DEPARTMENT OF TRANSPORTATION **[4910-EX-P]**

Federal Motor Carrier Safety Administration

49 CFR Parts 365, 387, and 390

[Docket No. FMCSA-2016-0352]

Regulatory Guidance Concerning Motor Carriers of Passengers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of regulatory guidance; request for comments.

SUMMARY: This notice clarifies existing FMCSA policies related to: (1) interstate commerce in the context of highway transportation of passengers immediately prior or subsequent to air transportation; and (2) for-hire motor carriers of passengers. Under certain conditions, motor carriers performing intrastate movements of passengers immediately before or after interstate air travel do not need FMCSA operating authority registration. However, such motor carriers are operating in interstate commerce and, unless otherwise exempt, are subject to applicable FMCSA regulations. FMCSA wants motor carriers of passengers and the public to be aware of applicable regulations and requirements. The statutes, regulations, and policies are currently in effect.

DATES: Comments on this notice must be received on or before [INSERT 60 DAYS AFTER DATE OF PUBLICATION].

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2016-0352 using any of the following methods:

• Federal eRulemaking Portal: Go to www.regulations.gov. Follow the on-line instructions for submitting comments.

• Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

• Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

• Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public on this notice of regulatory guidance. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as

described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Chandler, Team Leader, Commercial Passenger Carrier Safety Division, (202) 366-5763, peter.chandler@dot.gov. FMCSA office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, contact Docket Operations, telephone (202) 366-9826.

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SUPPLEMENTARY INFORMATION:

A. Background

FMCSA employs a regulatory guidance statement to explain how the Agency applies a particular regulation to a specific set of facts. A guidance statement does not alter the meaning of a regulation. Guidance statements are provided in question-and-answer format; statements interpreting the same regulation are numbered (e.g., "Section 395.8, Question 7").

The Agency notifies the public of regulatory guidance by publishing it in the Federal Register. Section 5203 of the Fixing America's Surface Transportation (FAST) Act (P.L. 114-94), titled "Guidance," requires that each guidance document issued by FMCSA have a date of issuance or a date of revision, as applicable, and include the name and contact information of a point of contact at the Agency who can respond to questions regarding the guidance. In addition, this section of the FAST Act requires that each guidance document issued or revised by FMCSA be published on a publicly accessible Internet Web site of the Department on the date of issuance or revision. As a result, the regulatory guidance in this notice will be published on FMCSA's Web site at www.fmcsa.dot.gov/regulations.

Further, Section 5203 requires that not later than 5 years after the date on which a guidance document is published under paragraph (a)(2) or during an applicable review under subsection (c), whichever is earlier, the Secretary must revise regulations to incorporate the guidance document to the extent practicable. FMCSA will complete an evaluation of the regulatory guidance in this notice in compliance with this requirement at a later time. Section 5203 also requires that the Administrator publish in the Federal Register a notice and request for comment that solicits input from stakeholders on which guidance documents should be updated or eliminated.

B. Legal Basis

This notice is based on the authority of the Motor Carrier Act of 1935 (Pub. L. 74-255, 49 Stat. 543, Aug. 9, 1935), as amended (the 1935 Act) [codified in 49 U.S.C. 31502]; the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, Title II, 98 Stat. 2832, Oct. 30, 1984), as amended (MCSA) [codified in 49 U.S.C. chapter 311]; the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99-570, Title XII, 100 Stat. 3207-170, Oct. 27, 1986), as amended (CMVSA) [codified in 49 U.S.C. chapter 313]; and the ICC Termination Act of 1995, (Pub. L. 104-88, 109 Stat. 803, Dec. 29, 1995) (ICCTA) [codified in 49 U.S.C. chapters 131-149].

With the 1935 Act, the Federal government began to regulate the operational safety of for-hire carriers of property and passengers and private carriers of property but not of passengers. The 1935 Act, as amended, provides that, "The Secretary of Transportation may prescribe requirements for – (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of

equipment of, a motor private carrier, when needed to promote safety of operation." (49 U.S.C. 31502(b)). Under the 1935 Act, as amended, a "motor carrier" is defined as "a person providing motor vehicle transportation for compensation" (49 U.S.C. 13102(14)) and a "motor private carrier" is "a person, other than a motor carrier, transporting property by motor vehicle when – (A) the transportation is as provided in section 13501 of this title [i.e., in interstate commerce]; (B) the person is the owner, lessee, or bailee of the property being transported; and (C) the property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise" (49 U.S.C. 13102(15)).

The MCSA of 1984 restated Federal safety jurisdiction in terms of "commercial motor vehicles" (CMVs) operating in interstate commerce, but did not repeal the Motor Carrier Act of 1935. The MCSA, as amended, defines a CMV as "a self-propelled or towed vehicle used on highways in interstate commerce to transport passengers or property, if the vehicle (A) has a gross vehicle weight rating [GVWR] or gross vehicle weight [GVW] of at least 10,001 pounds, whichever is greater; (B) is designed or used to transport more than 8 passengers (including the driver) for compensation; (C) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or (D) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title and transported in a quantity requiring placarding under regulations requiring placarding under regulations prescribed by the Secretary under section 5103" (49 U.S.C. 31132(1)). This definition expanded Federal jurisdiction for the first time to include private motor carriers of passengers.

The MCSA defines "interstate commerce" as "trade, traffic, or transportation in the United States between a place in a State and — (A) a place outside that State (including a place outside the United States); or (B) another place in the same State through another State or through a place outside the United States" (49 U.S.C. 31132(4)). Therefore, an entity operating a CMV in interstate commerce, unless otherwise exempt, is subject to FMCSA's safety regulations and oversight.

The CMVSA of 1986 created the commercial driver's license (CDL) program. However, the definition of the term "CMV" in the CMVSA is significantly different from the definition of "CMV" in the MCSA. The CMVSA defines a CMV as "a motor vehicle used in commerce to transport passengers or property that – (A) has a gross vehicle weight rating or gross vehicle weight of at least 26,001 pounds, whichever is greater, or a lesser gross vehicle weight rating or gross vehicle weight the Secretary of Transportation prescribes by regulation, but not less than a gross vehicle weight rating of 10,001 pounds; (B) is designed to transport at least 16 passengers including the driver; or (C) is used to transport material found by the Secretary to be hazardous under section 5103 of this title [Title 49 U.S. Code], except that a vehicle shall not be included as a commercial motor vehicle under this subclause if – (i) the vehicle does not satisfy the weight requirements of subclause (A) of this clause; (ii) the vehicle is transporting material listed as hazardous under section 306(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9656(a)) and is not otherwise regulated by the Secretary or is transporting a consumer commodity or limited quantity of hazardous material as defined in section 171.8 of title 49, Code of Federal Regulations; and (iii) the Secretary

does not deny the application of this exception to the vehicle (individually or as part of a class of motor vehicles) in the interest of safety" (49 U.S.C. 31301(4)).

In addition to the higher weight threshold (26,001 pounds compared to the MCSA's 10,001 pounds), the CMVSA applies to such vehicles operated in "commerce," not just in interstate commerce. It also defines "commerce" more expansively as "trade, traffic, and transportation – (A) in the jurisdiction of the United States between a place in a State and a place outside that State (including a place outside the United States); or (B) in the United States that *affects* trade, traffic, and transportation described in subclause (A) of this clause" (49 U.S.C. 31301(2)) (emphasis added). FMCSA's CDL regulations, which were issued under the authority in the CMVSA, and the associated drug and alcohol testing regulations, therefore, apply to drivers operating CMVs in intrastate as well as interstate commerce.

The ICCTA transferred much of the authority over the commercial aspects of motor carrier operations from the former Interstate Commerce Commission (ICC) to FMCSA. The ICCTA includes the following requirement, codified at 49 U.S.C. 13902(a)(1): "Except as otherwise provided in this section, the Secretary of Transportation shall register a person to provide transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier using self-propelled vehicles the motor carrier owns, rents, or leases only if the Secretary determines that the person" is willing and able to comply with the requirements specified in § 13902(a)(1)(A). The term "motor carrier" has the meaning specified in 49 U.S.C. 13102(14): "a person providing motor vehicle transportation for compensation." FMCSA uses the term "operating

authority registration" to refer to the commercial registration in section 13902, replacing the ICC's term "operating authority."

FMCSA has been delegated the authority to carry out the functions and exercise the authority vested in the Secretary of Transportation by the Motor Carrier Act of 1935 (49 CFR 1.87(i)), the MCSA (§ 1.87(f)), the CMVSA (§ 1.87(e)(1)), and the ICCTA (§ 1.87(a)). Most recently, in the Consolidated Appropriations Act, 2016, Congress excluded from the Agency's commercial jurisdiction (operating authority registration requirement), 9-15 passenger vans "operated by youth or family camps that provide recreational or educational activities." Pub.L. 114-113, Div. L, Title I, § 136, Dec. 18, 2015, 129 Stat. 2851, 49 U.S.C.A. § 13506(a)(16).

