

# Permit and Tax

The Business Side of Trucking



**J. J. Keller**  
& Associates, Inc.  
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# Permit and Tax

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**J. J. Keller & Associates, Inc.**

3003 Breezewood Lane

P.O. Box 368

Neenah, Wisconsin 54957-0368

Phone: (800) 327-6868

Fax: (800) 727-7516

*JJKeller.com*

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*JJKeller.com*

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# Permit and Tax

## Introduction

Different regulatory areas have different compliance standards. And, of course, different carriers also have different operations, even if engaging in similar business activities. Often there are several agencies, both federal and state, involved in compliance. This can make obeying federal and state motor carrier regulations somewhat confusing because there is no “one size fits all” answer to compliance. Factors such as vehicle weight, commodities transported, geographical area of operation, as well as for-hire or private carrier status all contribute to determining your compliance responsibilities. Knowing exactly which rules you are required to follow makes the task a little easier, and prevents unpleasant enforcement surprises. The compliance criteria for some of the major regulatory areas is provided in this manual. The *Permit and Tax: Business Side of Trucking* manual can help you decipher some of the compliance criteria. Our compliance “road map” that follows, along with the associated questions and answers, can give you a feel for what types of regulations and taxes with which you must comply, as well as the permits and credentials you may need to operate legally.

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**The Editors & Publisher**  
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# Permit and Tax

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# Federal Authority to Operate

## Federal Operating Authority

Federal and State governments have a responsibility to ensure the smooth and efficient transportation of persons and property in U.S. commerce and to provide a level of public protection from damage that may result from this transportation. Operating authority laws are intended to encourage efficient commercial transportation with uniform, established safeguards for the public.

Operating authority is a form of “business license” for motor carriers, and is in addition to vehicle licensing, fuel tax, and the safety requirements. In some cases, a carrier may be subject to both federal and state authority requirements.

Which government operating authority regulations apply to a carrier depends upon several factors:

- The kind of motor carriage conducted (for-hire, private, exempt).
- Where the motor carriage takes place (interstate, intrastate).
- The kind of commodity transported (exempt commodities, household goods, hazardous materials, general commodities, passengers).

Carriers not subject to federal operating authority regulation under the Federal Motor Carrier Safety Administration (FMCSA) include intrastate carriers (never crossing state boundaries, never furthering interstate commerce), private carriers of non-hazardous materials operating either interstate or intrastate, and for-hire carriers of exempt commodities. These carriers may be subject to state regulations, however, and before beginning any intrastate operations the carrier must comply with the requirements for authority registration in the state(s), as applicable.



## Compliance Point

### New Entrants

All new interstate carriers operating commercial motor vehicles as defined in 49 CFR §390.5 are subject to the new entrant requirements and must have a USDOT number.

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### For-Hire Carrier Authority

For-hire carriers are defined in the law as “a person providing motor vehicle transportation of property or passengers for compensation.”

For-hire operating authority is required for all interstate motor carriers, regardless of weight, providing for-hire motor vehicle transportation of passengers and regulated commodities. There is no minimum weight allowing operation without FMCSA operating authority; vehicles of any weight providing interstate for-hire motor carriage must comply.

For-hire includes common and contract carriers.

Contract carriers limit service to particular shippers, observing the terms and conditions in the written contract between the shipper and the carrier. Common carriers ship under the

## Federal: Authority to Operate

terms and conditions of their bill of lading, and their liability is governed by the provisions of the Carmack Amendment (49 United States Code (USC) 14706). However, in contract carriage, a carrier and shipper are allowed to enter into a service contract governed by specified rates and conditions (49 USC 14101). This kind of contract is not governed by the standard liability under 49 USC 14706; the shipper and carrier may make any reasonable contractual stipulations, except that they may not waive provisions governing the carrier's registration, insurance, or safety fitness.

The Federal government has oversight responsibilities for interstate for-hire motor carriage of property and passengers under 49 CFR Part 365. Before beginning operations, the carrier must submit a registration application to the FMCSA, file proof of required insurance, submit a Designation of Process Agents (BOC-3), and a \$300 fee for each application. When all fees and documents have been received and found to be in order by the FMCSA, an authority to operate is granted.

A motor carrier may have both common and contract authority but a separate registration fee is required for each.

Interstate for-hire motor carriers are issued a motor carrier number, also referred to as the "MC number." The MC number is issued with interstate operating authority, and is necessary before conducting interstate for-hire motor carriage. Federal operating authority requires no renewal; it remains valid as long as the carrier maintains proper insurance and conducts business in compliance with Federal and State requirements.



