

A Most Precious Commodity

FMCSR and ELog
compliance for
passenger carriers



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FMCSR and ELog compliance for passenger carriers



There is no denying that our country's passenger transportation system is safe. Serious crashes involving passenger-carrying commercial vehicles are relatively rare, and large buses in particular are the safest form of highway transportation out there, which is a great thing given their precious cargo.

But when accidents happen, they can be catastrophic and can grab national attention. And, where the headlines go, so too go the regulators and legislators in charge of protecting public safety. As one high-profile example of this, accidents caused by fatigue have led to a new rule that will require most passenger-carrying operations to use electronic logging devices (ELDs) in place of paper logs by **December 18, 2017**.

In fact, Congress and the U.S. Department of Transportation have been paying extra attention to motor carriers of passengers in recent years, largely as a result of major accidents involving multiple injuries and fatalities. Among them:

- A motorcoach accident in New York that left **15 dead and 18 injured**. Investigators said this “horrific” accident — described as one of the deadliest bus accidents ever investigated by the National Transportation Safety Board (NTSB) — was caused by driver fatigue, speeding, and “a corporate culture that fostered indifference to passenger safety.”
- A motorcoach rollover accident in Virginia that left **4 passengers dead and 49 injured**. Investigators found that the driver had fallen asleep at the wheel and the company failed to put critical safety practices in place.
- A deadly crash involving a medium-sized bus overturning in Arizona after the driver got distracted. The accident left **7 dead and 10 injured**.

Headlines like these are often followed by others, like:

- Jury Awards \$132 Million Settlement in Bus Crash Lawsuit
- Lawsuit Targets Tour Operator in Utah Bus Crash
- \$80 Million Settlement Over Bus Fire

Under the Microscope

As more accidents grab headlines, more and more passenger carriers are finding themselves under the microscope. In the past decade, the number of safety audits and inspections has increased dramatically for passenger carriers, and the results and consequences are significant.



Strike-force inspections: The FMCSA and state enforcement agencies have carried out an increasing number of special “strike force” inspections to shut down unsafe passenger carriers, and these types of inspection programs are expected to continue. During one such program over an 8-month period in 2013, regulators shut down 52 bus companies and removed 340 vehicles from the road.

In-house audits: Before 2005, the FMCSA says the average passenger carrier could expect to be audited roughly every eight years. Today that number is down to every three or four years for the roughly 12,000 regulated passenger carriers registered with the agency. In 2015, these passenger carriers underwent numerous comprehensive in-house audits, also known as “compliance reviews.”

Primary Vehicle Type	Compliance Reviews (2015)
Motorcoaches	958
Mini buses	403
Vans	275
School buses	155
Limousines	126

Through these audits, the FMCSA says it is now paying particular attention to passenger vehicle maintenance programs and compliance with the Americans with Disabilities Act (ADA).

Vehicle Type	Roadside Inspections
Buses	46,700
Schoolbuses	37,000
Motorcoaches	31,700
Vans	5,300
Limousines	1,300

Roadside inspections: Also in 2014, passenger-carrying vehicle drivers (of which there are more than 250,000 in the industry) endured more than 120,000 roadside inspections.

Fines: The latest government data shows that the fines can be significant when passenger carriers fail to comply with the FMCSRs.

Carrier Location	Violation	Penalty
Salem, CT	No operating authority	\$39,600
Cocoa, FL	False and/or missing logs	\$30,000
Commerce City, CO	Random drug testing	\$24,750
Houston, TX	Pre-employment drug testing	\$12,930
Champaign, IL	Operating vehicles without fixing identified defects	\$12,810

One passenger carrier was fined \$80,000 in 2010 for violating just six regulations. Operating in violation of registration requirements can cost \$25,000 per day.

CSA & Saferbus: The Compliance, Safety, Accountability (CSA) enforcement program — which scores motor carriers on seven compliance categories, like hours of service — holds passenger carriers to a higher standard, placing more weight on their violations. These scores can have a direct effect a carrier’s business, insurance rates, and interaction with enforcement. The FMCSA also actively encourages the public to report unsafe bus companies and to review carrier safety information through the widely publicized mobile app known as “Saferbus.”

With new funding and directives from Congress, the future holds continuing emphasis on passenger carrier safety and enforcement. For those who are not in compliance, the result of all this attention can be fines, penalties, lowered safety scores, mandates to improve compliance, out-of-service orders, and lost business, not to mention the significant consequences of accidents and litigation.

