

Transportation Compliance Guidelines for Daycares, Nursing Homes and Assisted Living Communities

Definitions:

49 C.F.R 390.5- Commercial motor vehicle means any self-propelled or towed motor vehicle used on a highway in 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 driver, and is not used to transport passengers for compensation; or

(4) Is used in transporting material 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.

49 C.F.R 390.5- Interstate commerce means trade, traffic or transportation in the United States-

(1) Between a place in a State and a place outside of such State (including a place outside of the United States);

(2) Between two places in a State through another State or a place outside of the United States; or

(3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States

49 C.F.R 390.5- Intrastate Commerce means any trade, traffic, or transportation in any State which is not described in the term “interstate commerce.

49 C.F.R 390.5- For-hire motor carrier means a person engaged in the transportation of goods or passengers for compensation.

K.S.A 66-1,108- Public Motor Carrier of passengers means any person who undertakes for hire to transport by commercial motor vehicle, from place to place, persons who may choose to employ or contract with the motor carrier; and

Federal Interpretation to Determine Operating Authority Applicability:

The Federal Motor Carrier Safety Administration (FMCSA) has deemed the daycare, nursing homes and assisted living communities that provide passenger transportation services and collect payment either direct or indirect as for-hire. The fee collected by these entities is considered indirect compensation for the passenger transportation provided.

49 CFR Part 390.5 interpretation question #10 clarifies the transportation provided by these entities to be for-hire.

Question 10: Does the FMCSA define for-hire transportation of passengers the same as the former ICC did?

Guidance: To the extent FMCSA's authority stems from 49 U.S.C. 31502 or other sections of Title 49 which are rooted in the Interstate Commerce Act, the FMCSA is bound by judicial precedent and legislative history in interpreting that Act, much of which relates to the operations of the former ICC. However, since the MCSA of 1984 reestablished the FHWA/FMCSA's jurisdictional authority and resulted in a repromulgation of the FMCSRs, the FHWA/FMCSA have established their own precedents based on "safety" rather than "economics" as the overriding consideration. This has resulted in some deviation in the definition of terms, e.g., commercial zones, for-hire transportation, etc.

The term "for-hire motor carrier" as defined in part 390 means a person engaged in the transportation of goods or passengers for compensation. The FHWA has determined that any business entity that assesses a fee, monetary or otherwise, directly or indirectly for the transportation of passengers is operating as a for-hire carrier. Thus, the transportation for compensation in interstate commerce of passengers by motor vehicles (except in six-passenger taxicabs operating on fixed routes) in the following operations would typically be subject to all parts of the FMCSRs, including part 387: whitewater river rafters, hotel/motel shuttle transporters, rental car shuttle services, etc. These are examples of for-hire carriage because some fee is charged, usually indirectly in a total package charge or other assessment for transportation performed

Safety Applicability:

[K.S.A. 66-1,129 Motor carriers; safety rules and regulations.](#)

[49 CFR Part 390.3T -- General applicability.](#)

Compliance Information:

[KCC Procedures for Safety Compliance.](#)

[FMCSA Regulations and Interpretations – 49 CFR Parts 300-399 | FMCSA \(dot.gov\)](#)

[49 CFR Part 40—Procedures for Transportation Workplace Drug and Alcohol Testing Programs](#)

Operating Authority:

[Intra: K.S.A. 66-1,109 Regulation of motor carriers; exemptions of certain carriers.](#)

[Inter: 49 CFR Part 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY.](#)

Insurance Requirements:

[Intra: K.S.A. 66-1314. Liability insurance requirements for vehicles not having KS MC permits.](#)

[Intra K.S.A. 66-1,128. Motor carrier liability insurance requirements](#)

[Inter: 49 CFR Part 387.33 -- Financial responsibility, minimum levels.](#)

390.3 T Exceptions:

Unless otherwise specifically provided, the rules in this subchapter do not apply to—

(6) 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 and drivers operating such vehicles are required to comply with §§ [390.15](#), [390.19T](#), [390.21T\(a\)](#) and [\(b\)\(2\)](#), [391.15\(e\)](#) and [\(f\)](#), [392.80](#) and [392.82](#) of this chapter.

***Vehicles with a gross vehicle weight rating of 10,001lbs. or more do not qualify for the 390.3 T exception.**