

MEMBER UPDATE

75 MILE EXEMPTION REMOVED

On February 1, 2010, the Department of Transportation (“DOT”) issued a *Federal Register* notice amending the Federal Motor Carrier Safety Regulations (“FMCSRs”) to require that motor carriers operating commercial motor vehicles (CMVs), designed or used to transport between 9 and 15 passengers (including the driver), in interstate commerce for direct compensation comply with the safety regulations regardless of the distance traveled. *See* Safety Requirements for Operators of Small Passenger-Carrying Commercial Motor Vehicles Used in Interstate Commerce, 75 Fed. Reg. 4996-5002 (Feb. 1, 2010). Specifically, this rule makes certain FMCSRs applicable to the operation of such vehicles when they are operated within a 75 air-mile radius (86.3 statute miles or 138.9 kilometers) from the driver’s normal work-reporting location. Motor carriers, drivers, and the vehicles operated by them will be subject to the same safety requirements imposed upon such vehicles when they are operated beyond a 75-air-mile radius. This action is required by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

This rule is effective May 3, 2010. Motor carriers must be in compliance with this rule no later than June 1, 2010.

This alert summarizes the February 1 notice that requires motor carriers operating CMVs designed or used to transport between 9 and 15 passengers (including the driver) in interstate commerce for direct compensation comply with the regulations contained in 49 C.F.R. parts 390, 391, 392, 393, 395 and 396, regardless of the distance traveled. This update should be used for summary purposes only and does not constitute legal advice. Specific legal or regulatory questions should be addressed by your counsel.

- **Marking Requirements** - The notice will require motor carrier compliance with the general requirements under part 390, including but not limited to vehicle marking requirements. Motor carriers must ensure that every self-propelled CMV they operate is marked as specified in paragraphs (b), (c), and (d) under 49 CFR 390.21, including among other things, the requirement to mark the vehicle with the USDOT Number and the legal name or a single trade name of the motor carrier operating the vehicle. The final rule eliminates the exception under Sec. 390.3(f)(6)(ii) which permitted small passenger-carrying vehicles operated within a 75 air-mile radius of the normal work reporting location to be marked only with the USDOT Number and to exclude the legal or trade name.
- **Alcohol, Drugs, Drowsy** - These motor carriers are required to ensure that each of their drivers meets all of the minimum qualifications for interstate CMV drivers prescribed in part 391, including physical qualifications and maintaining records to document compliance. The rules in part 392 regarding driving of CMVs also are applicable. Part 392 requirements include general prohibitions against the use of alcohol, drugs and other substances while operating a CMV or operating a CMV while ill or fatigued. The motor carrier must ensure that its drivers comply with rules governing operation of CMVs at railroad grade crossings, practices to ensure a CMV is safely stopped, fueling precautions, and other generally prohibited practices such as transporting unauthorized persons, towing or pushing loaded buses. The FMCSA is not making the commercial driver’s license and controlled substances and alcohol testing requirements applicable to operators of small passenger-carrying CMVs, because section 4136 does not change the existing non-application of those requirements that results from the statutory definition of CMV in 49 U.S.C. 31301(4) used for those programs. Consequently, the passenger-carrying threshold for CDL and controlled substances and alcohol testing requirements remains at 16 passengers (including the driver).
- **Hours of Service** - Under part 395, motor carriers must ensure that their drivers comply with the applicable hours-of-service requirements for motor carriers of passengers. Most, if not all, operators of small-passenger carrying vehicles within the 75 air-mile limit and their drivers will be covered by the short-haul operations provisions of 49 CFR Sec. 395.1(e)(1). If the driver operates within a 100 air-mile radius of the normal work-reporting location and the driver returns to that location and is released from work within 12 consecutive hours after starting work, then the driver must not drive more than 10 hours after 8 hours off duty and must have at least 8 consecutive hours off duty separating each 12 hours on duty. Drivers covered by these short-haul provisions are not required to maintain a record-of-duty status (log book). However, the employer must maintain for 6 months records of each driver’s time of both reporting for and being released from duty, and the number of hours on duty each day. In accordance with 49 CFR 395.5, any drivers who operate beyond a 100 air-mile radius from the normal work-reporting location must not drive more than 10 hours after 8 consecutive hours off duty or operate CMVs after being on duty more than 15 hours, following 8 consecutive hours off duty. Furthermore, drivers must not drive after being on duty 60 hours in any 7 consecutive days if the motor carrier does not operate CMVs every day of the week (60-hour rule), or after being on duty 70 hours in any eight consecutive days if the motor carrier operates CMVs every day of the week (70-hour rule). In addition, 49 CFR 395.8 requires those drivers who operate 100 miles beyond the normal work reporting location to document the number of hours on duty and the number of hours driving and record his/her duty status.
- **Inspection Program** - Each motor carrier is required under part 396 to have a systematic inspection, repair, and maintenance program for the CMVs it operates, and to ensure that vehicles are in safe and proper operating condition at all times. They are also required to maintain records to document compliance with these rules. Motor carriers are required to ensure that each vehicle is inspected at least once every 12 months by a qualified inspector/mechanic and that any motor carrier employee

who is responsible for the adequacy of any brake-related inspection, repair, or maintenance work meets certain minimum qualifications. They must also maintain records to document compliance with these rules.

- ***New Entrant*** - The 2003 final rule required all motor carriers that operate CMVs designed or used to transport between 9 and 15 passengers for direct compensation to complete a motor carrier identification report (Form MCS-150), and to obtain a USDOT Number. This included carriers operating within the 75 air-mile exclusion. 49 CFR 390.3(f)(6). All such carriers that have fulfilled the requirements of the 2003 final rule would already be included in FMCSA's census of motor carriers and would have been considered new entrants and subject to a limited new entrant review to ensure their compliance with the very limited requirements of the rule (i.e., maintaining an accident register and marking of their CMVs). Any carriers that have already registered will be subject to safety requirements such as driver qualifications and hours of service and be required to have appropriate safety management controls in place to ensure compliance with the FMCSRs. However, any carriers not previously registered will be considered new entrant motor carriers. Those carriers will be covered by the revised New Entrant Safety Assurance Process recently adopted by the Agency. 73 FR 76472 (Dec. 16, 2008).
- ***Safety Fitness Procedures*** - Part 385 of the FMCSRs establishes procedures to determine the safety fitness of motor carriers, to assign safety ratings, to take remedial action when required, and to prohibit motor carriers receiving a safety rating of "Unsatisfactory" from operating a CMV. As a result of this final rule, motor carriers operating small passenger-carrying CMVs within a 75 air-mile radius of the driver's normal work-reporting location are now covered by the same safety fitness procedures and standards used to evaluate other interstate motor carriers. This means that motor carriers affected by this rulemaking are subject to compliance reviews and will receive safety ratings. Those that receive an "Unsatisfactory" safety rating will be prohibited from operating CMVs to transport passengers in interstate commerce. In addition, these motor carriers will be ineligible to contract or subcontract with any Federal agency for transportation of passengers in interstate commerce.
- ***No Exemption for Stretch Limousines*** - The final rule does not exempt stretch sedan, SUV or super stretch sedan limousines.