

# A Most Precious Commodity

## FMCSR compliance for passenger carriers



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### *Where the headlines go, so too go the regulators.*

There is no denying that our country's passenger transportation system is safe. Serious crashes involving passenger-carrying commercial vehicles are relatively rare, and large buses in particular are the safest form of highway transportation out there, which is a great thing given their precious cargo.

But when accidents happen, they can be catastrophic and they can grab national attention. And, where the headlines go, so too go the regulators and legislators in charge of protecting public safety.

Congress and the U.S. Department of Transportation have been paying extra attention to motor carriers of passengers in recent years, largely as a result of major accidents involving multiple injuries and fatalities. Among them:

- A 2011 motorcoach accident in New York that left **15 dead and 18 injured**. Investigators said this “horrific” accident — described as one of the deadliest bus accidents ever investigated by the National Transportation Safety Board (NTSB) — was caused by driver fatigue, speeding, and “a corporate culture that fostered indifference to passenger safety.”
- A motorcoach rollover accident in Virginia that left **4 passengers dead and 49 injured** in 2011. Investigators found that the driver had fallen asleep at the wheel and the company failed to put critical safety practices in place.
- A 2012 school bus accident in New Jersey that **killed one student and injured 15**. Investigators said the driver suffered from acute sleep loss and was sedated by his prescription medication.
- A deadly crash in 2009 involving a medium-sized bus overturning in Arizona after the driver got distracted. The accident left **7 dead and 10 injured**.

Headlines like these are often followed by other headlines, like:

- *Jury Awards \$132 Million Settlement in Bus Crash Lawsuit*
- *Lawsuit Targets Tour Operator in Utah Bus Crash*
- *\$80 Million Settlement Over Bus Fire*

### **Under the Microscope**

As more accidents grab headlines, more and more passenger carriers are finding themselves under the microscope. In the past decade, the number of safety audits and inspections has increased dramatically for passenger carriers, and the results and consequences are significant.

*The average passenger carrier can expect to be audited roughly every 3 or 4 years.*

**Strike-force inspections:** The FMCSA and state enforcement agencies have carried out an increasing number of special “strike force” inspections to shut down unsafe passenger carriers, and these types of inspection programs are expected to continue. During one such program over an 8-month period in 2013, regulators shut down 52 bus companies and removed 340 vehicles from the road.

**In-house audits:** Before 2005, the FMCSA says the average passenger carrier could expect to be audited roughly every eight years. Today that number is down to every three or four years for the roughly 12,000 regulated passenger carriers registered with the agency. In 2014, these passenger carriers underwent numerous comprehensive in-house audits, also known as “compliance reviews”:

Primary Vehicle Type	Compliance Reviews (2014)
Motorcoaches	880
Mini buses	380
Vans	270
School buses	150
Limousines	100

*Drivers of passenger-carrying vehicles endured nearly 120,000 roadside inspections in 2014.*

Through these audits, the FMCSA says it is now paying particular attention to passenger vehicle maintenance programs and compliance with the Americans with Disabilities Act (ADA).

**Roadside inspections:** Also in 2014, passenger-carrying vehicle drivers (of which there are more than 250,000 in the industry) endured nearly 120,000 roadside inspections:

Vehicle Type	Roadside Inspections (2014)
Buses	43,000
School buses	36,300
Motorcoaches	32,000
Vans	5,200
Limousines	1,500

**Fines:** The latest government data shows that the fines can be significant when passenger carriers fail to comply with the FMCSRs. Some examples of actual fines paid by passenger carriers in recent years:

Carrier Location	Violation	Penalty
Salem, CT	No operating authority	\$39,600
Cocoa, FL	False and/or missing logs	\$30,000
Commerce City, CO	Random drug testing	\$24,750
Houston, TX	Pre-employment drug testing	\$12,930
Champaign, IL	Operating vehicles without fixing identified defects	\$12,810

*One passenger carrier was fined \$80,000 for violating just six regulations.*

One passenger carrier was fined \$80,000 in 2010 for violating just six regulations. Operating in violation of registration requirements can cost \$25,000 per day.

**CSA & Saferbus:** The Compliance, Safety, Accountability (CSA) enforcement program, which scores motor carriers on seven compliance categories, holds passenger carriers to a higher standard, placing more weight on their violations. These scores are made public — in part through the FMCSA's widely publicized mobile app known as “Saferbus” — and can have a direct effect on your business, your insurance rates, and your interaction with enforcement. The FMCSA is also actively encouraging the public to report unsafe bus companies.