C. Current Regulations and Requirements

The Federal Motor Carrier Safety Regulations (FMCSRs) comprise parts 350 through 399 of title 49, Code of Federal Regulations. These regulations set minimum safety standards for motor carriers, vehicles and drivers operating in interstate commerce. The areas covered include motor carrier registration, driver qualifications, licensing, hours of driving and on duty time, vehicle safety equipment, operating condition, inspection and maintenance. In some areas, through previous rulemaking, the Agency has adopted exceptions for certain categories of vehicles or operations and thus does not exercise regulatory authority to the full extent of its statutory jurisdiction.

The jurisdictional thresholds of the statutes FMCSA administers, and the corresponding regulations, are not uniform. First, for most of the FMCSRs, the Agency's jurisdiction is based upon the CMV definition in 49 U.S.C. 31132(1) and 49 CFR 390.5. A passenger vehicle is a CMV if it is designed or used to transport 9 or more passengers

for compensation or 16 or more passengers not for compensation. Larger passenger vehicles also qualify as CMVs irrespective of their passenger capacity if they have a GVW or GVWR (whichever is greater) of 10,001 pounds or more. The Agency's safety jurisdiction does not cover passenger-carrying vehicles that meet *all three* of following criteria: (1) are designed and used to transport 8 or fewer passengers, (2) have a GVWR and GVW of 10,000 pounds or less, and (3) are not transporting hazardous materials in a quantity that requires placarding. If a passenger-carrying vehicle exceeds even one of these three thresholds, however, FMCSA has safety jurisdiction over the vehicle.

A second CMV definition governs the CDL program and the corresponding drug and alcohol testing regulations (49 CFR parts 383 and 382, respectively), which apply to CMV operations both in interstate and intrastate commerce. It is noteworthy that parts 383 and 382 apply to the operation of a motor vehicle that has a GVWR or GVW of 26,001 pounds or more and is used to transport passengers, regardless of the number of passengers that the vehicle is designed to or actually does transport.

Third, with some exceptions, the commercial regulations are applicable to for-hire interstate transportation of passengers in any vehicle, no matter the weight, weight rating, or passenger capacity (49 CFR part 365). The level of insurance required to operate as a for-hire passenger carrier is governed by the number of passengers the vehicle is designed to transport (49 CFR part 387, subpart B). The required level of insurance is $1.5 million if the carrier's largest vehicle has a seating capacity of 15 or fewer passengers or $5 million if the largest vehicle has a seating capacity of 16 passengers or more. These are also the levels of insurance required for a passenger carrier to obtain for-hire operating authority registration under 49 U.S.C. 13902. There is an exception to

some Federal insurance/financial responsibility requirements for passenger carriers that receive certain grants from the Federal Transit Administration.

D. Transportation of Passengers To and From Airports and Other Points of Interstate Departure/Arrival

In 1938, Congress amended section 203(b) of the 1935 Act to exempt from the requirement to obtain operating authority registration "the transportation of persons or property by motor vehicle when incidental to transportation by aircraft" [Civil Aeronautics Act of 1938, Sec. 1107(j), Chap. 601, 52 Stat. 973, 1029, June 23, 1938]. Today, Section 203(b)(7a) of the 1935 Act is codified at 49 U.S.C. 13506(a)(8)(A) for transportation of passengers incidental to transportation by aircraft – and implemented by 49 CFR 372.117(a).

In 1964, the ICC reaffirmed its longstanding position that the exemption for incidental-to-air transportation did not require passengers to hold a through ticket when it addressed the following question:

> whether the transportation of airline passengers by motor vehicle which is incidental to transportation by air must be confined to situations in which the air and motor movements are provided pursuant to some common arrangement for through passage, that is, on a through ticket or at the request and at the expense of the air carrier. In dealing with the transportation of property . . . we have found that a bona fide terminal area pickup and delivery service must entail through air-motor billing. A similar condition has never been considered essential where the transportation of passengers is concerned, and our reexamination of this aspect of the overall problem convinces us that no change is warranted in this regard. . . . Nor do we think that a requirement applicable to the transportation of freight must necessarily be appropriate to the transportation of passengers (95 M.C.C. at 535).

FMCSA agrees with the Commission's position that through-ticketing is not required to invoke the exemption from commercial operating authority registration for transportation incidental to air travel in 49 U.S.C. 13506(a)(8)(A). However, prearranged motor vehicle

transportation, secured by an advance guarantee demonstrating an obligation by the passenger to take the service and the motor carrier to provide the service, immediately prior or subsequent to aircraft transportation across State lines is part of a continuous movement in interstate commerce. Motor carriers performing intrastate movements of interstate air passengers thus do not need operating authority registration if they operate only within the radius specified as "incidental to transportation by aircraft" in 49 CFR § 372.117(a), but they are nevertheless operating in interstate commerce and are subject to the FMCSRs unless they are otherwise exempt.

The parties who commented on the ICC's passenger rulemaking in the 1960s reported that "in virtually no case is it the practice of the airlines to issue . . . through tickets" (95 M.C.C. 532). That has not changed. Package deals combining ground and air transportation may be offered by travel agents or on-line ticketing services, but airlines themselves only rarely offer such arrangements. FMCSA sees no reason to change the ICC's common-sense conclusion that motor carriers offering transportation of passengers to or from an airport are eligible for the exemption in current 49 U.S.C. 13506(a)(8)(A) even though the passengers are not traveling on a single ticket that includes both ground and aircraft transportation.

As discussed below, however, § 13506(a)(8)(A) does not confer an exemption from applicable safety regulations. Prearranged motor vehicle transportation, secured by an advance guarantee demonstrating an obligation by the passenger to take the service and the motor carrier to provide the service, immediately prior or subsequent to aircraft transportation across State lines is part of a continuous movement in interstate commerce. Motor carriers performing intrastate movements of interstate air passengers by CMV thus

do not need operating authority registration if they operate only within the radius specified as "incidental to transportation by aircraft" in 49 CFR § 372.117(a), but if the transportation is prearranged, they are nevertheless operating in interstate commerce and are subject to the Federal safety regulations unless they are otherwise exempt.

E. Prearrangement of Passenger Transportation

The Federal courts have long held that "[t]he characterization of transportation between two points within a single state as interstate or intrastate depends on the essential character of the shipment involved. . . . The crucial factor in determining the essential character of a shipment is 'the shipper's fixed and persisting intent at the time of shipment.'" Central Freight Lines v. Interstate Commerce Commission, 899 F.2d 413, 419 (5th Cir. 1990) (internal citations omitted). The key inquiry is whether, before or at the time the trip begins, the shipper has manifested his/her intent to ship something in interstate commerce. In the case of passenger transportation, the "shipper" is the passenger, and his/her fixed intent to travel in interstate commerce is best demonstrated by pre-arranging the interstate air (or water or rail) transportation and the intrastate ground transportation by CMV at more or less the same time, and substantially before the interstate trip begins.

For example, reserving a seat, with an advanced guarantee obligating the passenger to take the service and the motor carrier to provide the service, in a limousine via the internet for transportation to or from an airport about the same time of booking an interstate flight that will occur multiple weeks in the future would demonstrate a fixed and persisting intent to travel in interstate commerce, placing the limousine segment of the trip in the stream of interstate commerce. On the other hand, on the day of a trip

deciding to take a cab to or from the airport before or after the flight would not involve prearrangement and would not amount to interstate commerce. In any case, evidence of a traveler's intent is normally based on documentation, not assumptions.

The same kind of analysis applies to passengers boarding or disembarking from a cruise ship. Prior arrangement of CMV ground transportation – for example via tour bus from a port of call to some inland destination – made in conjunction with cruise-ship reservations would demonstrate the fixed intent of the passenger to travel by motor vehicle as part of an interstate or international trip. In some cases, cruise lines may even sell through-tickets that cover both maritime and land transportation which clearly demonstrate both prearrangement and the fixed intent of the travelers to use multiple modes of transportation on an interstate or international trip.

In 1963, the Third Circuit held that intrastate transportation of passengers in the Virgin Islands pursuant to prearranged packages covering both lodging and travel was interstate commerce (Southerland v. St. Croix Taxicab Ass'n, 315 F.2d 364 (3rd Cir. 1963)). Federal court decisions have increasingly expanded this line of analysis and found ground transportation to be in the stream of interstate commerce where the traveler, even in the absence of package arrangements, has separately booked the air and ground portions of a trip. See Abel v. Southern Shuttle Services, Inc., 631 F.3d 1210 (11th Cir. 2011); Executive Town & Country Services v. City of Atlanta, 789 F.2d 1523 (11th Cir. 1986); Charter Limousine, Inc. v. Dade County Board of County Commissioners, 678 F.2d 586 (5th Cir. 1982); East West Resort Transportation, LLC, v. Binz, 494 F.Supp.2d 1197 (D. Col. 2007).

