

APPLICATION OF THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS UPON PRIVATE MOTOR CARRIERS – ARE YOU AWARE OF THE RISKS?

Kevin L. Fritz and Patrick E. Foppe Lashly & Baer, P.C.



In order to ensure public safety on the nation's highways, the Federal Motor Carrier Safety Administration (FMCSA) promulgates and enforces safety standards for commercial motor vehicles (CMVs), which are known as the Federal Motor Carrier Safety Regulations (FMCSRs).¹ It is generally well understood that for-hire trucking and bus companies and their drivers must comply with the FMCSRs. It is perhaps less clear when the FMCSRs apply to other types of entities or persons, such as churches, concert promoters, private schools, television production companies, hospitals, hotels or courier services. One would be mistaken to assume that the FMCSRs only apply to tractor trailers or buses, or only to those required to have commercial driver's licenses (CDLs), or only in the operation of a vehicle for compensation.

Generally speaking, the FMCSRs broadly apply to all those operating CMVs, which transport property or passengers in interstate commerce, i.e. trade, traffic, or transportation involving more than one state.² In addition, many states have adopted portions of FMCSRs for CMVs operating in intrastate commerce. If applicable, the FMCSRs impose a complex and extensive set of rules requiring such things as: registering and marking of CMVs; maintaining minimum levels of financial responsibility; ensuring that drivers are qualified; complying with maximum driving time rules; and complying with inspection, repair and maintenance rules.

Under the FMCSRs, all persons, businesses, or organizations engaged in the transportation of goods or passengers by a CMV for compensation are referred to as "for-hire motor carriers," whereas those that do so not for compensation are "private motor carriers." Those who transport property are referred to as "private motor carriers of property," and those who transport passengers are referred to as "private motor carriers of passengers." This article addresses how the FMCSRs apply to so-called private motor carriers and how civil liability may arise from violations of the FMCSRs.

1. WHAT CONSTITUTES A CMV UNDER THE FMCSRs?

To be a private motor carrier, one must operate a CMV. The FMCSRs generally define a CMV as 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 pounds or more, whichever is greater;
- Is designed or used to transport more than 8 passengers (including the driver) for compensation;
- 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 a quantity of hazardous material requiring placarding.

It is important to note, however, that the FMCSRs for CDL requirements and alcohol and drug testing requirements apply to CMVs having a gross vehicle weight rating of 26,001 or more pounds or are designed to transport 16 or more passengers (including the driver), or meet certain other requirements.³ Confusion can arise because a vehicle may qualify as a CMV for most rules under the FMCSRs, but not require a CDL to operate. In other words, the FMCSRs can apply to large vans, shuttles, large pick-up trucks, rental moving trucks and other types of vehicles that can be operated without a CDL.

2. WHO ARE PRIVATE MOTOR CARRIERS OF PROPERTY?

A private motor carrier of property provides transportation of its own property as part of its business, whereas a for-hire motor carrier of property generally hauls property of another for compensation. Property broadly includes the transport of cargo, goods, materials, merchandise, tools, equipment, and supplies, including equipment permanently mounted on a vehicle, such as tow equipment, cement pump, or a crane.⁴

Examples of private motor carriers of property include companies that haul their own materials for their operations, retailers that deliver their products to their customers, and production studios that rent moving trucks to carry their equipment.

3. WHO ARE PRIVATE MOTOR CARRIERS OF PASSENGERS (PMCPs)?

PMCPs became subject to the FMCSRs in 1995. They are separated into two groups: business or non-business. Business PMCPs are involved in the interstate transportation of passengers, which is provided in the furtherance of a commercial enterprise and is not available to the public at large. Examples of business PMCPs include companies that use buses to transport their own employees and professional musicians who own or lease buses and employ drivers for concert tour-related transportation.

Non-business PMCPs provide private transportation of passengers that is not in the furtherance of a commercial purpose. Also, non-business PMCPs must engage in some group activity and do not include individuals providing personal conveyance of passengers for recreational purposes. Examples of non-business PMCPs include churches, private schools, scout groups, sports clubs, fraternal societies or lodges, and other organizations that may purchase or lease large vans or buses for the private transportation of their respective groups.

In comparison, for-hire motor carriers of passengers:

- provide interstate transportation of passengers for a commercial purpose;
- are compensated, either directly or indirectly, for the transportation service provided; and
- provide transportation service that is generally available to the public at large.

Examples of for-hire motor carriers of passengers include intercity bus services, charter bus services, hotels with shuttle services, and private school bus companies under contract with a school transporting children to sporting events or field trips.