With new funding and directives from Congress, the future holds continuing emphasis on passenger carrier safety and enforcement. For those who are not in compliance, the result of all this attention can be fines, penalties, lowered safety scores, mandates to improve compliance, out-of-service orders, and lost business, not to mention the significant consequences of accidents and litigation.

Companies that wish to stay out of the headlines and under the FMCSA's radar need to commit significant attention and resources to compliance and safety. But where to begin?

Compliance starts with a simple question that some carriers are too afraid to ask (or don't know they *need* to ask): “*Am I subject to the rules?*”

*Compliance starts with a simple question: “Am I subject to the rules?”*

Let's examine the answer to that question and the various federal regulations that may apply when the answer is affirmative.

### **FMCSA Regulations**

The FMCSA enforces the Federal Motor Carrier Safety Regulations (FMCSRs), which apply to all sorts of commercially operated vehicles, from pickup trucks and tankers to vans, motorcoaches, and everything inbetween. The FMCSRs are designed with one goal in mind: preventing vehicle accidents. They accomplish this by setting *minimum* safety standards that all drivers, vehicles, and motor carriers must meet.

Among the requirements and guidelines:

- Making sure that drivers are fully trained, licensed, physically fit, and otherwise qualified to be behind the wheel, get enough rest to remain alert while driving, and don't engage in activities or behaviors that could endanger public safety.
- Ensuring that vehicles meet all technical specifications and are inspected and maintained on a regular basis.
- Ensuring that the company is properly registered and authorized to carry passengers, maintains all required paperwork, and has financial backing in the event of an accident.
- Having policies, procedures, and other safety management controls in place to ensure safety and compliance.

*The CMV definition does not rely on the type of vehicle but rather its capacity.*

In terms of passenger carriers, the FMCSRs apply to all employers, employees, and vehicles that are involved in the transportation of passengers across state lines\* for a commercial purpose. This can include companies that operate vehicles for their own private use — such as a professional orchestra using buses for concert tours or a company shuttling its employees between facilities — as well as those transporting passengers for compensation, such as a charter bus service or airport/hotel shuttle.

The rules may apply whether the vehicles are leased, borrowed, rented, or owned, and whether empty or loaded. In some cases, vehicles operating strictly within a single state are also subject, depending on which rules the state has enacted. Some regulations even apply to operators who are normally exempt, such as schools or government agencies.

### CMVs

For purposes of most of the FMCSRs, the definition of “commercial motor vehicle” (CMV) is found in 49 CFR Sec. 390.5. In part, a CMV is defined as any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle:

- Is designed or used to transport 9 or more passengers (including the driver) for compensation; or
- Is designed or used to transport 16 or more passengers (including the driver) not for compensation; or
- Has a gross vehicle weight rating (GVWR), gross combination weight rating (GCWR), gross vehicle weight (GVW), or gross combination weight (GCW) of 10,001 pounds or more, whichever is greater.

Note that the definition does not rely on the *type* of vehicle but rather its *capacity*. In terms of passenger carriers, regulated vehicles can include school buses, passenger vans, limousines, shuttle buses, mini-buses, full-size buses, motorcoaches, or any other type of vehicle that meets the definition above.

*Despite how they may seem, the regulations are not “one size fits all.”*

Despite how they may seem, the regulations are not “one size fits all.” Not all motor carriers need to comply with every section or part of the FMCSRs. There are exceptions and exemptions based on the type of operation involved, and this is where compliance can get tricky — especially for passenger carriers. Let’s break it down by operation type.

\*The FMCSRs apply to operations that are involved in “interstate” commerce, which is commerce that crosses state boundaries or otherwise affects such commerce. Commerce that remains strictly within a single state and that does not otherwise affect interstate commerce is said to be “intrastate” commerce that falls under the jurisdiction of state enforcement agencies.

## For-Hire Motor Carriers

For-hire motor carriers of passengers provide transportation of passengers in exchange for payment. Examples of for-hire passenger transportation include intercity bus services, charter bus services, canoe rental company bus services, and hotel bus services. According to the FMCSA, there are three key factors to determining if a motor carrier of passengers is a for-hire carrier:

1. The motor carrier provides interstate transportation of passengers for a commercial purpose, and
2. The motor carrier is compensated, either directly or indirectly, for the transportation service provided, and
3. The transportation service is generally available to the public at large.