### Compliance Point

#### State Requirements

A number of states require authority registration for intrastate for-hire carriers operating intrastate within their boundaries. Before conducting intrastate transportation, check the requirements of the state of operation. This manual includes state-by-state authority requirements for property carriers.

#### Private Carrier Authority

A private carrier is a person or company which transports its own property by motor vehicle in interstate or foreign commerce for the furtherance of its own business or commercial enterprises other than trucking.

According to law, private carriage exists when:

1. The property is transported by a person engaged in a business other than transportation; and
2. The transportation is within the scope of, and furthers a primary business (other than transportation) of the person.

Because private carriers may only transport their own goods in their own vehicles to further a primary business that is not trucking, they do not require federal operating authority from the FMCSA. If a private carrier transports their own goods in their own vehicles but *also* wishes to transport goods for someone else for compensation, the private carrier would require for-hire operating authority.



## Federal: Authority to Operate

Even though federal authority is not required, the FMCSA will eventually be regulating certain private carriers in terms of financial responsibility. As part of the FMCSA's Unified Registration System (URS) rulemaking, new private carriers transporting hazardous materials in interstate commerce will eventually need to have proof of insurance on file with the FMCSA. And, all new interstate private carriers, regardless of commodity carried, will eventually need to file proof of designation of process agents (Form BOC-3) on file with the FMCSA.

The new requirements applicable to private carriers mentioned above were originally slated to become effective January 14, 2017 (new carriers), and April 14, 2017 (existing carriers), but in a *Federal Register* final rule on January 17, 2017, the FMCSA suspended these compliance dates and has also effectively suspended the implementation of URS. **The new requirements will be implemented at a later date to be determined by FMCSA.**



### Compliance Point

#### State requirements

A number of states require authority registration for intrastate private carriers operating within their boundaries. Therefore, even though federal operating authority is *not* required, private carriers should be aware of and comply with the authority requirements of the state(s) of operation.

Private motor carriers that operate vehicles considered to be “commercial motor vehicles” are subject to all state requirements for vehicle licensing, fuel tax, size and weight, and DOT safety laws.

#### BOC-3 — Designation of Agent for Service of Process

A process agent is a carrier's “statutory agent” and receives legal service of documents in any proceeding brought against the motor carrier in that state on behalf of the carrier. A “blanket designation” may be used to meet this requirement, rather than contracting with an agent in each state individually.

Authority granted by the FMCSA to operate as a for-hire carrier requires the applicant, as a condition of the authorization, to file a “Designation of Agent for Service of Process” (Form BOC-3) for each state in which operations will be conducted.

As part of the FMCSA's Unified Registration System (URS) rulemaking, new private carriers and for-hire exempt carriers will eventually be required to have a Designation of Agent of Service of Process/Form BOC-3 on file with the FMCSA.

The new Designation of Agent of Service of Process/Form BOC-3 filing requirements were originally slated to become effective January 14, 2017 (new carriers), and April 14, 2017 (existing carriers), but in a *Federal Register* final rule on January 17, 2017, the FMCSA suspended these compliance dates and has also effectively suspended the implementation of URS. **The new requirements will be implemented at a later date to be determined by FMCSA.**

#### Insurance/Financial Responsibility

Financial responsibility means having insurance policies or surety bonds sufficient to satisfy the minimum public liability requirements contained in 49 CFR §387.9 (property carriers) and §387.33 (passenger carriers).

## Federal: Authority to Operate

Public liability means liability for bodily injury, property damage, and environmental restoration. Motor carriers of property operating commercial motor vehicles in interstate, foreign, or intrastate commerce, and for-hire carriers of passengers operating in interstate or foreign commerce must have at least the minimum amount of insurance required by law.

### Financial Responsibility, Minimum Levels

Type of carriage	Commodity transported	January 1, 1985
(1) For-hire (in interstate or foreign commerce, with a gross vehicle weight rating of 10,001 or more pounds)	Property (non-hazardous)	\$750,000
(2) For-hire and Private (in interstate, foreign, or intrastate commerce, with a gross vehicle weight rating of 10,001 or more pounds)	Hazardous substances, as defined in 49 CFR 171.8 transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Division 1.1, 1.2, and 1.3 materials, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR §173.403	\$5,000,000
(3) For-hire and Private (in interstate or foreign commerce: in any quantity; or in intrastate commerce, in bulk only; with a gross vehicle weight rating of 10,001 or more pounds)	Oil listed in 49 CFR §172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CFR §171.8 and listed in 49 CFR §172.101, but not mentioned in (2) above or (4) below	\$1,000,000
(4) For-hire and Private (in interstate or foreign commerce, with a gross vehicle weight rating of less than 10,001 pounds)	Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 CFR §173.403	\$5,000,000
(5) For-hire fleet including only small freight vehicles with a gross vehicle weight rating of less than 10,001 pounds (see 49 CFR §387.303)	Commodities not subject to requirements in items (1) — (4) above	\$300,000

### Cargo insurance

Minimum levels of cargo insurance must be maintained by all household goods motor carriers in the amount of \$5,000 for loss of or damage to property carried on any one motor vehicle and \$10,000 for loss of or damage to property occurring at any one time and place.