FMCSA has been asked if our commercial and safety jurisdiction over a motor carrier of passengers requires some threshold ratio of interstate to intrastate trips. Many motor carriers have a mixture of interstate and intrastate passenger transportation operations. To answer this question, we look back to a case interpreting the Fair Labor Standards Act of 1938. In this case, only 3-4% of a carrier's trips were interstate in nature and the Supreme Court held that, under the 1935 Act, the ICC had authority to impose its hours-of-service rules on all of the company's drivers because they were randomly assigned to handle interstate trips, even though 2 out of about 40 drivers had not made a single interstate trip during the 21 months at issue in that case [Morris v. McComb, 332 U.S. 422 (1947)]. The Court said "[w]e hold that the Commission has the *power* to establish qualifications and maximum hours of service, pursuant to the provisions of § 204 of the Motor Carrier Act [of 1935], for the entire classification of petitioner's drivers and 'mechanics' and it is the existence of that power (rather than the precise terms of the requirements actually established by the Commission in the exercise of that power) that Congress has made the test as to whether or not [the overtime requirement of] § 7 of the Fair Labor Standards Act is applicable to these employees." Ibid. at 434.

FMCSA's authority over interstate operations under the MCSA of 1984 is in most ways even broader than the ICC's authority under the 1935 Act because it includes fewer statutory exemptions and is equally or more focused on highway safety. The Agency can, therefore, require compliance with the FMCSRs by passenger carriers with interstate operations no more extensive than those previously described in Morris v. McComb, providing those operations are undertaken with CMVs, as defined in 49 CFR § 390.5.

A related question is whether relatively infrequent operations in interstate commerce make a motor carrier permanently subject to FMCSA jurisdiction. For an answer, we again look at the 1935 Act and to Federal Highway Administration (FHWA) precedent. The FHWA, our predecessor agency, said in a 1981 notice of interpretation that "[e]vidence of driving in interstate commerce or being subject to being used in interstate commerce should be accepted as proof that the driver is subject to [the hours-of-service requirements in 49 U.S.C. 31502(b)] for a 4-month period from the date of the proof" 46 FR 37902, 37903 (July 23, 1981).

FHWA replaced the 4-month rule with a 14/15-day "rule" in 1999. (More information about this matter can be found in Question 24 under regulatory guidance for § 390.3 on the FMCSA website, www.fmcsa.dot.gov.) However, the Agency's Acting Deputy Administrator explained in a letter of August 21, 2001, to the Department of Labor that "[t]he 14/15-day rule is a prudential limitation on the use of FMCSA authority, not an interpretation of FMCSA jurisdiction." The letter also noted that "[b]ecause most of the case law interpreting the provisions of the MCA [Motor Carrier Act of 1935] has been generated by Fair Labor Standards Act litigation, the courts have dealt only with agency authority to enforce the hours-of-service limits. The MCA, however, authorizes regulations addressing a wider variety of safety problems, and we believe that the jurisdictional principles set forth by the courts would apply to them as well, e.g., to the medical qualifications of drivers."

FMCSA takes this occasion to reaffirm the view expressed in the Acting Deputy Administrator's 2001 letter that the Agency has jurisdiction over motor carriers, vehicles, and drivers for a 4-month period after a trip in interstate commerce. However, records

must be retained for whatever period is required by the FMCSRs, even if that period exceeds 4 months.

Later in this notice, FMCSA issues regulatory guidance in a question and answer format to clarify the conditions under which highway transportation of passengers by CMV within a single State would constitute interstate commerce if the passengers are beginning a trip to, or completing a trip from, a point outside the State by another mode of transportation (e.g., aircraft, railroad, or vessel). If a passenger plans a trip involving more than one mode of transportation that begins and ends in different States or a place outside the United States and has prearranged the CMV portion of the trip, as demonstrated by an advance guarantee for the service, all transportation during the trip is in interstate commerce, because the passenger prearranged the transportation with persistent intent of continuous interstate movement throughout the trip. Additional prearranged side trips or excursions made before the trip begins or while traveling in interstate commerce are included as part of the flow of interstate commerce. However, if the passenger has made no arrangement for transportation and upon arriving at an airport, port, or railway station, makes arrangements for transportation, that later-arranged transportation is not a continuation of the trip and is not in interstate commerce. Prearrangement in multimodal transportation of a passenger is an important consideration in determining interstate commerce because it can establish the passenger's intent about travel and provide a clear linkage of continual transportation segments. When one such segment is interstate in nature, all linked transportation segments are in the stream of interstate commerce.

F. "For Compensation" and "For-Hire"

FMCSA's safety jurisdiction, except in the CDL regulations, is circumscribed by the definition of a "commercial motor vehicle" (CMV) in 49 U.S.C. 31132(1). Under section 31132(1), a CMV is defined in part as a vehicle used to transport passengers or property in interstate commerce that "(B) is designed or used to transport more than 8 passengers (including the driver) *for compensation*, [or] (C) is designed or used transport more than 15 passengers, including the driver, and is *not* used to transport passengers *for compensation* . . ." (49 U.S.C. 31132(1)(B)-(C)) (emphasis added). Furthermore, a motor carrier registering for commercial operating authority under 49 U.S.C. 13902 is governed by the definition of "motor carrier" in 49 U.S.C. 13102(14), i.e., "a person providing motor vehicle transportation *for compensation.*"

The FMCSRs incorporate "compensation" into the definition of "for-hire motor carrier," which the rules treat as "a person engaged in the transportation of goods or passengers for compensation" (49 CFR 390.5). In a notice of interpretation published on May 7, 1993, FHWA provided an expansive interpretation of "compensation," stating that compensation includes both direct and indirect payment. In addition, the FHWA said certain non-business organizations, including churches and charities, operate as for-hire passenger carriers when they engage in chartered operations, charging a fee [58 FR 27328, 27329]. The notice clarified that certain businesses, including hotels and car rental agencies operating shuttle bus services, and outdoor recreation operations such as whitewater rafters and scuba diving schools transporting patrons to or from a recreation site, constitute for-hire motor carriage of passengers. Compensation as used in the context of a business enterprise includes both direct and indirect payment for the transportation service provided. It need not mean 'for profit.'

This policy was repeated in slightly different form in regulatory guidance published on November 17, 1993 [58 FR 60734, 60745] and April 4, 1997 [62 FR 16370, 16407]. This position was also reiterated in the final rule on private motor carriers of passengers [59 FR 8748, February 23, 1994], which adopted certain exceptions for "private motor carriers of passengers (business)" (now codified at 49 CFR 391.69) and "private motor carriers of passengers (nonbusiness)" (49 CFR 391.68).

"Compensation," as used in the definition of "for-hire motor carrier" in § 390.5, includes both direct and indirect payments. Companies providing intercity motorcoach service are directly compensated, while hotels, car rental companies, parking facilities, and other businesses that offer shuttle bus service are indirectly compensated because they add the cost of that service to their room rates, car rental rates, etc. By statute, most taxicab service is not subject to the requirement to obtain commercial operating authority registration [49 U.S.C. 13506(a)(2)] or to maintain minimum levels of financial responsibility [49 U.S.C. 31138(e)(2), 49 CFR § 387.27(b)(2)]. In addition, most taxis are not subject to Federal safety regulations because their designed passenger capacity is below 9 passengers and their vehicle weight is too low to make them CMVs under 49 CFR § 390.5.

Passenger transportation is either for-hire or private. Unless exempted by statute or regulation, for-hire motor carriers must obtain operating authority registration under 49 U.S.C. 13902 before engaging in interstate transportation. While a passenger carrier may provide both for-hire and private transportation, a specific trip is either for-hire or private depending upon the presence or absence of direct or indirect compensation. Though

private passenger transportation is not available to the public at large, for-hire transportation service may or may not be available to the general public. Compensation is the primary factor to determine for-hire transportation.

G. Vanpools

In an interim final rule published on September 3, 1999 [64 FR 48510], FHWA qualified its previous expansive interpretation of "compensation" as applied to vanpools:

> The FHWA does not believe Congress intended the agency to regulate commuter vanpools. . . [T]he agency does not intend to regulate commuter vanpools that are not operated in the furtherance of a commercial enterprise. The FHWA considers the phrase 'for compensation' to be synonymous with 'for hire' [citing the April 4, 1997 regulatory guidance] . . . The FHWA understands that passengers in many vanpools pay a monthly fee to an individual, who either owns or leases the van. The FHWA does not believe this is a business. The individual uses this money not as a source of income or in the furtherance of a commercial enterprise, but to pay for the van, insurance premiums, and maintenance. There may be surplus funds each month that are put in reserve to cover unexpected costs or losses of revenue during periods in which vanpool membership decreases. The FHWA, however, does not believe that this type of arrangement should be considered 'for compensation' and does not intend to regulate such operations [64 FR 48514].

A few months later, Sec. 212 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) [Pub. L. 106-159, 113 Stat. 1748,1766, Dec. 9, 1999] established FMCSA and directed the Agency to "determine which motor carriers operating commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver) for compensation shall be covered" by the FMCSRs. The statute added that "[i]n no case should the rulemaking exempt from such regulations all motor carriers operating commercial vehicles designed or used to transport between 9 and 15 passengers (including the driver) for compensation" [113 Stat. 1766]. In the preamble of the Notice of Proposed Rulemaking to implement that mandate, published on Jan. 11, 2001 [66 FR 2767], FMCSA proposed to focus on small passenger carriers operating for direct

compensation, stating that these operators were "identified as having significant deficiencies in their safety management controls for their drivers and vehicles" and pose "a serious safety risk to the motoring public" [66 FR 2768].

