

# Federal Motor Carrier Safety Administration

- Home
- Rules & Regulations
- Registration & Licensing
- Forms
- Safety & Security
- Facts & Research
- Cross Border
- About FMCSA

Home > Rules & Regulations > All Regulations > 390.5 Interpretation

Go

Overview
<b>Federal Regulations</b>
<a href="#">All</a>
<a href="#">Driver</a>
<a href="#">Vehicle</a>
<a href="#">Company</a>
<a href="#">FMCSA Hazmat</a>
<a href="#">Regulatory Guidance</a>
<a href="#">Who Must Comply with the Regulations?</a>
<b>Rulemakings and Notices</b>
<a href="#">Final Rules</a>
<a href="#">Interim Final Rules</a>
<a href="#">Proposed Rules</a>
<a href="#">Notices</a>
<b>Topics of Interest</b>
<a href="#">Hours of Service (HOS)</a>

## Interpretation for Part 390: General



**Search**  for  Go

Examples: *Medical Form, 391.53, 391*

[All Regulations](#)

< [390.3](#) 390.7 >

### §390.5 Definitions

*Question 1:* Do the definitions of "farm," "farmer" and "agricultural crops" apply to greenhouse operations?

*Guidance:* Yes.

*Question 2:* Is a vehicle used to transport or tow anhydrous ammonia nurse tanks considered a [CMV](#) and subject to [FMCSRs](#)?

*Guidance:* Yes, provided the vehicle's [GVWR](#) or [GCWR](#) meets or exceeds that of a [CMV](#) as defined in [§390.5](#) and/or the vehicle transports HM in a quantity that requires placarding.

*Question 3:* If a vehicle's [GVWR](#) plate and/or VIN number are missing but its actual gross weight is 10,001 pounds or more, may an enforcement officer use the latter instead of GVWR to determine the applicability of the [FMCSRs](#)?

*Guidance:* Yes. The only apparent reason to remove the manufacturer's [GVWR](#) plate or VIN number is to make it impossible for roadside enforcement officers to determine the applicability of the [FMCSRs](#), which have a GVWR threshold of 10,001 pounds. In order to frustrate willful evasion of safety regulations, an officer may therefore presume

**Related Links**

[Disclaimer Regulation](#)

Hazardous  
Materials

Medical Program

NAFTA Rules

Drug & Alcohol  
Testing

that a vehicle which does not have a manufacturer's GVWR plate and/or does not have a VIN number has a GVWR of 10,001 pounds or more if: (1) It has a size and configuration normally associated with vehicles that have a GVWR of 10,001 pounds or more; and (2) It has an actual gross weight of 10,001 pounds or more.

A motor carrier or driver may rebut the presumption by providing the enforcement officer the [GVWR](#) plate, the VIN number or other information of comparable reliability which demonstrates, or allows the officer to determine, that the GVWR of the vehicle is below the jurisdictional weight threshold.

*Question 4:* If a vehicle with a manufacturer's [GVWR](#) of less than 10,001 pounds has been structurally modified to carry a heavier load, may an enforcement officer use the higher actual gross weight of the vehicle, instead of the GVWR, to determine the applicability of the [FMCSRs](#)?

*Guidance:* Yes. The motor carrier's intent to increase the weight rating is shown by the structural modifications. When the vehicle is used to perform functions normally performed by a vehicle with a higher [GVWR](#), [§390.33](#) allows an enforcement officer to treat the actual gross weight as the GVWR of the modified vehicle.

*Question 5:* A driver used by a motor carrier operates a [CMV](#) to and from his/her residence out of State. Is this considered interstate commerce?

*Guidance:* If the driver is operating a [CMV](#) at the direction of the motor carrier, it is considered interstate commerce and is subject to the [FMCSRs](#). If the motor carrier is allowing the driver to use the vehicle for private personal transportation, such transportation is not subject to the [FMCSRs](#).

*Question 6:* Is transporting an empty [CMV](#) across State lines for purposes of repair and maintenance considered interstate commerce?

*Guidance:* Yes. The [FMCSRs](#) are applicable to drivers and [CMVs](#) in interstate commerce which transport property. The property in this situation is the empty [CMV](#).

*Question 7:* Does off-road motorized construction equipment meet the definitions of "motor vehicle" and "commercial motor vehicle" as used in sections [383.5](#) and [390.5](#)?