### Public liability and property damage forms

All applicants for motor carrier, forwarder, and broker authorities must have specific insurance and legal process agent documents on file before the FMCSA will issue the authority.

Liability and cargo insurance forms must be submitted directly by the home office of the insurance company providing the coverage. The FMCSA does not provide copies of insurance forms.

The required filings vary based on the kind of registration involved.

## Federal: Authority to Operate

BMC-91	Uniform Motor Carrier Bodily Injury and Property Damage Certificate of Insurance (Full security limits)
BMC-91X	Motor Carrier Automobile Bodily Injury Liability and Property Damage Liability (Full coverage of security limits, or any level of aggregation of limits)
BMC-91MX	Foreign Motor Carrier (Mexican) Private or For-hire
BMC-82	Carrier Surety Bond
BMC-84	Broker Surety Bond
BMC-85	Broker Trust Fund Agreement

### *Cargo Insurance*

BMC-34	Certificate of Cargo Insurance
BMC-83	Cargo Surety Bond

### *Cancellation Notice*

BMC-35	Notice of Cancellation of Motor Carrier Insurance
BMC-36	Motor Carrier and Broker Surety Bond and Trust Fund Motor Carrier and Broker Surety Bond and Trust Fund Agreement Cancellation

### **Proof of required financial responsibility**

These forms are not actual insurance policies or surety bonds. They serve as proof that the motor carrier has the minimum levels of insurance in place. The form must be maintained at the motor carrier's principal place of business. Proof may be shown by any of the following:

MCS-90	Endorsement(s) for Motor Carrier Policies of Insurance for Public Liability under Sections 20 and 30 of the Motor Carrier Act of 1980 issued by an insurer (used with each BMC-91 or BMC-91X) See 49 CFR §387.15 for sample form.
MCS-90B	Endorsement for Motor Carriers of Passengers policies of insurance for public liability under Section 18 of the Bus Regulatory Reform Act of 1982 issued by an insurer. See 49 CFR §387.33 for sample form.
MCS-82	Motor Carrier Surety Bond for Public Liability under Section 30 of the Motor Carrier Act of 1980 issued by a surety. See 49 CFR §387.15 for sample form.
MCS-82B	A Motor Carrier of Passengers Surety Bond for public liability under Section 18 of the Bus Regulatory Reform Act of 1982 issued by a surety. See 49 CFR §387.33 for sample form.
BMC-32	Cargo insurance endorsement.

A Form MCS-90/90B remains valid if the insurance policy number on the form is still valid when the insurance is renewed. Whenever the policy number has changed or the policy has been canceled, a new Form MCS-90 must be completed and attached to the valid insurance policy.

# Federal

## USDOT Numbers/MCS-150

### MCSA-1/MCS-150

Effective December 12, 2015, all new motor carriers (private, for-hire, and exempt) operating vehicles defined as commercial motor vehicles in 49 CFR §390.5 wishing to operate in interstate commerce must file a Form MCSA-1 with the FMCSA and receive a USDOT number.

This form is an electronic-only form available at [www.fmcsa.dot.gov/registration](http://www.fmcsa.dot.gov/registration). In addition, for-hire motor carriers must obtain operating authority from FMCSA unless providing transportation of certain commodities that are exempt from the authority requirements.

Prior to December 12, 2015, new motor carriers would use the MCS-150 form to obtain a USDOT number. This form is not obsolete, however. The MCS-150 form is still to be used by **any existing** motor carrier when updating information on file with the FMCSA. Even if a carrier was a new entrant carrier after December 12, 2015, the MCS-150 is to be used to complete any necessary updates with the FMCSA.

An MCS-150 update is **required** every two years according to the schedule in 49 CFR §390.19. Form MCS-150 may be downloaded at [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov). Electronic filing is recommended and available at the same website.

### New Entrant Registration

After being issued a USDOT number (a new entrant registration), the carrier is subject to an 18-month safety-monitoring period. During this safety monitoring period, the carrier's roadside safety performance will be closely monitored to ensure the carrier's basic safety management controls are operating effectively. Also, during this 18-month safety-monitoring period, the motor carrier will receive a safety audit. Generally, the safety audit is conducted at least three months after the carrier has been granted new entrant registration. This allows the carrier to have sufficient records for the evaluation. The carrier may be subjected to an expedited safety audit or compliance review if any of seven violations listed in 49 CFR §385.308 are discovered during a roadside inspection or by any other means.