APPLICABILITY OF THE FMCSRs UPON PRIVATE MOTOR CARRIERS

Part Of FMCSRs	Regulatory Topic	Property	Business PMCPs	Non-Business PMCPs
380	Special Training Requirements for Longer Combination Vehicle and Entry-Level Drivers	Yes	Partial	Partial
382	Controlled Substances and Alcohol Use and Testing	Yes*	Yes*	Yes*
383	CDL Requirements	Yes*	Yes*	Yes*
387	Financial Responsibility (Insurance/Surety)	Partial+	No	No
391	Qualifications of Drivers	Yes	Yes	Partial***
392	Driving of CMVs	Yes	Yes	Yes
393	Parts and Accessories	Yes	Yes**	Yes**
395	Driver's Hours of Service++	Yes	Yes	Partial***
396	Inspection, Repair, and Maintenance	Yes	Yes	Partial***

* Parts 382 and 383 generally apply to vehicles with a capacity of 16 or more passengers (including the driver) or a gross vehicle weight rating of 26,001 pounds or more operating in either interstate or intrastate commerce.
 ** PMCPs may continue to operate older buses manufactured before Federal Fuel System requirements were adopted, provided the fuel system is maintained to the original manufacturer's standards.
 *** Exempt from most paperwork and recordkeeping requirements of Part 391, § 395.8(a) and Part 396.
 + Part 387 imposes minimum levels of financial responsibility for private motor carriers transporting certain hazardous materials.
 ++ See § 395.1 (b) through (s) for various exemptions of Part 395.

4. WHICH FMCSRs APPLY TO PRIVATE MOTOR CARRIERS?

The chart summarizes the applicability of the FMCSRs upon private motor carriers of property, business PMCPs and non-business PMCPs.

In addition, motor carriers operating 9 to 15 passenger-carrying CMVs not for direct compensation (e.g., where the fee is included in a total package charge or other assessment for transportation services) are generally required only to:

- file a motor carrier identification report;
- mark their CMVs with the USDOT identification number;
- maintain an accident register; and
- comply with the prohibition against drivers texting while driving and using handheld cellular phones.

5. HOW CAN VIOLATIONS OF THE FMCSRs GIVE RISE TO CIVIL LIABILITY?

Private motor carriers are involved in many accidents each year. According to the FMCSA, data indicates private motor carriers generally have higher overall crash rates per vehicle miles travelled than for-hire motor

carriers.⁵ Private motor carriers and their drivers must be knowledgeable of and comply with all FMCSRs, which are applicable to their operations. Whenever under the FMCSRs a duty is prescribed for a driver or a prohibition is imposed upon the driver, it is the duty of the private motor carrier to require observance of such duty or prohibition under the FMCSRs. Failing to follow the FMCSRs can expose private motor carriers not only to enforcement by the FMCSA, but also to civil liability if the violation causes or contributes to cause injuries to the motoring public.

Injured motorists will often try to use violations of the FMCSRs to form the foundation of a negligence claim and/or punitive damage claim. Depending on the jurisdiction, typical theories include:

- **negligent operation of a CMV** – e.g., failing to follow the maximum driving time rules resulting in fatigued driving, failing to place proper warnings near a disabled CMV, failing to properly secure loads or improperly driving during hazardous conditions;
- **negligent inspection and maintenance** – e.g., failing to properly calibrate brakes or failing to maintain lights or conspicuity tape;
- **negligent hiring, retention and entrustment** –

e.g., failing to do a proper background check of the driver, failing to properly train the driver or allowing repeated driver's log violations; and

- **negligence per se** – violation of a FMCSR itself establishes civil liability in lieu of a breach of a common law duty.

CONCLUSION

The FMCSRs broadly apply to those operating CMVs, which transport property or passengers in interstate commerce, including private motor carriers. Private motor carriers encompass a wide variety of businesses and organizations, which are probably not as familiar with the FMCSRs as trucking and bus companies. If not careful, however, private motor carriers and their drivers can expose themselves to civil liability by failing to comply with the FMCSRs.



Kevin L. Fritz and Patrick E. Foppe are partners at Lashly & Baer, P.C. in St. Louis, Missouri, who focus primarily on transportation matters. Kevin is the immediate past Chair of the USLAW NETWORK



Transportation Practice Group and currently serves on its Board of Directors. Patrick was recently honored with Missouri Lawyers Weekly's "Up & Coming" Award.

¹ The FMCSRs can be found at <http://www.fmcsa.dot.gov/rules-regulations/rules-regulations.htm>.
² Among other exceptions, the FMCSRs do not apply to occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise. For lists of exceptions, see 49 CFR §§ 382.103(d), 383.3(d), and 390.3(f).
³ 49 CFR §§ 382.107 and 383.5.
⁴ See *Midwest Crane & Rigging, Inc. v. F.M.C.S.A.*, 603 F.3d 837, 840 (10th Cir. 2010).
⁵ Mark Lepofsky, et al., *Potential Applicability of Financial Responsibility Requirements to Private Motor Carriers – Final Report*, FMCSA, March 2006, at 6-1.