business that would involve operations in interstate commerce is not sufficient to establish jurisdiction. If jurisdiction is claimed over a driver who has not driven in interstate commerce, evidence must be presented that the carrier has operated in interstate commerce and that the driver could reasonably be expected to make one of the carrier's interstate runs. Satisfactory evidence would include, but not be limited to, statements from drivers and carriers and any employment agreements.*

*Evidence of driving or being available for use in interstate commerce makes the driver subject to the FMCSRs for a four-month period from the date of the proof. For that period, the motor carrier is also required to comply with those portions of the FMCSRs that deal with drivers, driving, and records related to or generated by drivers, primarily those in 49 CFR parts 387, 391, 392, 395, and 396. The FHWA believes that the four-month period is reasonable because it avoids both a week-by-week determination of jurisdiction, which is excessively narrow, and the assertion that a driver who is used or available for use once remains subject to the FMCSRs for an unlimited time, which is overly inclusive.*

**Editor's Note:** *The following memorandum was issued February 8, 2000:*

**Purpose**

*On July 6, 1999, I issued a memorandum to all field offices concerning the authority of the Office of Motor Carrier and Highway Safety (OMCHS) to regulate the qualifications and maximum hours of service of commercial motor vehicle (CMV) drivers who operate both in interstate and intrastate commerce. Concerns about that memo have been expressed by (1) state agencies uncertain about its implications for the Motor Carrier Safety Assistance Program (MCSAP) (specifically, the tolerance guidelines for states' intrastate hours-of-service regulations); (2) motor carriers trying to determine whether federal or state safety regulations would apply to intrastate trips made by drivers who also handled interstate runs; and (3) FMCSA field office personnel.*

*After considering the issues raised by the July memo, I have decided to change the policy of the FMCSA. This memorandum explains when the agency will exercise jurisdiction over intrastate operations of motor carriers and drivers that sometimes operate interstate.*

**Background**

*The statutes on which most of the Federal Motor Carrier Safety Regulations (FMCSRs) are based apply only to "interstate commerce." The extent of the jurisdiction conferred by that term has been decided by the federal courts in a long series of cases. Most of the motor carrier cases analyzing "interstate commerce" involve disputes about overtime pay under the Fair Labor Standards Act (FLSA). The FLSA exempts employers from the requirement to pay overtime to any employee "with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service" under the Motor Carrier Act of 1935 (i.e., 49 U.S.C. 31502). Since the 1935 Act*

applies only to "interstate commerce," the courts have had to determine whether drivers not currently operating across state lines may nonetheless be subject to the "power" of the Secretary, and thus not entitled to overtime pay.

In 1981 the Federal Highway Administration (FHWA), on behalf of its Bureau of Motor Carrier Safety, published a notice in the Federal Register (46 FR 37902, July 23, 1981) discussing the more important FLSA cases and interpreting its "jurisdiction to regulate the qualifications and maximum hours of service of commercial motor vehicle drivers engaged in interstate or foreign commerce." The notice summarized the conclusions of these cases as follows:

*If in the regular course of employment a driver is, or could be, called upon to transport a shipment in interstate commerce the driver would be subject to the FHWA's jurisdiction under 49 U.S.C. 304 [i.e., the Motor Carrier Act of 1935, now codified at 49 U.S.C. 31502]. 49 U.S.C. 304 provides the authority to regulate the qualifications and maximum hours of service of employees and safety of operation and equipment of common carriers, contract carriers, private carriers of property, and carriers of migrant workers. These cases establish the basic tests for determining whether a driver is subject to Federal jurisdiction under 49 U.S.C. 304. They hold that even a minor involvement in interstate commerce as a regular part of an employee's duties will subject that employee to the jurisdiction of the FHWA. In two of the cases mentioned, "Morris v. McComb" [332 U.S. 422, Supreme Court, 1947] and "Starrett v. Bruce" [391 F.2d 320 (10th Cir. 1968)], the courts found jurisdiction over drivers even though those drivers had not driven at all in interstate commerce. The findings of jurisdiction were based on the probability of those drivers being assigned to interstate runs in the regular course of their employment.*