The FMCSA will notify the carrier of the results of the safety audit within 45 days. If FMCSA determines the new entrant has adequate basic safety management controls, the new entrant will be notified and will continue to be monitored for the remainder of the 18-month safety-monitoring period. If FMCSA determines the new entrant does not have adequate basic safety management controls, the new entrant will be notified that its new entrant registration will be revoked and its operations placed out of service unless the new entrant takes specific actions to remedy its safety practices.

A new entrant will automatically fail a safety audit and will receive notice that its USDOT new entrant registration will be revoked if found in violation of any of one of 16 regulations listed in 49 CFR §385.321.

### Vehicle Markings

Proper external identification of vehicles is an important compliance issue. Determining which vehicles need to display identification and what information must be shown can be confusing. Several factors influence the answer to these questions. First, where does the vehicle operate? Traveling across state lines is "interstate" transportation and subjects the vehicle to FMCSA rules. Operating solely within a single state and never crossing state lines is "intrastate" transportation, governed by the state of operation. Second, certain characteristics of the vehicle or load affect which vehicles must display identification. These characteristics include gross vehicle (or combination) weight/rating, number of passengers, or if the vehicle is transporting placardable hazardous materials.

## Federal: USDOT Numbers/MCS-150

All vehicles defined as commercial motor vehicles in 49 CFR §390.5 and operating in interstate commerce must display prescribed identification information according to 49 CFR §390.21.

The vehicle marking must show:

- The legal name or single trade name of the company operating the vehicle, and
- The motor carrier identification number, issued by the FMCSA, preceded by the letters “USDOT.”

According to 49 CFR §390.5, a commercial motor vehicle means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle:

- Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 10,001 pounds (4,536 kilograms) or more, whichever is greater; or
- Is designed or used to transport more than eight passengers (including the driver) for compensation; or
- Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
- Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 USC 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.

Carriers operating vehicles that travel interstate and fall within any one of the four categories listed above must have a USDOT number and legal company name displayed on the vehicle as required by the FMCSA marking requirements in 49 CFR §390.21. Both for-hire and private carriers must comply. Note that transporters of placardable amounts of hazardous materials must comply regardless of weight.

Short-term (30 days or less) rental/leased vehicles may be marked as described above or the vehicles may use the rental company’s information along with the documentation requirements described in 49 CFR §390.21(e). There are some regulatory options for legal identification of these short-term rental vehicles:

- The vehicle may display the motor carrier’s legal trade name and USDOT number; or
- The vehicle may display the legal trade name and USDOT number of the owner/lessor of the vehicle and carry in the vehicle the rental agreement between you (the renting carrier) and the lessor/owner. The rental agreement must clearly show:
  - The carrier’s legal name and the complete physical address of your principal place of business; and
  - The carrier’s USDOT number from the FMCSA. If the carrier does not have a USDOT number, the following additional information must be shown in the rental agreement:
    - Information stating whether the carrier is engaged in “interstate” or “intrastate” commerce;
    - Information showing whether the carrier is transporting hazardous materials in the rented CMV; and
    - The sentence: “This lessor cooperates with all Federal, State, and local law enforcement officials nationwide to provide the identity of customers who operate this rental CMV.”

## Federal: USDOT Numbers/MCS-150

The rental agreement must be carried on the rental CMV during the full term of the rental agreement.

This regulation allows an option for marking the vehicle only. The renting/leasing carrier operating the vehicle is still responsible for compliance with all FMCSA safety regulations, as well as DOT and state permitting requirements during the term of the lease/rental agreement. Any safety or enforcement events that occur while the renting/leasing carrier is operating the vehicle are attributed to the renting/leasing carrier's USDOT number. The general leasing regulations are found in 49 CFR §376.11, and the written lease requirements are in 49 CFR §376.12.

### Marking Intrastate Vehicles

Vehicles operating solely within the boundaries of a single state are subject to the identification rules of the state of operation. These rules vary widely from state to state. In many states for-hire carriers, regardless of weight, must have operating authority and display prescribed identification on the vehicle. Other states require for-hire and private carriers meeting a defined weight threshold to display state prescribed identification. States may choose to adopt the FMCSA marking rules and issue USDOT numbers to their intrastate carriers. This means intrastate only vehicles in these states must display a state-issued USDOT number followed by the two-letter state postal code.

Certain states require interstate carriers, also operating intrastate, to comply with both the FMCSA rules for interstate carriers and the state's intrastate marking rules. Motor carriers with a state-issued US DOT number later wishing to begin interstate operations must convert their number to an interstate USDOT number, which is done by updating the MCS-150.