

Federal Motor Carrier Safety Administration

49 CFR 390 General

§390.3 General applicability.

- (a) The rules in Subchapter B of this chapter are applicable to all employers, employees, and commercial motor vehicles, which transport property or passengers in interstate commerce.
- (b) The rules in [Part 383](#), Commercial Driver's License Standards; Requirements and Penalties, are applicable to every person who operates a commercial motor vehicle, as defined in [§383.5](#) of this subchapter, in interstate or intrastate commerce and to all employers of such persons.
- (c) The rules in [Part 387](#), Minimum levels of financial responsibility for motor carriers, are applicable to motor carriers as provided in [§§387.3](#) or [§387.27](#) of this subchapter.
- (d) **Additional requirements.** Nothing in Subchapter B of this chapter shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.
- (e) **Knowledge of and compliance with the regulations.**
- (e)(1) Every employer shall be knowledgeable of and comply with all regulations contained in this subchapter which are applicable to that motor carrier's operations.
- (e)(2) Every driver and employee shall be instructed regarding, and shall comply with, all applicable regulations contained in this subchapter.
- (e)(3) All motor vehicle equipment and accessories required by this subchapter shall be maintained in compliance with all applicable performance and design criteria set forth in this subchapter.

(f) **Exceptions.** Unless otherwise specifically provided, the rules in this subchapter do not apply to —

(f)(1) All school bus operations as defined in [§390.5](#);

(f)(2) 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 Congress of the United States;

(f)(3) The occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise;

(f)(4) The transportation of human corpses or sick and injured persons;

(f)(5) The operation of fire trucks and rescue vehicles while involved in emergency and related operations;

(f)(6)(i) 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, except that motor carriers operating such vehicles are required to comply with §§ 390.15, 390.19, and 390.21(a) and (b)(2).

(f)(6)(ii) The operation of commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver) for direct compensation, provided the vehicle is not being operated beyond a 75 air-mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location, and provided the vehicle does not otherwise meet the definition of a commercial motor vehicle, except that motor carriers operating such vehicles are required to comply with §§ 390.15, 390.19, and 390.21(a) and (b)(2).

(g) *Motor carriers that transport hazardous materials in intrastate commerce.* The rules in the following provisions of subchapter B of this chapter apply to motor carriers that transport hazardous materials in intrastate commerce and to the motor vehicles that transport hazardous materials in intrastate commerce:

(g)(1) Part 385, subparts A and E, for carriers subject to the requirements of § 385.403 of this chapter.

(g)(2) Part 386, Rules of practice for motor carrier, broker, freight forwarder, and hazardous materials proceedings, of this chapter.

(g)(3) Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in § 387.3 of this chapter.

(g)(4) Section 390.19, Motor carrier identification report, and § 390.21, Marking of CMVs, for carriers subject to the requirements of § 385.403 of this chapter. Intrastate motor carriers operating prior to January 1, 2005, are excepted from § 390.19(a)(1).

[53 FR 18052, May 19, 1988, as amended at 54 FR 12202, Mar. 24, 1989; 58 FR 33776, June 21, 1993; 59 FR 8752, Feb. 23, 1994; 59 FR 67554, Dec. 29, 1994; 62 FR 1293, Jan. 9, 1997; 63 FR 33276, June 18, 1998; 64 FR 48111, Sept. 2, 1999; 66 FR 2766, Jan. 11, 2001; 68 FR 47875, August 12, 2003; 69 FR 39372, Jun 30, 2004]

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

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- 390.13 Aiding or abetting violations.
- 390.15 Assistance in investigations and special studies.
- 390.16 [Reserved]
- 390.17 Additional equipment and accessories.
- 390.19 Motor carrier identification report.
- 390.21 Marking of CMVs.
- 390.23 Relief from regulations.
- 390.25 Extension of relief from regulations—emergencies.
- 390.27 Locations of motor carrier safety service centers.
- 390.29 Location of records or documents.
- 390.31 Copies of records or documents.
- 390.33 Commercial motor vehicles used for purposes other than defined.
- 390.35 Certificates, reports, and records: Falsification, reproduction, or alteration.
- 390.37 Violation and penalty.

Subpart C [Reserved]

AUTHORITY: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31502, 31504, and sec. 204, Pub. L. 104-88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677; sec. 217, Pub. L. 106-159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

SOURCE: 53 FR 18052, May 19, 1988, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 390 appear at 66 FR 49873, Oct. 1, 2001.

Subpart A—General Applicability and Definitions

§ 390.1 Purpose.

This part establishes general applicability, definitions, general requirements and information as they pertain to persons subject to this chapter.

§ 390.3 General applicability.

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(b) The rules in Part 383, Commercial Driver's License Standards; Requirements and Penalties, are applicable to every person who operates a commercial motor vehicle, as defined in § 383.5 of this subchapter, in interstate or intrastate commerce and to all employers of such persons.

(c) The rules in Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, are applicable to motor

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carriers as provided in § 387.3 or 387.27 of this subchapter.

(d) *Additional requirements.* Nothing in subchapter B of this chapter shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(e) Knowledge of and compliance with the regulations.

(1) Every employer shall be knowledgeable of and comply with all regulations contained in this subchapter which are applicable to that motor carrier's operations.

(2) Every driver and employee shall be instructed regarding, and shall comply with, all applicable regulations contained in this subchapter.

(3) All motor vehicle equipment and accessories required by this subchapter shall be maintained in compliance with all applicable performance and design criteria set forth in this subchapter.

(f) *Exceptions.* Unless otherwise specifically provided, the rules in this subchapter do not apply to—

(1) All school bus operations as defined in § 390.5;

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(5) The operation of fire trucks and rescue vehicles while involved in emergency and related operations;

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(ii) The operation of commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver) for direct compensation, provided the vehicle is not

being operated beyond a 75 air-mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location, and provided the vehicle does not otherwise meet the definition of a commercial motor vehicle, except that motor carriers operating such vehicles are required to comply with §§ 390.15, 390.19, and 390.21(a) and (b)(2).

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(3) Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in § 387.3 of this chapter.

(4) Section 390.19, Motor carrier identification report, and § 390.21, Marking of CMVs, for carriers subject to the requirements of § 385.403 of this chapter. Intrastate motor carriers operating prior to January 1, 2005, are excepted from § 390.19(a)(1).

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§ 390.5 Definitions.

Unless specifically defined elsewhere, in this subchapter:

Accident means—

(1) Except as provided in paragraph (2) of this definition, an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

(2) The term accident does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo.

Alcohol concentration (AC) means the concentration of alcohol in a person's blood or breath. When expressed as a percentage it means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

Bus means any motor vehicle designed, constructed, and or used for the transportation of passengers, including taxicabs.

Business district means the territory contiguous to and including a highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

Charter transportation of passengers means transportation, using a bus, of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin.

Commercial motor vehicle means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—

(1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or

(2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or

(3) Is designed or used to transport more than 15 passengers, including the