The 1981 notice reached the following conclusion:

*The FHWA view is that in order to establish jurisdiction under 49 U.S.C. 304 [now 49 U.S.C. 31502] the carrier must be shown to have engaged in interstate commerce within a reasonable period of time prior to the time at which jurisdiction is in question. The carrier's involvement in interstate commerce must be established by some concrete evidence such as an actual trip in interstate commerce or proof, in the case of a "for hire" carrier, that interstate business had been solicited. If jurisdiction is claimed over a driver who has not driven in interstate commerce, evidence must be presented that the carrier has engaged in interstate commerce and that the driver could reasonably have been expected to make one of the carrier's interstate runs. Satisfactory evidence would be statements from drivers and carriers, and any employment agreements.*

*Evidence of driving in interstate commerce or being subject to being used in interstate commerce should be accepted as proof that the driver is subject to 49 U.S.C. 304 for a four-month period from the date of the proof. The FHWA believes that the four-month period is reasonable because it avoids both the too strict week-by-week approach and the situation where a driver could be used or be subject to being used once and remain subject to jurisdiction under 49 U.S.C. 304 for an unlimited time.*

Although the notice of interpretation was never included in the Code of Federal Regulations, the FHWA summarized it in the Regulatory Guidance for the FMCSRs published on April 4, 1997 (Q. 24 under Part 390, 63 FR 16370, at 16406).

Despite the 1981 and 1997 publications, the Office of Motor Carriers (OMC) and the OMCHS never applied the so-called four-month rule, or at least not universally. My July 6 memorandum was designed to create a new, consistent policy for OMC. As mentioned above, however, it has created more problems than it resolved. I am therefore issuing this document to establish a new national policy for the FMCSA.

National Policy (Note: This interpretation was issued prior to the change in hours of service rules.)

Safety is the highest priority of the FMCSA. Enforcement of the hours of service regulations is a critical part of that mandate. Drivers who operate in interstate commerce must be in compliance with 49 C.F.R. Part 395 before, during and after interstate trips. Although the case law discussed in the 1981 notice of interpretation clearly supports an assertion of jurisdiction over a driver for four months after a single interstate trip, a four-month rule is not necessary to prevent fatigue. The rules in Part 395 control hours of service in periods of either seven consecutive days (if the carrier does not operate every day of the week) or eight consecutive days (if the carrier operates every day of the week). Because compliance with Part 395 during the seven- or eight-day period before and after an interstate trip will keep driver fatigue within manageable bounds, the FMCSA will replace the four-month rule with a 14/15-day rule.

1. Any driver who begins a trip in interstate commerce must continue to meet the requirements of 49 CFR 395.3(a) and (b) through the end of the next seven to eight consecutive days, depending on which rule the motor carrier operates under. The driver must continue to comply with the requirements of 49 CFR Part 395, even if he/she operates exclusively in intrastate commerce for the remainder of the 60/70 hour period (i.e. seven–eight day schedule) at the end of the interstate trip. The driver must also continue to comply with the 10- and 15-hour rules as well as the 60- or 70-hour rules for the remainder of that day, and the following seven days (if the 60-hour rule was applicable) or eight days (if the 70-hour rule was applicable). A driver who begins a trip in interstate commerce in a CMV must have in his/her possession a copy of records of duty status for the previous seven consecutive days, as required by 49 CFR 395.8(k)(2) unless they meet 49 CFR 395.1(e), even if the driver operated only in intrastate commerce during that seven-day period. During the seven-day period prior to the interstate trip the driver may follow the state regulations applicable to intrastate commerce with regard to the states' CMV driving and on-duty requirements.
2. FMCSA investigators should cite drivers for violations of the 10- or 15-hour rules or the 60- or 70-hour rules that are committed while on the interstate trip or during the seven or eight days after completing the interstate trip (depending on which rule the motor carrier operates under). The driver remains subject to Part 395 for seven or eight days after a trip in interstate commerce even if he/she drives only in intrastate commerce for that period. Violations of the policies stated here which are discovered during compliance reviews should be treated like any other violations of the FMCSRs in determining the motor carrier's safety rating and enforcement action may be taken.
3. The Motor Carrier Safety Assistance Program (MCSAP) Tolerance Guidelines in Appendix C to 49 C.F.R. Part 350 are unchanged This policy statement simply clarifies the difference between Paragraphs 2 and 3 of the Guidelines, i.e., between the type of trips subject to federal jurisdiction, as opposed to those subject only to state jurisdiction.