*Guidance:* No. Off-road motorized construction equipment is outside the scope of these definitions: (1) When operated at construction sites; and (2) when operated on a public road open to unrestricted public travel, provided the equipment is not used in furtherance of a transportation purpose. Occasionally driving such equipment on a public road to reach or leave a construction site does not amount to furtherance of a transportation purpose. Since construction equipment is not designed to

operate in traffic, it should be accompanied by escort vehicles or in some other way separated from the public traffic. This equipment may also be subject to State or local permit requirements with regard to escort vehicles, special markings, time of day, day of the week, and/or the specific route.

*Question 8:* What types of equipment are included in the category of off-road motorized construction equipment?

*Guidance:* The definition of off-road motorized construction equipment is to be narrowly construed and limited to equipment which, by its design and function is obviously not intended for use on a public road. Examples of such equipment include motor scrapers, backhoes, motor graders, compactors, tractors, trenchers, bulldozers and railroad track maintenance cranes.

*Question 9:* Are mobile cranes operating in interstate commerce subject to the [FMCSRs](#)?

*Guidance:* Yes, the definition of [CMV](#) encompasses mobile cranes.

*Question 10:* Does the [FHWA](#) define for-hire transportation of passengers the same as the former [ICC](#) did?

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

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

*Question 11:* A company has a truck with a [GVWR](#) under 10,001 pounds towing a trailer with a [GVWR](#) under 10,001 pounds. However, the [GVWR](#) of the truck added to the [GVWR](#) of the trailer is greater than 10,001 pounds. Would the company operating this vehicle in interstate

commerce have to comply with the [FMCSRs](#)?

*Guidance:* [§390.5](#) of the [FMCSRs](#) includes in the definition of [CMV](#) a vehicle with a [GVWR](#) or [GCWR](#) of 10,001 or more pounds. The section further defines [GCWR](#) as the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. Therefore, if the [GVWR](#) of the truck added to the [GVWR](#) of the trailer exceeds 10,001 pounds, the driver and vehicle are subject to the [FMCSRs](#).

*Question 12:* A [CMV](#) becomes stuck in a median or on a shoulder, and has had no contact with another vehicle, a pedestrian, or a fixed object prior to becoming stuck. If a tow truck is used to pull the [CMV](#) back onto the traveled portion of the road, would this be considered an accident?

*Guidance:* No.

*Question 13:* To what extent would the windshield and/or mirrors of a vehicle have to be damaged in order for it to be considered "disabling damage" as used in the definition of an accident in [§390.5](#)?

*Guidance:* The decision as to whether damage to a windshield and/or mirrors is disabling is left to the discretion of the investigating officer.

*Question 14:* Is the tillerman who controls the steerable rear axle of a vehicle so equipped a driver subject to the [FMCSRs](#) while operating in interstate commerce?

*Guidance:* Yes. Although the tillerman does not control the vehicle's speed or braking, the rear-axle steering he/she performs is essential to prevent the trailer from offtracking into other lanes or vehicles or off the highway entirely. Because this function is critical to the safe operation of vehicles with steerable rear axles, the tillerman is a driver.

*Question 15:* Does the definition of a "commercial motor vehicle" in [§390.5](#) of the [FMCSRs](#) include parking lot and/or street sweeping vehicles?

*Guidance:* If the [GVWR](#) of a parking lot or street sweeping vehicle is 10,001 or more pounds, and it operates in interstate commerce, it is a [CMV](#).

*Question 16:* Does a driver leasing company that hires, assigns, trains, and/or supervises drivers for a private or for-hire motor carrier become a motor carrier as defined by 49 [CFR 390.5](#)?

*Guidance:* No.

*Question 17:* May a motor carrier that employs owner-operators who have their own operating authority issued by the [ICC](#) or the Surface Transportation Board transfer the responsibility for compliance with the [FMCSRs](#) to the owner-operators?

*Guidance:* No. The term "employee," as defined in [§390.5](#), specifically includes an independent contractor employed by a motor carrier. The existence of operating authority has no bearing upon the issue. The motor carrier is, therefore, responsible for compliance with the [FMCSRs](#) by its driver employees, including those who are owner- operators.

*Question 18:* Must a person who is injured in an accident and immediately receives treatment away from the scene of the accident be transported in an ambulance?

*Guidance:* No. Any type of vehicle may be used to transport an injured person from the accident scene to the treatment site.

*Question 19:* What is the meaning of "immediate" as used in the definition of "accident?"

*Guidance:* The term "immediate" means without an unreasonable delay. A person immediately receives medical treatment if he or she is transported directly from the scene of an accident to a hospital or other medical facility as soon as it is considered safe and feasible to move the injured person away from the scene of the accident.