In view of the varied and sometimes inconsistent[1] regulatory guidance on "compensation" issued over the past two decades, the Agency takes this opportunity to clarify its position. Pursuant to 49 U.S.C. 31132(1)(B)-(C), a vehicle designed or used to transport between 9 and 15 passengers (counting the driver as a passenger) cannot be a "commercial motor vehicle" (CMV) for purposes of the FMCSRs unless it is used to transport passengers "for compensation" or has a GVW or GVWR of 10,001 pounds or greater. Similarly, under § 31132(1)(C), a vehicle designed or used to transport more than 15 passengers (including the driver) is a CMV even if it is "not used to transport passengers for compensation." The term "compensation" is, therefore, jurisdictional. If a vehicle is designed and used to transport more than 8, but fewer than 16 passengers, and has a GVW and GVWR of less than 10,001 pounds, without "compensation," it is not a CMV and FMCSA has no safety jurisdiction over it.

This issue is particularly critical for vanpools. Although payment is compensation, FMCSA decided the intent of Congress is not to recognize the fees as compensation unless the revenue amount is required to be reported to the Internal Revenue Service (IRS), pursuant to 26 U.S.C. §§ 1402(b) and 132(f). It is also important to recognize that although previously characterized as an exemption in policy and preamble statements, the Agency never adopted a regulatory exemption for vanpool operations.

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[1] Cf. 66 FR 2756, 2761 and 66 FR 2767, 2768, both January 11, 2001.

Consistent with prior statements regarding the applicability of the FMCSRs, and to remain consistent with Congressional intent, the Agency is not changing its position. Therefore, FMCSA will not pursue enforcement against commuter vanpool operations when all of the following conditions are met: (1) the motor vehicle is operated by individuals travelling to and from work transporting other individuals as part of a daily commute to and from work in an interstate, single daily round trip; (2) the motor vehicle is designed and used to carry no more than 15 individuals (including the driver); (3) the gross vehicle weight and gross vehicle weight rating is less than 10,001 pounds; and (4) the money received by the vanpool operator for transportation is not reported to the IRS, pursuant to 26 U.S.C. §§1402(b) and 132(f), or is not deemed reportable by an IRS investigation under the same provisions.

FMCSA recognizes the guidance contained in this notice has compliance implications for motor carriers that previously considered themselves to not be subject to certain Agency requirements because such carriers mistakenly believed their passenger transportation operations were in intrastate commerce only, not for-hire, and/or somehow exempt. It should be emphasized, however, that while for-hire motor carriers operating in interstate commerce must obtain both commercial operating authority registration (no matter how small or light the vehicle(s) used, unless exempted), and safety registration under 49 U.S.C. 31134 (all initial registrations by new applicants must use the Unified Registration System online registration application) from FMCSA, the safety regulations apply only to motor carriers (private and for-hire) operating in interstate commerce that use vehicles that qualify as "commercial motor vehicles," as defined in 49 U.S.C. 31132(1) and 49 CFR § 390.5. FMCSA will conduct outreach to motor carriers and their

associations that are affected by this notice to inform them about applicable FMCSA requirements. FMCSA will create a new webpage for passenger carriers to provide an information resource about applicable FMCSA requirements.

The following examples show the real-world implications and interactions of "interstate commerce," "CMV," "compensation," "for-hire" and "private" carriage, and a variety of regulatory exemptions and exceptions. These examples are arranged in topical categories. The first provides guidance on the meaning of "interstate commerce." All subsequent examples provide guidance in three regulatory applicability contexts, specifically (1) operating authority registration, (2) minimum level of financial responsibility, and (3) general safety regulatory jurisdiction.

The guidance published today uses the following acronyms:

Commercial Driver's License – CDL

Code of Federal Regulations – CFR

Commercial Motor Vehicle – CMV

Federal Motor Carrier Safety Administration – FMCSA

Federal Motor Carrier Safety Regulations – FMCSRs

Gross Vehicle Weight – GVW

Gross Vehicle Weight Rating – GVWR

Example Scenarios:

A. Passengers Using Multiple Transportation Modes

Scenario 1: A couple hires a limousine to transport them from their residence to an airport. This highway transportation is within a single State. The aircraft transports the couple to another State. After landing and obtaining checked baggage, the couple boards

a mini-bus that transports them within the second State to a waterway port. The couple boards a cruise ship that transports them to foreign island countries.

Section 390.5 Definitions.

Question 33: Under what conditions would highway transportation of passengers by CMV within a single State constitute interstate commerce if the passengers are beginning a trip to, or completing a trip from, a point outside the State by another mode of transportation (e.g., aircraft, railroad, or vessel)?

Guidance: If a passenger plans a trip involving more than one mode of transportation that begins and ends in different States or a place outside the United States, and has prearranged the CMV portion of the trip, secured by an advance guarantee demonstrating an obligation by the passenger to take the service and the motor carrier to provide the service, all transportation during the trip is in interstate commerce because the passenger prearranged the transportation with persistent intent of continuous interstate movement throughout the trip. Additional prearranged side trips or excursions made before the trip begins or while traveling in interstate commerce are included as part of the flow of interstate commerce. However, if the passenger has made no arrangement for transportation upon arriving at an airport, waterway port, or railway station, and then makes arrangements for transportation, that transportation is not a continuation of the trip and is not in interstate commerce.

Scenario 2: A company offering sight-seeing tours operates buses designed to transport more than 15 passengers including the driver. It picks up cruise ship passengers at a port of call, takes them to nearby attractions, and returns them to the ship. The bus tour does not cross State lines, but all cruises originate in another State or foreign country. The

cruise passengers book and pay for the bus tour before starting, or during, the cruise. The passenger transportation is not confined to a commercial zone. The company is not currently registered with FMCSA.

Section 365.101 Applications governed by these rules

Question 1: Is the company required to obtain operating authority registration for its bus tours?

Guidance: Yes, the sight-seeing company is an interstate for-hire motor carrier of passengers. Prearranged intrastate highway transportation occurring during an interstate trip is in the stream of interstate commerce, exactly like prearranged highway transportation immediately before or after an interstate trip. The fixed and persistent intent of the cruise ship passengers to travel by bus as part of the interstate cruise was demonstrated by their advance booking of the bus tour, usually through the internet, but also while still on-board the ship. If not registered with FMCSA, this company must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E.

Section 387.27 Applicability

Question 17: Is the company subject to the financial responsibility requirements in 49 CFR part 387 subpart B?

Guidance: Yes, the company is operating for-hire passenger vehicles with a seating capacity of at least 16 in interstate commerce and is required by § 387.33(a) to maintain $5 million of financial responsibility.

Section 390.3 General applicability

Question 32: Do any exceptions to the FMCSRs apply to this company?

Guidance: No. The company operates CMVs, as defined in § 390.5, in interstate commerce. The company is a motor carrier subject to all applicable FMCSRs, including parts 350 to 399, and it must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. In addition, the company is operating a CMV designed to transport 16 or more passengers, as defined in § 383.5. The bus driver must have a CDL with the applicable endorsement(s) and comply with the drug and alcohol testing regulations in part 382.

Scenario 3: While planning a trip, a person goes on-line, books an airline flight to a city in another State, and reserves a rental car in that city. The car rental company is located near the airport, and it offers shuttle bus service between the terminal and the facility where its customers can pick up and drop off cars. The shuttle does not require a reservation. The car rental company always has at least one shuttle vehicle circulating between the airport and its parking lot during business hours. All shuttle vehicles have a GVWR of 10,001 pounds or more and are designed to transport 16 or more passengers (including the driver). All shuttle operations are (1) conducted on roads and highways that are open to public travel, and (2) confined to a zone encompassed by a 25-mile radius of the boundary of the airport. The company is not currently registered with FMCSA.

Section 365.101 Applications governed by these rules

Question 2: Is the car rental company required to obtain operating authority registration for its passenger transportation?

Guidance: No. The shuttle service qualifies for the exemption from operating authority in 49 U.S.C. 13506(a)(8)(A) and 49 CFR § 372.117(a) for the transportation of

passengers by motor vehicle that is (1) incidental to the transportation by aircraft, (2) limited to the transportation of passengers who have had or will have an immediately prior or subsequent movement by air, and (3) confined to a zone encompassed by a 25-mile radius of the boundary of the airport. Although the shuttle service, unlike the airline or rental car reservation, is not explicitly prearranged, it is in the stream of interstate commerce because customers expect and intend to utilize the service wherever a rental facility is not within walking distance of the airport terminal.

Section 387.27 Applicability

Question 8: Is this car rental company subject to the financial responsibility requirements in 49 CFR part 387 subpart B?

Guidance: Yes, the company is operating passenger vehicles with a seating capacity of at least 16 for hire in interstate commerce and is required by § 387.33(a) to maintain $5 million of financial responsibility.