The FMCSA does not disagree with the legal conclusions the FHWA reached in the 1981 notice of interpretation. However, in the interest of simplicity and workability, I have decided to replace the so-called four-month rule with a 14/15-day rule.

**Question 25:**

Do the FMCSR apply to transportation performed by the federal government of a foreign country, or by a state, provincial, or territorial government of a foreign country?

**Guidance:**

Yes. Although §390.3(f)(2) includes an exception for transportation performed by the federal government, a state, or any political subdivision of a state, the exceptions are only applicable to government entities in the United States.

**Question 26:**

Is the operation of fire trucks and rescue vehicles in interstate commerce by a private firefighting company subject to the FMCSRs when the company provides its services under contract to federal or state agencies?

**Guidance:**

Generally, 49 CFR parts 390-399 (FMCSRs) are not applicable to the operation of fire trucks and rescue vehicles by private contract fire companies while such vehicles are being used in emergency and related operations, i.e., while their personnel are engaged in firefighting or participating in rescue operations, and when their vehicles are returning from the emergency or rescue scene [see 49 CFR 390.3(f)(5)]. In such cases, private contract fire companies, drivers, and vehicles are not subject to most of the safety regulations.

In addition to 49 CFR 390.3(f)(5), private contract firefighting companies are also exempted by 49 CFR 390.23 when providing direct assistance during national, regional or local emergencies. The term "emergency," as used in § 390.23, means an occurrence, natural or manmade, that interrupts the delivery of services (such as electricity, medical care, sewer, water, telecommunications, and telecommunications transmissions) or supplies (such as food and fuel), or that otherwise immediately threatens human life or public welfare. The occurrence must result in a declaration of an emergency by the president of the United States, the governor of a state, or their authorized representatives having authority to declare emergencies; such as the FMCSA Field Administrator for the geographical area in which the occurrence happens; or by other federal, state or local government officials having authority to declare emergencies. Direct assistance means transportation or other relief services provided by a motor carrier (including a private contract fire company) or its driver(s) incident to the immediate restoration of essential services or essential supplies. Direct assistance does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to human life and property has passed.

With regard to non-emergency and rescue activities, such as training exercises, emergency preparedness drills, or pre-positioning of personnel and equipment prior to an actual emergency, private contract fire companies must comply with the FMCSR while operating commercial motor vehicles in interstate commerce.

**Question 27:**

Section 390.3(f)(5) provides an exemption from the FMCSRs for the operation of fire trucks and rescue vehicles while such vehicles are being used in emergency and related operations. What is meant by the phrase "emergency and related operations"?

**Guidance:**

The term "emergency," as used in § 390.3(f)(5), includes any occurrence, natural or manmade, that immediately threatens human life or public welfare, and requires the work of firefighters or rescue personnel to respond to the threat. Such occurrences include, but are not limited to, fires, floods, motor vehicle crashes, and medical emergencies. An emergency, however, need not have been formally declared by a governmental authority in order to utilize this exemption.

The term "related operations" includes driving fire trucks or rescue vehicles to the scene of an emergency, and driving such vehicles while returning from the emergency or rescue scene. "Related operations" does not include the pre-positioning of fire trucks or rescue vehicles in anticipation of emergencies, or the use of such vehicles in training or emergency preparedness exercises.

**Question 28:**

Is the operation of motor vehicles designed or used to transport between 9 and 15 passengers (including the driver), in interstate commerce, by private firefighting companies transporting their employees subject to the FMCSRs?