*Even 9-passenger vans can be subject to significant bodies of regulation.*

For-hire motor carriers of passengers are subject to all the FMCSRs, with possible exceptions based on vehicle size and method of compensation. But as noted below, even nine-passenger vans can be subject to significant bodies of regulation:

Capacity*	Weight/Rating	Payment Type	Which FMCSRs apply?
16+	Any	Any	Subject to all FMCSRs, including rules for CDL licensing, drug and alcohol testing, insurance, driver qualification, hours of service, and vehicle maintenance and inspection.
9 to 15	Any	Direct**	Subject to all FMCSRs, including rules for insurance, driver qualification, hours of service, and vehicle maintenance and inspection. Exempt from CDL licensing and drug and alcohol testing if weight remains under 26,001 pounds.
	10,000 lbs. or less	Indirect	Exempt from most FMCSRs but must keep an accident log, mark vehicles with a USDOT number, and comply with prohibitions on texting and use of hand-held cell phones.
	10,000 lbs. or more	Indirect	Subject to all FMCSRs based on weight of the vehicle. Exempt from CDL licensing and drug and alcohol testing if weight remains under 26,001 pounds.
8 or fewer	10,000 lbs. or less	Any	May be subject to insurance requirements.

\* Including driver, and based on either the manufacturer's design or the actual use.

\*\*Direct compensation means payment made to the motor carrier by the passengers or a person acting on behalf of the passengers for the transportation services provided, and not included in a total package charge or other assessment for highway transportation services.

*Private motor carriers of passengers became subject to the FMCSRs in 1995.*

## Private Motor Carriers

The FMCSA has regulated for-hire passenger carriers since the 1930s, but private carriers are a more recent addition to the agency's purview. Private motor carriers of passengers (PMCPs) became subject to the FMCSRs in 1995, and they are separated into two groups — business and non-business.



*Non-business private motor carriers are subject to many of the same regulations as for-hire carriers.*

### **Business PMCPs**

Like for-hire carriers, business PMCPs transport passengers as part of a commercial operation but they do not provide passenger transportation services to the general public. Examples include companies that use buses to transport their own employees and professional musicians who use buses for concert tours. Again, this does NOT include commercial businesses that provide transportation to the general public.

Business PMCPs are subject to the same regulations and exceptions as for-hire carriers as described above, except that:

- The insurance requirements do not apply; and
- There are “grandfathering” provisions for certain drivers who have been employed by the same company for at least the past 20 years.

### **Non-business PMCPs**

Non-business PMCPs also provide private transportation of passengers but not for the benefit of a commercial purpose. Examples include churches and other religious groups, sports clubs, charitable organizations, private schools and other educational organizations, fraternal societies or lodges, scouting groups, civic or scientific organizations, and other charitable groups that may purchase or lease buses for the private transportation of their respective groups.

This does not include individuals providing personal conveyance of passengers for recreational purposes; a non-business PMCP must be engaged in some type of group activity.

Non-business PMCPs are subject to many of the same regulations and exceptions as for-hire carriers as described above, but are exempt from insurance, most paperwork requirements, and other restrictions, such as:

- Employment applications, driving-record checks, previous-employer inquiries, annual reviews, and annual list of driver violations;
- Road tests;
- Certain medical-related requirements;
- Driver qualification and investigation files;
- Drivers’ logs;
- Certain vehicle maintenance records; and
- Daily post-trip vehicle inspection reports.

### **School Buses**

Under the FMCSRs, a “school bus” is:

- Any passenger motor vehicle designed or used to carry a driver plus 11 or more passengers; and
- Primarily used for the purpose of transporting preprimary, primary, or secondary-school students from home to school and from school to home.

These “standard” school bus operations — those that operate between a school and students’ homes — are exempt from most FMCSRs except that their drivers:

- May not text or use a hand-held cell-phone while driving (which is generally forbidden anyway, under state and local laws and district policies); and
- Need commercial driver’s licenses (CDLs) and are subject to drug and alcohol testing when the vehicles are designed or used to transport 16 or more passengers (including the driver).

It goes without saying that those are not the only safety rules that apply; school buses are subject to all sorts of federal, state, and local requirements, but generally not most FMCSRs when used for pupil transportation to and from school.

School buses operated by the government (such as local school districts), are also exempt from most FMCSRs except the CDL and drug/alcohol testing rules, but this exemption does not extend to contractors performing transportation on behalf of the government.