Section 390.3 General applicability

Question 33: Do any exceptions to the FMCSRs apply to this car rental company?

Guidance: No. The company operates CMVs, as defined in § 390.5, for hire in interstate commerce, and the company is a motor carrier subject to all applicable FMCSRs, including parts 350 to 399, and it must register by following the procedures in 49 CFR part 390 subpart E. In addition, the company is operating a passenger-carrying CMV designed to transport 16 or more passengers, as defined in § 383.5. The bus driver must have a CDL with the applicable endorsement(s) and comply with the drug and alcohol testing regulations in 49 CFR part 382.

Hotel Related Passenger Transportation

Scenario 1: A hotel in Cincinnati, Ohio offers a courtesy van to take its guests to and from the Cincinnati/Northern Kentucky International Airport in Kentucky. The van is designed to transport 15 passengers, including the driver, and has a GVW and GVWR of less than 10,000 pounds. All passenger transportation occurs within a zone encompassed by a 25-mile radius of the boundary of the airport. The hotel is not currently registered with FMCSA.

Section 365.101 Applications governed by these rules

Question 3: Is the hotel required to obtain operating authority registration for its passenger transportation?

Guidance: No. Although the hotel is providing interstate for-hire transportation (indirect compensation for the shuttle van being included in the cost of the room), that service meets the exemption requirements of 49 U.S.C. 13506(a)(8)(A) and 49 CFR 372.117(a). The hotel's shuttle transportation of passengers is (1) incidental to transportation by aircraft, (2) limited to the transportation of passengers who have had an immediately prior or will have an immediately subsequent movement by air, and (3) confined to a zone encompassed by a 25-mile radius of the boundary of the airport at which the passengers arrive or depart. The hotel does not meet the exemption requirements of 49 U.S.C. 13506(a)(3) for a motor vehicle owned or operated by or for a hotel and only transporting hotel patrons between the hotel and the local station of a carrier. The definition of carrier within this exemption does not include air carrier. However, the hotel only needs to meet the requirements of one exemption to not be subject to operating authority registration.

Section 387.27 Applicability

Question 9: Is the hotel subject to the financial responsibility requirements in 49 CFR part 387 subpart B?

Guidance: Yes. The hotel is providing indirectly compensated, for-hire transportation of passengers in interstate commerce in a vehicle with a seating capacity of 15, and is required by § 387.33(a) to maintain $1.5 million of financial responsibility.

Section 390.3 General applicability

Question 34: Do any exceptions to the FMCSRs apply to this hotel?

Guidance: Yes. The hotel's van is designed and used to transport 9 to 15 passengers (including the driver), not for direct compensation in interstate commerce. Therefore, the hotel's van operation is eligible for the limited exception to regulatory applicability in § 390.3(f)(6). If the hotel complies with the applicable provisions listed in § 390.3(f)(6), then this passenger transportation is compliant with the safety regulations contained in 49 CFR parts 350 to 399. The hotel must register by following the procedures in 49 CFR part 390 subpart E. In addition, the hotel's 15-passenger van is not a CMV under § 383.5 and, therefore, drivers of these vehicles are not required to have CDLs.

Scenario 2: A hotel in Winchester, Virginia, located 12 miles outside of the zone encompassed by a 25-mile radius of the boundary of the airport, offers a courtesy van to take its guests to and from Washington Dulles International Airport in Dulles, Virginia. The van is designed to transport 15 passengers, including the driver, and has a GVW and GVWR of less than 10,000 pounds. The hotel is not currently registered with FMCSA.

Section 365.101, Applications governed by these rules.

Question 4: Is the hotel required to obtain operating authority registration for its passenger transportation?

Guidance: Yes. The hotel is providing interstate for-hire transportation (indirect compensation for the shuttle van being included in the cost of the room), and is outside the zone that would qualify it for the incidental to air travel exemption within 49 U.S.C. 13506(a)(8)(A) and 49 CFR 372.117(a). Also, the hotel's transportation does not meet the exemption requirements of 49 U.S.C. 13506(a)(3) for a motor vehicle owned or operated by or for a hotel and only transporting hotel patrons between the hotel and the local station of a carrier. The definition of carrier within this exemption does not include air carrier. The hotel must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E.

Section 387.27 Applicability

Question 10: Is the hotel subject to the financial responsibility requirements in 49 CFR part 387 subpart B?

Guidance: Yes. The hotel is providing indirectly compensated, for-hire transportation of passengers in interstate commerce in a vehicle with a seating capacity of 15, and is, therefore, required by § 387.33(a) to maintain $1.5 million of financial responsibility.

Section 390.3 General applicability

Question 35: Do any exceptions to the FMCSRs apply to this hotel?

Guidance: Yes. The hotel's van is designed and used to transport 9 to 15 passengers (including the driver), not for direct compensation, in interstate commerce. Therefore, the hotel's van operation is eligible for the limited exception to regulatory applicability in § 390.3(f)(6). This passenger transportation is compliant with the safety regulations contained in 49 CFR parts 350 to 399 if the hotel complies with the applicable provisions listed in § 390.3(f)(6). The hotel must register by following the procedures in 49 CFR

part 365 subpart A and part 390 subpart E. In addition, the hotel's 15-passenger van is not a CMV under § 383.5 and, therefore, drivers of these vehicles are not required to have CDLs.

Employer Related Passenger Transportation

Scenario 1: A commercial building cleaning company owns and operates 15-passenger vans to transport its employees to client locations to perform cleaning services. The employer is located close to a State boundary, and employees are transported into a neighboring State. When employees are transported outside a specified distance from the company's single office location, the employer provides the transportation free of charge. However, when employees are transported wholly within the specified distance, the employer charges each employee a transportation fee and deducts that amount from the employee's pay. Most of this employee transportation is outside the commercial zone of the municipality where the company's office is located and where passenger transportation originates. All of the company's drivers and vehicles are at some point involved in interstate passenger transportation outside the commercial zone. The company is not currently registered with FMCSA.

Section 365.101 Applications governed by these rules

Question 5: Is the company required to obtain operating authority registration for its passenger transportation?

Guidance: Yes. The company is an interstate for-hire motor carrier of passengers because its vehicles cross State lines and it charges fees for transportation. Furthermore, this company must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E.

Section 387.27 Applicability

Question 11: Is the company subject to the financial responsibility requirements contained in 49 CFR part 387 subpart B?

Guidance: Yes. The company is operating vehicles, with a seating capacity of 15, for hire in interstate commerce and must maintain financial responsibility of $1.5 million, as required by § 387.33(a).

Section 390.3 General applicability

Question 36: Do any exceptions to the FMCSRs apply to this motor carrier of passengers?

Guidance: Because the 15-passenger vans are used to transport employees for compensation in interstate commerce, they qualify as CMVs under § 390.5. The building cleaning company operating these CMVs is an interstate for-hire motor carrier and must comply with the applicable regulations in 49 CFR parts 350 to 399. Because the employer charges each employee a transportation fee and deducts that amount from the employee's pay, the compensation is direct, and the company therefore does not qualify for the limited exception in § 390.3(f)(6) for 9 to 15 passenger-carrying CMVs operated not for direct compensation. The company must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. However, the drivers of these 15-passenger vans are not required to have CDLs and are not subject to employer conducted controlled substances and alcohol testing because the vehicles are not CMVs as defined in § 383.5. Although the drivers are not required to have a CDL, they are subject to the general driver qualification regulations in part 391, including the requirements to be medically examined and certified in accordance with §§ 391.41, 391.43, and 391.45.

Scenario 2: A construction company owns and operates a bus designed to transport more than 15 passengers including the driver. The bus transports employees to work sites and does not charge a fee for the transportation. At the request of its employees, the company uses the bus on a Saturday during the summer to provide round-trip transportation for interested employees to an amusement park in a neighboring State. This trip is open only to employees and people the employees invite. The company collects money from each passenger. The transportation is not confined within a commercial zone. The company is not currently registered with FMCSA.

Section 365.101 Applications governed by these rules

Question 6: Is the construction company required to obtain operating authority for this passenger transportation?

Guidance: Yes, because the construction company provided a trip for compensation to the amusement park in another State, the company is a for-hire interstate motor carrier and must have operating authority registration. The company must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. Since the company does not charge its employees a fee for their transportation to work sites, however, that transportation is not for compensation, and operating authority registration is not required on the basis of these trips alone.

Section 387.27 Applicability

Question 12: Is the company subject to the financial responsibility requirements in 49 CFR part 387 subpart B?

Guidance: Yes, the company operates passenger vehicles with a seating capacity of at least 16 in interstate commerce and must maintain financial responsibility of at least $5 million, as required by § 387.33(a).

Section 390.3 General applicability

Question 37: How do the FMCSRs apply to this construction company?

Guidance: The company is operating a CMV, as defined in § 390.5, in interstate commerce. The transportation is subject to all of the provisions in parts 350 to 399 of Title 49 relevant to passenger carrier operations. The company must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. In addition, the bus is also a CMV as defined in 49 CFR § 383.5, and the driver must have a CDL with a Passenger endorsement and be enrolled in a drug and alcohol testing program consistent with 49 CFR part 382.