**Guidance:**

*No. Although the 9- to 15-passenger vehicles are being operated in interstate commerce, firefighting companies transporting their own employees would be considered private motor carriers of passengers with regard to the operation of these vehicles because the passengers are not being transported for compensation. Vehicles designed or used to transport 9- to 15-passengers, in interstate commerce, but not for compensation, are excluded from the definition of "commercial motor vehicle" found at 49 CFR 390.5. Therefore, the FMCSRs are not applicable to the operation of such vehicles, even if the firefighting company operates other vehicles that are subject to the safety regulations.*

**Question 29:**

Section 390.3(f)(5) provides an exemption from the FMCSRs for the operation of fire trucks and rescue vehicles while such vehicles are being used in emergency and related operations. Section 390.23 provides an exception to most of the FMCSRs for motor carriers providing direct assistance during an emergency. What are the differences between these provisions when they are applied to contract wildfire suppression services?

**Guidance:**

*Section 390.3(f)(5) provides an exception to all of the requirements in Subchapter B of Chapter III, Title 49 of the Code of Federal Regulations (49 CFR Parts 350 through 399) for certain operations of fire trucks and rescue vehicles. By contrast the exception provided by § 390.23 is limited to all of the requirements in 49 CFR Parts 390 through 399 and may be used by any motor carrier, including contract wildfire suppression services, providing direct assistance during an emergency, as defined in 49 CFR 390.5.*

*The exception provided by § 390.3(f)(5) may be used by operators of fire trucks and rescue vehicles while such vehicles are used in emergency and related operations, regardless of whether there is an emergency declaration. The exception provided in § 390.23 always requires a declaration of an emergency by the president of the United States, the governor of a state, or their authorized representatives having authority to declare emergencies, such as the FMCSA Field Administrator for the geographical area in which the occurrence happens; or by other federal, state, or local government officials having authority to declare emergencies.*

**Question 30:**

Section 390.3(f)(5) provides an exemption from the FMCSRs for the operation of fire trucks and rescue vehicles while such vehicles are being used in emergency and related operations. Is this exemption applicable to all fire trucks and rescue vehicles, or is it limited to such vehicles when they are used for emergency and related operations associated with occurrences in or around residential or commercial buildings or structures?

**Guidance:**

*Section 390.3(f)(5) is applicable to all fire trucks and rescue vehicles while such vehicles are being used in emergency and related operations, regardless of whether the emergency or related operation involves occurrences in or around residential or commercial buildings or structures. For example, § 390.3(f)(5) is applicable to fire trucks and rescue vehicles used by wildfire suppression services when these vehicles are used in emergency and related operations, regardless of whether there are buildings or structures in the immediate vicinity of the fire suppression activities.*

**Question 31:**

Section 390.3(f)(5) provides an exemption from the FMCSRs for the operation of fire trucks and rescue vehicles while such vehicles are being used in emergency and related operations. What is meant by the phrase “firetrucks and rescue vehicles?”

**Guidance:**

*For the purposes of § 390.3(f)(5), the term “fire trucks and rescue vehicles” should be considered to include a wide range of fire and rescue apparatus used by firefighters, such as, but not limited to, pumper trucks (which may or may not be equipped with water tanks) and rescue trucks (used to transport a crew and various emergency equipment; they may or may not be equipped with water pumping equipment) used primarily or exclusively for fire and rescue operations.*

*The term “firetrucks and rescue vehicles” should not be considered to include certain wildfire suppression services support vehicles such as: trucks operated by caterers or other food vendors; cargo tank vehicles and trailers operated by water supply companies; cargo tank vehicles and trailers used to transport fuel for helicopters and auxiliary equipment such as generators; vehicles used to transport tents (or other temporary shelters), portable showers, or portable/mobile restrooms; or, buses designed or used to transport 16 or more passengers, including the driver. Although cargo tank vehicles and trailers operated by water supply companies should not be considered fire trucks or rescue vehicles, wildfire suppression efforts that require significant use of water supply companies are likely to result in the declaration of an emergency, as defined in 49 CFR 390.5. If an emergency is declared, all motor carriers, including water supply companies, providing direct assistance (as defined in 49 CFR 390.5) in responding to the emergency would be covered by § 390.23, an exception to all of the requirements of 49 CFR Parts 390 through 399.*

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