*Question 20:* A person involved in an incident discovers that he or she is injured after leaving the scene of the incident and receives medical attention at that time. Does the incident meet the definition of accident in [49 CFR 390.5](#)?

*Guidance:* No. The incident does not meet the definition of accident in [49 CFR 390.5](#) because the person did not receive treatment immediately after the incident.

*Question 21:* Do electronic devices which are advertised as radar jammers meet the definition of a radar detector in [49 CFR 390.5](#)?

*Guidance:* Devices that are said to reflect incoming energy passively or to transmit steadily on the same frequency as police radar units are not radar detectors because they do not detect radio microwaves. Devices that are said to detect and isolate the incoming signal and then to transmit on the same frequency to interfere with the police unit would qualify as radar detectors.

*Question 22:* Is a motor vehicle drawing a non-self-propelled mobile home that has one or more set of wheels on the roadway, a driveway-towaway operation?

*Guidance:* Yes, if the mobile home is a commodity. For example, the mobile home is transported from the manufacturer to the dealer or from the dealer or other seller to the buyer.

*Question 23:* Can a truck tractor drawing a trailer be a driveway-towaway operation?

*Guidance:* Yes, if the trailer is a commodity. For example, the trailer is transported from the manufacturer to the dealer or from the dealer or other seller to the buyer.

*Question 24:* Are trailers which are stacked upon each other and drawn by a motor vehicle by attachment to the bottom trailer, a driveaway-towaway operation.

*Guidance:* No. Only the bottom trailer has one or more sets of wheels on the roadway. The other trailers are cargo.

*Question 25:* The definition of a passenger **CMV** is a vehicle "designed to transport" more than 15 passengers, including the driver. Does that include standing passengers if the vehicle was specifically designed to accommodate standees?

*Guidance:* No. "Designed to transport" refers only to the number of designated seats; it does not include areas suitable, or even designed, for standing passengers.

*Question 26:* What is considered a "public road"?

*Guidance:* A public road is any road under the jurisdiction of a public agency and open to public travel or any road on private property that is open to public travel.

*Question 27:* An individual is transported to a hospital for observation or "check up" after an occurrence involving a CMV. Is this observation or check up considered "medical treatment," making the occurrence an "accident" for purposes of the FMCSRs?

*Guidance:* No. An individual who does not receive active medical intervention for injuries directly related to the occurrence, has not received "medical treatment" as that term is used in [§390.5](#). The observation or check up alone would not make the occurrence an "accident" for purposes of the FMCSRs.

*Question 28:* Is the [§390.5](#) definition of an accident met when a driver of a commercial motor vehicle (CMV) is changing lanes and a passenger car driver behind the CMV loses control, leaves the roadway, and hits a building sustaining damage requiring the vehicle to be towed?

*Guidance:* No. An occurrence in which a motor carrier's vehicle does not leave the roadway, or strike another vehicle, person or object does not meet the definition of an accident. No contact between the vehicles is not a recordable accident.

*Question 29:* A corporation (the parent corporation) owns subsidiary corporations that are for-hire motor carriers, each having their own separate operating authorities. The parent corporation does not operate commercial motor vehicles. However, the parent corporation exercises or retains management supervision, including supervision for safety compliance, and

provides policy/procedural manuals and driver safety manuals for the subsidiary corporations (for-hire motor carriers). Is the parent corporation considered a motor carrier as defined by 49 CFR [390.5](#)?

*Guidance:* No. A motor carrier is defined in 49 CFR [390.5](#) as a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. As long as the parent corporation does not engage in the transportation of goods or passengers for compensation (i.e., exercising daily control over drivers and equipment; and, in the case of a for-hire motor carrier, soliciting customers, and billing and collecting freight charges), it would not be considered a motor carrier. The exercise of managerial control by the parent corporation by establishing operational policies and procedures, or through other forms of general oversight, does not, in and of itself, make it a motor carrier under FMCSA regulations.



[Feedback](#) | [Privacy Policy](#) | [USA.gov](#) | [Freedom of Information Act \(FOIA\)](#) | [Accessibility](#)  
[Web Policies and Important Links](#) | [Site Map](#) | [Plug-ins](#)

[Federal Motor Carrier Safety Administration](#)  
400 7th Street SW, Washington, DC 20590 • 1-800-832-5660 • TTY: 1-800-877-8339  
[Field Office Roster](#)