What about school buses operated by non-governmental entities and used for other purposes? For example, buses used to transport post-secondary students or buses used to travel to extracurricular activities across state lines? These operations are generally subject to at least some of the rules.

The following table outlines how the FMCSRs apply to school-bus operations, including those that are largely exempt:

Operation Type	Student Type	When used to/from school and home	When used for extracurricular activities
Public school*	Any	Exempt from most FMCSRs except CDL licensing and drug/alcohol testing	Exempt from most FMCSRs except CDL licensing and drug/alcohol testing
Private school	Pre-primary, primary, and/or secondary	Exempt from most FMCSRs except CDL licensing and drug/alcohol testing	Subject to FMCSRs as a non-business PMCP
	Post-secondary	Subject to FMCSRs as a non-business PMCP	
For-hire contractor	Pre-primary, primary, and/or secondary	Exempt from most FMCSRs except CDL licensing and drug/alcohol testing	Subject to FMCSRs as a for-hire carrier
	Post-secondary	Subject to FMCSRs as a for-hire carrier	

\*When buses are operated by a government entity.



*Safety and compliance are shared responsibilities.*

## **A Shared Responsibility**

Passenger carriers that are subject to the FMCSRs can't simply hold their drivers and maintenance personnel responsible for compliance. Safety and compliance are shared responsibilities among all levels of the operation.

### **§390.11 Motor carrier to require observance of driver regulations.**

*Whenever ... a duty is prescribed for a driver or a prohibition is imposed upon the driver, it shall be the duty of the motor carrier to require observance of such duty or prohibition....*

### **§390.3 General applicability.**

*...Every employer shall be knowledgeable of and comply with all regulations contained in [the FMCSRs]...*

*Every driver and employee shall be instructed regarding, and shall comply with, all applicable [FMCSRs].*

*All motor vehicle equipment and accessories ... shall be maintained in compliance with all applicable [FMCSRs]....*

Tour operators, group leaders, and others can run afoul of the regulations as well, especially if they encourage or insist upon rule violations.

### **§390.13 Aiding or abetting violations.**

*No person shall aid, abet, encourage, or require a motor carrier or its employees to violate the rules of this chapter.*

In 2010, a consultant to a passenger carrier was fined over \$55,000 for aiding and abetting the company to violate the FMCSRs.

## **Now is the Time**

*Now is the time to analyze your compliance program.*

If you operate passenger-carrying commercial motor vehicles, your operation is “under the microscope” like never before. With Congress, federal and state regulators, attorneys, and even the news media cracking down on passenger carriers, now is the time to analyze your compliance program — before you see your company name in the headlines or get a call from the DOT.

Though burdensome and sometimes scary, compliance with the FMCSRs is necessary, can be accomplished, and can ultimately keep you in business.

Compliance involves three steps:

- 1.** Learning which rules apply;
- 2.** Following those rules throughout your operation; and

3. Being able to prove compliance for an auditor, inspector, or attorney.

Each of these steps involves significant work and resources, but failing to strive for 100 percent compliance could put your entire operation at risk.

## About the Author

### Daren Hansen

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#### J. J. Keller & Associates, Inc.

A Senior Editor in the Transportation Publishing Department of Editorial Resources at J. J. Keller & Associates, Daren Hansen is responsible for writing and editing a variety of safety-related publications, products and services for the trucking and busing industries. Daren's primary areas of expertise include the Federal Motor Carrier Safety Regulations related to hours of service, cargo securement, drug and alcohol testing, and driver qualification. He has spoken and written extensively on these topics, both for clients and for industry groups, and is a member of the National Private Truck Council's Legislative & Regulatory Advisory Committee.

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## How We Can Help

The [\*FMCSA Compliance Manual for Passenger Carriers\*](#) is the first online manual that targets ground passenger carriers. This easy-to-understand reference for fleet managers provides explanations and regulations for the Federal Motor Carrier Safety Regulations (FMCSRs) that apply specifically to bus, motorcoach and other passenger-carrier operations.

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Designed for use by drivers and as a training aid, the [\*Passenger-Carrying Driver Handbook\*](#) contains a comprehensive overview of FMCSRs that are applicable to the passenger carrying industry in an easy-to-understand format. It covers a variety of critical bus and motorcoach topics, including passenger safety, customer service, transporting special needs passengers, driver qualification, defensive driving and more.

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