If the company operates its CMV in interstate commerce only on rare occasions, FMCSA has jurisdiction over the company, such vehicle, and the driver of such vehicle for a 4-month period after a trip in interstate commerce. However, records must be retained for whatever period is required by the FMCSRs, even if that period exceeds 4 months.

Education Related Passenger Transportation

Scenario 1: A non-profit organization conducts educational tours with 15-passenger vans. All tours can be booked as part of a classroom course, or as a stand-alone tour. Each tour crosses either a State or international border, beyond a commercial zone. Passengers pay a single, inclusive of transportation fee whether they book a tour or a tour combined with a classroom lecture. The 15-passenger vans have a GVWR and actual GVW under 10,000 pounds. The organization is not currently registered with FMCSA.

Section 365.101 Applications governed by these rules

Question 7: Is operating authority registration required?

Guidance: Yes. The organization transports passengers across State lines and includes the cost of transportation in a flat rate fee. Its non-profit status is irrelevant. A carrier that receives compensation, even indirect compensation, is providing for-hire service, and, because the carrier operates beyond a commercial zone, it must obtain operating authority registration from FMCSA. This organization is not a youth or family camp, and the statutory exemption from operating authority registration for such camps that provide recreational or educational activities therefore does not apply. Furthermore, the organization must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E.

Section 387.27 Applicability

Question 13: Is this organization subject to the financial responsibility requirements in 49 CFR part 387 subpart B?

Guidance: Yes, because it operates passenger vehicles with a seating capacity of 15 or fewer for hire (although compensated indirectly) in interstate commerce, the organization is required by § 387.33(a) to maintain $1.5 million of financial responsibility.

Section 390.3 General applicability

Question 38: How do the FMCSRs apply to this organization?

Guidance: The vans used by this organization are CMVs under 49 CFR § 390.5 because they have a passenger capacity of more than 8 and are used to transport passengers for compensation in interstate commerce. However, the organization is eligible for the limited exception to regulatory applicability in § 390.3(f)(6) because (1) the vans are

designed or used to transport between 9 and 15 passengers, (2) the organization does not receive direct compensation, and (3) the vans meet none of the alternative definitions of a CMV such as a GVW or GVWR of 10,001 pounds or more. The applicable regulatory provisions listed in § 390.3(f)(6) are § 390.15 (maintain an accident register), § 390.19 (motor carrier identification report), § 390.21 (marking of CMVs), and §§ 392.80 and 392.82 (anti-distraction rules). The drivers of these vans do not need CDLs because the vehicles are not CMVs under 49 CFR § 383.5; both their passenger capacity and weight are below the applicable thresholds. Furthermore, the organization must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E.

Scenario 2: A school bus contractor is hired by a school district to transport high school athletes, faculty, and volunteers to and from an athletic competition in another State on a single day. During the following week, the same school bus contractor is hired by the same school district to transport elementary school students and faculty to and from a historic site in another State for an educational tour. The school bus used by the contractor is designed to transport more than 15 passengers including the driver. The contractor is not currently registered with FMCSA.

Section 365.101 Applications governed by these rules

Question 8: Is this contractor required to obtain operating authority registration for these bus tours?

Guidance: No. Although both examples of the school bus contractor's passenger transportation are in interstate commerce, the contractor is not required to obtain operating authority registration from the FMCSA for these interstate trips because it is engaged in transportation to or from school, and the transportation is organized,

sponsored, and paid for by the school district. The regulatory exception in 49 CFR section 372.103 and the statutory exemption in 49 USC 13506(a)(1) both apply to each type of passenger transportation conducted by the school bus contractor in this scenario.

Section 387.27 Applicability

Question 14: Is this school bus contractor subject to the financial responsibility requirements contained in 49 CFR part 387 subpart B?

Guidance: No, the school bus contractor qualifies for the exception in 49 CFR § 387.27(b)(4) because it is a motor carrier operating under contract providing transportation of preprimary, primary, and secondary students for extra-curricular trips organized, sponsored, and paid by a school district.

Section 390.3 General applicability

Question 39: Do any exceptions to the FMCRSs apply to this school bus contractor?

Guidance: No, the school bus contractor is a for-hire motor carrier operating CMVs, as defined in § 390.5, in interstate commerce. It is not eligible for the exception for "school bus operations" in 49 CFR § 390.3(f)(1) because the operations are defined in § 390.5 as the transportation of school children and/or personnel "from home to school and from school to home." In this scenario, the students and faculty gather at the school and are transported, not from and to home, but from the school premises to out-of-State venues and then back to the school premises. The school bus contractor must obtain safety registration under 49 U.S.C. 31134. The contractor must register by following the procedures in 49 CFR part 390 subpart E. In addition, the contractor is operating a school bus with a passenger capacity of at least 16, which also meets the definition of CMV under § 383.5. The drivers of the school buses must therefore hold CDLs with the

applicable endorsements, and the employer of such drivers must administer a drug and alcohol testing program in compliance with part 382.

Scenario 3: A private university transports only student athletes and university employees to games, sometimes in other States, in university-owned buses, which are designed to transport more than 15 passengers including the driver. The passenger transportation is financed by an allotment in the university athletic department's budget. The university is not currently registered with FMCSA.

Section 365.101 Applications governed by these rules

Question 9: Is the private university required to obtain operating authority registration for this passenger transportation?

Guidance: No, the private university is operating as a business private motor carrier of passengers and is not required to have operating authority registration. There is no compensation for this passenger transportation.

Section 387.27 Applicability

Question 15: Is the private university subject to the financial responsibility requirements in 49 CFR part 387 subpart B?

Guidance: No, the private university is a business operating as a private motor carrier of passengers (business).

Section 390.3 General applicability

Question 40: Do any exceptions to the FMCSRs apply to this motor carrier of passengers?

Guidance: The private university is a private motor carrier of passengers (business) operating CMVs, as defined in § 390.5, in interstate commerce. Except as noted in the

next paragraph, the transportation is subject to the requirements of parts 350 to 399 of title 49 relevant to passenger carrier operations. The university must register by following the procedures in 49 CFR part 390 subpart E. In addition, the private university's bus is a commercial motor vehicle as defined in 49 CFR § 383.5, and the driver must have a CDL with a Passenger endorsement and be enrolled in a drug and alcohol testing program consistent with 49 CFR part 382.

There is a regulatory exception in 49 CFR § 391.69, however, from certain driver qualification requirements relating to applications for employment, investigations and inquiries, and road tests for single-employer drivers employed by a private motor carrier of passengers (business). Additionally, private motor carriers of passengers (business) may also 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 [49 CFR § 393.67(a)(6)].

This guidance is based on the following:

- the financing of passenger transportation is from a university budget source, so there is no compensation for the transportation;
- the passenger transportation is not available to the public at large;
- the FMCSA views a private university as a commercial enterprise and its transportation of students and faculty as having a commercial purpose;
- the possible absence of ticket sales to sporting event spectators does not affect the commercial nature of the enterprise;
- whether the private university is tax exempt or has a non-profit status does not determine whether its passenger transportation is for-hire or private; and

- the passenger transportation is in furtherance of a commercial enterprise because the private university is a business and its athletic activities are an element of the institution's operations.

Scenario 4: A private high school owns and operates buses to transport students, baseball team members, and faculty to games in another State. One vehicle is a school bus with a capacity of 48 passengers. Two other vehicles are mini-buses designed to transport 26 passengers including the driver, and one other vehicle is a van designed to transport 15 passengers including the driver. The school does not transport students from home to school or vice versa. The passenger transportation is financed by an allotment in the school's athletic department budget. The school is not currently registered with FMCSA.

Section 365.101 Applications governed by these rules

Question 10: Is the private high school required to obtain operating authority for this passenger transportation?

Guidance: No, the private high school is a private motor carrier of passengers (business) and is not required to have operating authority registration.

Section 387.27 Applicability

Question 16: Is the private high school subject to the financial responsibility requirements in 49 CFR part 387 subpart B?

Guidance: No, the private high school is a private motor carrier of passengers (business).

Section 390.3 General applicability.

Question 41: Do any exceptions to the FMCSRs apply to this motor carrier of passengers?

Guidance: The private high school is a private motor carrier of passengers (business) operating CMVs, as defined in § 390.5, in interstate commerce. The school bus and mini-buses are CMVs. The van, which is designed to transport 15 passengers including the driver and is not transporting passengers for compensation, is not a CMV unless it is used to transport 16 or more passengers. The transportation in the larger vehicles, however, is subject to the requirements of parts 350 to 399 of title 49 relevant to passenger carrier operations. The school must register by following the procedures in 49 CFR part 390 subpart E. In addition, other than the van, the private high school's vehicles are CMVs as defined in 49 CFR § 383.5, and the drivers of these vehicles must have CDLs with Passenger endorsements and be enrolled in a drug and alcohol testing program consistent with 49 CFR part 382.

There is a regulatory exception in 49 CFR § 391.69, however, from certain driver qualification requirements relating to applications for employment, investigations and inquiries, and road tests for single-employer drivers employed by a private motor carrier of passengers (business). Additionally, private motor carriers of passengers (business) 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 [49 CFR § 393.67(a)(6)].

This guidance is based on the following:

- the financing of passenger transportation is from a high school budget source so there is no compensation for the transportation;

- the passenger transportation is not available to the public at large;
- the FMCSA views a private high school as a commercial enterprise and its transportation of students and facility as having a commercial purpose;
- the possible absence of ticket sales to sporting event spectators does not affect this commercial nature of the enterprise;
- whether the private high school is tax exempt or has a non-profit status does not determine whether its passenger transportation is for-hire or private; and
- the passenger transportation is in furtherance of a commercial enterprise because the private high school is a business, and its athletic activities are an element of the institution's operations.

Faith-Based Organizations and Passenger Transportation

Scenario 1: A faith-based organization sponsors a trip for its members to an amusement park in a neighboring State. The trip is announced in the organization's newsletters, but not advertised to the general public. Group members may invite friends and family, including non-members, to join. An event fee paid by all trip goers covers transportation, lodging, food, and admission to the amusement park. The organization's bus that will be used for the trip is designed to transport more than 15 passengers, including the driver. The trip will extend beyond the commercial zone of the city where the organization is located. The organization is not currently registered with FMCSA.

Section 365.101 Applications governed by these rules

Question 11: Is the faith-based organization required to obtain operating authority registration for its passenger transportation?

Guidance: Yes. The organization is providing interstate motor vehicle transportation for compensation indirectly through the event fee, and it must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. The organization is a for-hire motor carrier even though the trip is not available to the public at large.

Section 387.27 Applicability

Question 17: Is the faith-based organization subject to the financial responsibility requirements in 49 CFR part 387 subpart B?

Guidance: Yes, the organization is an interstate for-hire motor carrier of passengers compensated indirectly through the event fee. Because there is no applicable exception, it must maintain the $5 million of financial responsibility required to operate a vehicle with a seating capacity of at least 16 passengers [49 CFR § 387.33].

Section 390.3 General applicability

Question 42: Do any exceptions to the FMCSRs apply to this faith-based organization?

Guidance: No, the faith-based organization's bus is a CMV, as defined in § 390.5, operating in interstate commerce, and the faith-based organization is a motor carrier subject to all applicable FMCSRs, including parts 350 to 399. The organization must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. In addition, the faith-based organization is operating a passenger-carrying CMV, as defined in § 383.5 because it is designed to transport 16 or more passengers; the driver of the bus must therefore have a CDL with a Passenger endorsement and comply with the drug and alcohol testing regulations in part 382.

Scenario 2: A faith-based organization owns a bus which it uses to transport some of its members to an associated organization in another State. It suggests participating members

contribute money to help cover the fuel expense. The bus is designed to transport more than 15 passengers including the driver. The transportation of the faith-based organization members is not confined to a commercial zone. The organization is not currently registered with FMCSA.

Section 365.101 Applications governed by these rules

Question 12: Is the faith-based organization required to obtain operating authority registration for its passenger transportation?

Guidance: Yes, the money provided from organization's members for the trip constitutes direct compensation, making the faith-based organization a for-hire motor carrier. The organization must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E.

Section 387.27 Applicability

Question 18: Is the faith-based organization subject to the financial responsibility requirements in 49 CFR part 387 subpart B?

Guidance: Yes, the faith-based organization is using a bus with a seating capacity of 16 or more to transport passengers for hire in interstate commerce and is thus required by § 387.33(a) to maintain financial responsibility of at least $5 million. The monetary contribution requested of each passenger constitutes compensation, making the faith-based organization a for-hire motor carrier.

Section 390.3 General applicability

Question 43: Do any exceptions to the FMCSRs apply to this faith-based organization's bus operation?

Guidance: No, the faith-based organization's bus is a CMV, as defined in § 390.5, operating in interstate commerce, and the organization is a motor carrier subject to all applicable FMCSRs, including parts 350 to 399. The organization must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. In addition, the faith-based organization is operating a passenger-carrying CMV, as defined in § 383.5 because it is designed to transport 16 or more passengers; the driver of the organization's bus must therefore have a CDL with a Passenger endorsement and comply with the drug and alcohol testing regulations in part 382.

Scenario 3: To raise funds, a faith-based organization organizes a one-time trip to an amusement park in a neighboring State. The organization advertises the trip on its website and in various public places such as grocery stores, libraries, etc., making the trip open to the public. A per person fee will cover admission to the amusement park and round trip transportation. The faith-based organization will use its own bus, which is designed to transport more than 15 passengers including the driver. A group member is the volunteer bus driver. The passenger transportation is not confined to a commercial zone. The organization is not currently registered with FMCSA.

Section 365.101, Applications governed by these rules.

Question 13: Is the faith-based organization required to obtain operating authority registration for its passenger transportation?

Guidance: Yes, it is a for-hire motor carrier of passengers in interstate commerce. The organization must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E.

Section 387.27 Applicability.

Question 19: Is the faith-based organization subject to the financial responsibility requirements in 49 CFR part 387 subpart B?

Guidance: Yes, the faith-based organization is operating a passenger vehicle with a seating capacity of at least 16, for-hire in interstate commerce and is required by § 387.33(a) to maintain $5 million of financial responsibility.

Section 390.3 General applicability

Question 44: Do any exceptions to the FMCSRs apply to this faith-based organization's bus operation?

Guidance: No, the faith-based organization's bus is a CMV, as defined in § 390.5, operating for-hire in interstate commerce, and the organization is a motor carrier subject to all applicable FMCSRs, including parts 350 to 399. The organization must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. In addition, the faith-based organization is operating a passenger-carrying CMV, as defined in § 383.5 because it is designed to transport 16 or more passengers; the driver of the organization's bus must therefore have a CDL with a Passenger endorsement and comply with the drug and alcohol testing regulations in part 382.

Scenario 4: A high school cheerleading team wants to travel to a neighboring State to participate in a cheerleading competition. A parent of one cheerleader is a member of a faith-based organization that owns a bus designed to transport more than 15 passengers including the driver. The parent persuades the faith-based organization to take the team to the competition. The cheerleaders and their parents give the faith-based organization money for use of the bus, and the faith-based organization pays one of its members to

drive it. The trip is not confined to a commercial zone. The organization is not currently registered with FMCSA.

Section 365.101 Applications governed by these rules

Question 14: Is the faith-based organization required to obtain operating authority registration for its passenger transportation?

Guidance: Yes, it is a for-hire motor carrier of passengers in interstate commerce. The organization must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E.

Section 387.27

Applicability. Question 20: Is the faith-based organization subject to the financial responsibility requirements in 49 CFR part 387 subpart B?

Guidance: Yes, the faith-based organization is operating a passenger vehicle, with a seating capacity of at least 16, for-hire in interstate commerce and is required by § 387.33(a) to maintain $5 million of financial responsibility.

Section 390.3 General applicability

Question 45: Do any exceptions to the FMCSRs apply to this faith-based organization's bus operation?

Guidance: No, the faith-based organization's bus is a CMV, as defined in § 390.5, operating for hire in interstate commerce, and the organization is a motor carrier subject to all applicable FMCSRs, including parts 350 to 399. The organization must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. In addition, the faith-based organization is operating a passenger-carrying CMV, as defined in § 383.5 because it is designed to transport 16 or more passengers; the driver of the

faith-based organization's bus must have a CDL with a Passenger endorsement and comply with the drug and alcohol testing regulations in part 382.

Scenario 5: A faith-based organization with many charitable operations provides transportation to a variety of passengers – both members of the organization and nonmembers -- for a variety of events. For example, paid and volunteer collectors are sent to donation sites, the faith-based organization's employees are taken to and from the location of coat and food drives, donors are transported to fundraising events, daycare children are taken on trips, and individuals are provided transportation for job training programs. The faith-based organization's daycare center charges a fee for its services which include interstate passenger transportation. The faith-based organization uses different types of vehicles to transport its passengers. Some have a seating capacity of 16 or more passengers and others have a seating capacity of 15 or fewer passengers. All passenger-carrying vehicles are used throughout the faith-based organization's various transportation operations. In addition, all of the faith-based organization's drivers operate a vehicle with a seating capacity of 16 or more passengers to transport the daycare children on interstate trips on at least an occasional basis. All of the various passengers are transported into another State. The organization is not currently registered with FMCSA.

Section 365.101 Applications governed by these rules

Question 15: Is the faith-based organization required to obtain operating authority for its passenger transportation?

Guidance: Yes. The faith-based organization receives indirect compensation through the fees charged for the daycare center, so it is operating as an interstate, for-hire motor

carrier of passengers. There is no applicable exemption from operating authority registration. The organization must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E.

Section 387.27 Applicability

Question 21: Is the faith-based organization subject to the financial responsibility requirements in 49 CFR part 387 subpart B?

Guidance: Yes. The faith-based organization operates some passenger vehicles with a seating capacity of at least 16, for-hire in interstate commerce, and it is required by § 387.33(a) to maintain $5 million of financial responsibility.

Section 390.3 General applicability

Question 46: Do any exceptions to the FMCSRs apply to this faith-based organization?

Guidance: No. The organization operates CMVs, as defined in § 390.5, in interstate commerce as a for-hire motor carrier of passengers and is subject to the applicable FMCSRs in parts 350 to 399. The organization must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. The faith-based organization receives compensation for the transportation of daycare children from the collection of its fees, and all drivers and vehicles are engaged in such transportation. Therefore, all of the organization's drivers and vehicles are involved in for-hire, interstate passenger transportation. The limited exception for smaller vehicles in § 390.3(f)(6) does not apply to the organization because all of its passenger-carrying vehicles are designed or used to transport 16 or more passengers in interstate commerce. In addition, because some of the vehicles are designed to transport 16 or more passengers, and all of the drivers operate all of the different vehicles on occasion, all the drivers must have CDLs with a Passenger

endorsements, and the faith-based organization must comply with the drug and alcohol testing regulations in part 382.

Scenario 6: A religiously affiliated group of singers and musicians travels to various locations to play music at events and ceremonies. The group operates multiple vehicles to transport its members and their equipment. Each vehicle has a GVWR and GVW of 10,001 to 26,000 pounds, and is designed to transport more than 15 passengers including the driver. All of the vehicles are driven between multiple States for performances at faith-based events. The hosting organizations request event participants for donations which are provided to the musical group. Sometimes the musical group sells compact disks, T-shirts, souvenirs, or other merchandise at the events. The group is not currently registered with FMCSA.

Section 365.101 Applications governed by these rules

Question 16: Are any of the musical groups required to obtain operating authority registration for their transportation?

Guidance: No. The musical group's interstate transportation of its members is in furtherance of a commercial enterprise, but the group is not transporting passengers for compensation. The musical group instead is compensated for its musical services through accepted donations. The members of the group likewise do not pay a fee for their transportation. The musical group is thus a private motor carrier of passengers (business), and such carriers are not required to obtain operating authority registration.

Section 387.27 Applicability

Question 22: Is the musical group subject to the financial responsibility requirements in 49 CFR part 387 subpart B?

Guidance: No, the musical group is a private motor carrier of passengers (business).

Section 390.3 General applicability

Question 47: Do any exceptions to the FMCSRs apply to the transportation by the musical group?

Guidance: The musical group is a private motor carrier of passengers (business) and is operating CMVs, as defined in § 390.5, in interstate commerce. The transportation is thus subject to parts 350 to 399 of title 49 relevant to passenger carrier operations. The musical group must register by following the procedures in 49 CFR part 390 subpart E. In addition, because the musical group's vehicles are designed to transport more than 15 passengers including the driver, the drivers of these vehicles must have CDLs with a Passenger endorsement and be enrolled in a drug and alcohol testing program consistent with 49 CFR part 382.

There is a regulatory exception in 49 CFR § 391.69, however, from certain driver qualification requirements relating to applications for employment, investigations and inquiries, and road tests for single-employer drivers employed by a private motor carrier of passengers (business). Additionally, private motor carriers of passengers (business) may also 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 [49 CFR § 393.67(a)(6)].

This guidance is based on the following:

- The passenger transportation is not available to the public at large;
- The receipt of money for a musical performance constitutes a business transaction;

- The FMCSA views the musical groups as commercial enterprises and their transportation of members and equipment as having a commercial purpose;
- The possible absence of merchandise sales does not affect the commercial nature of the enterprise;
- Whether a musical group is tax exempt or has a non-profit status does not determine whether it is a business or non-business; and
- The transportation of passengers and equipment is an essential element of each group's operations, and such transportation is in furtherance of each commercial enterprise.

Miscellaneous Passenger Transportation

Scenario 1: An assisted living apartment community is a commercial business that owns and operates a bus designed to transport more than 15 passengers, including the driver. The drivers are employees of the apartment community. The bus is used to transport residents to medical appointments, shopping centers, theaters, etc. Routine local transportation within the State is financed by general fees paid by all community residents. The community office assesses a special charge for entertainment-related transportation. The general public is not allowed to use the bus service. Some trips to shopping centers and theaters go into a neighboring State, but all transportation remains in the commercial zone of the community. The assisted living apartment business is not currently registered with FMCSA.

Section 365.101 Applications governed by these rules

Question 17: Is the assisted living apartment community required to obtain operating authority registration for their passenger transportation?

Guidance: No. Although the community is an interstate for-hire motor carrier of passengers assessing special charges for entertainment trips to a neighboring State, operating authority registration is not required because the transportation is wholly within the commercial zone where the community is located (49 U.S.C. 13506(b)(1)).

Section 387.27 Applicability

Question 23: Is this assisted living apartment community subject to the financial responsibility requirements in 49 CFR part 387, subpart B?

Guidance: Yes, under 49 CFR § 387.33(a), the community must obtain and maintain $5 million of financial responsibility because it is a for-hire motor carrier of passengers operating in interstate commerce and at least one of its vehicles has seating for 16 or more passengers. The general fees paid by the community residents cover a multitude of services including local transportation. This indirect compensation arrangement for transportation is service for-hire. The special charge for entertainment-related transportation is direct compensation and is also a for-hire service.

Section 390.3 General applicability

Question 48: How do the FMCSRs apply to this assisted living community's transportation operations?

Guidance: The community is operating a CMV, as defined in § 390.5, in interstate commerce. The fact that all passenger transportation is entirely within a commercial zone is irrelevant for purposes of the "interstate commerce" component of the definition of CMV under § 390.5. The transportation is subject to all of the provisions in 49 CFR parts 350 to 399 relevant to passenger carrier operations. The community must register by following the procedures in 49 CFR part 390 subpart E. In addition, the 16-passenger van

is also a CMV vehicle as defined in 49 CFR § 383.5, and the driver therefore must have a CDL with a Passenger endorsement and be enrolled in a drug and alcohol testing program consistent with 49 CFR part 382.

Scenario 2: A youth camp transports campers in 15-passenger vans from an airport to the camp site and back, from the camp site to parks and other locations in neighboring States, and to facilities for medical care, etc. Trips to and from the airport extend beyond a 25-mile radius from the boundary of the airport and the commercial zone of the municipality that falls within the 25-mile radius of the airport. Other trips also extend beyond a commercial zone. Campers and camp employees are the only transported passengers. The vans have a GVW and GVWR below 10,001 pounds. The camp collects payment for the participating youth with a total package fee. The camp is not currently registered with FMCSA.

Section 365.101 Applications governed by these rules

Question 18: Is operating authority registration required?

Guidance: No, there is an applicable exemption from operating authority registration in 49 U.S.C. 13506(a)(16) for the transportation of passengers by 9 to 15-passenger motor vehicles operated by youth or family camps that provide recreational or educational activities.

Section 387.27 Applicability

Question 24: Is the camp subject to the financial responsibility requirements in 49 CFR part 387 subpart B?

Guidance: Yes, the camp is an interstate for-hire motor carrier of passengers compensated indirectly through camp fees. Because there is no applicable exception, it must maintain $1.5 million of financial responsibility (49 CFR § 387.33).

Section 390.3 General applicability

Question 49: How do the FMCSRs apply to this youth camp?

Guidance: If a single fee covers all services provided by the camp including transportation, most of the safety regulations would not apply to the camp. Although the camp operates CMVs as defined in 49 CFR § 390.5 in interstate commerce, it would qualify for the exception in § 390.3(f)(6) for CMVs designed or used to transport between 9 and 15 passengers not for direct compensation, and its vans meet none of the alternative definitions of a CMV (such as a GVW or GVWR of 10,001 pounds or more). The organization would therefore be required to comply only with those requirements specified in § 390.3(f)(6) – specifically, 49 CFR § 390.15 (maintain an accident register), § 390.19 (motor carrier identification report), § 390.21 (marking of CMVs), and §§ 392.80 and 392.82 (anti-distraction rules). Furthermore, the camp must register by following the procedures in 49 CFR part 390 subpart E.

However, if the camp collects a specific fee for passenger transportation, it is then receiving direct compensation and does not qualify for the limited exception in § 390.3(f)(6). With direct compensation, the camp must comply with the applicable regulations in 49 CFR parts 350 to 399 including motor carrier registration in accordance with § 390.201. The drivers of these 15-passenger vans with a GVW and GVWR below 10,001 pounds are not required to have a CDL and are not subject to employer conducted controlled substances and alcohol testing because such vehicles are not CMVs as defined

in § 383.5. Although the drivers are not required to have a CDL, they must be medically examined and certified in accordance with §§ 391.41, 391.43, and 391.45, and they are subject to the general driver qualification regulations in part 391 because such vehicles are CMVs as defined in § 390.5.

FMCSA will publish the regulatory guidance in this notice on FMCSA's Web site at www.fmcsa.dot.gov/regulations.

Issued under the authority delegated in 49 CFR 1.87 on:

T.F. Scott Darling, III
Administrator