Companies that wish to stay out of the headlines and under the FMCSA’s radar need to commit significant attention and resources (including technology) to compliance and safety. But where to begin?

Compliance starts with a simple question:
“Am I subject to the rules?”

Compliance starts with a simple question that some carriers are too afraid to ask (or don’t know they need to ask): “Am I subject to the rules?”

Let’s examine the answer to that question and the various federal regulations that may apply when the answer is affirmative, including the rules for ELogs.

FMCSA Regulations

The FMCSA enforces the Federal Motor Carrier Safety Regulations (FMCSRs), which apply to all sorts of commercially operated vehicles, from pickup trucks and tankers to vans, motorcoaches, and everything in-between. The FMCSRs are designed with one goal in mind: preventing vehicle accidents. They accomplish this by setting minimum safety standards that all drivers, vehicles, and motor carriers must meet.

Among the requirements and guidelines:

- Making sure that drivers are fully trained, licensed, physically fit, and otherwise qualified to be behind the wheel, get enough rest to remain alert while driving, don’t drive too much, and don’t engage in activities or behaviors that could endanger public safety.
- Ensuring that vehicles meet all technical specifications and are inspected and maintained on a regular basis.
- Ensuring that the company is properly registered and authorized to carry passengers, maintains all required paperwork, and has financial backing in the event of an accident.
- Having policies, procedures, and other safety management controls in place to ensure safety and compliance.

In terms of passenger carriers, the FMCSRs apply to all employers, employees, and vehicles that are involved in the transportation of passengers across state lines* for a commercial purpose. This can include companies that operate vehicles for their own private use — such as a professional orchestra using buses for concert tours or a company shuttling its employees between facilities — as well as those transporting passengers for compensation, such as a charter bus service or airport/hotel shuttle.

The rules may apply whether the vehicles are leased, borrowed, rented, or owned, and whether empty or loaded. In some cases, vehicles operating strictly within a single state are also subject, depending on which rules the state has enacted. Some regulations even apply to operators who are normally exempt, such as schools or government agencies.

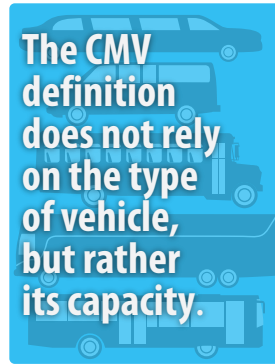
CMVs

For purposes of most of the FMCSRs, the definition of “commercial motor vehicle” (CMV) is found in 49 CFR Sec. 390.5. In part, a CMV is defined as any self-propelled or towed

*The FMCSRs apply to operations that are involved in “interstate” commerce, which is commerce that crosses state boundaries or otherwise affects such commerce. Commerce that remains strictly within a single state and that does not otherwise affect interstate commerce is said to be “intrastate” commerce that falls under the jurisdiction of state enforcement agencies.

motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle.

- Is designed or used to transport 9 or more passengers (including the driver) for compensation; or
- Is designed or used to transport 16 or more passengers (including the driver) not for compensation; or
- Has a gross vehicle weight rating (GVWR), gross combination weight rating (GCWR), gross vehicle weight (GVW), or gross combination weight (GCW) of 10,001 pounds or more, whichever is greater.



Note that the definition does not rely on the *type* of vehicle but rather its *capacity*. In terms of passenger carriers, regulated vehicles can include school buses, passenger vans, limousines, shuttle buses, mini-buses, full-size buses, motorcoaches, or any other type of vehicle that meets the definition above.

Despite how they may seem, the regulations are not “one size fits all.”

Despite how they may seem, the regulations are not “one size fits all.” Not all motor carriers need to comply with every section or part of the FMCSRs. There are exceptions and exemptions based on the type of operation involved, and this is where compliance can get tricky — especially for passenger carriers. Let’s break it down by operation type.

For-Hire Motor Carriers

For-hire motor carriers of passengers provide transportation of passengers in exchange for payment. Examples of for-hire passenger transportation include intercity bus services, charter bus services, canoe rental company bus services, and hotel bus services. According to the FMCSA, there are three key factors to determining if a motor carrier of passengers is a for-hire carrier:

1. The motor carrier provides interstate transportation of passengers for a commercial purpose, and
2. The motor carrier is compensated, either directly or indirectly, for the transportation service provided, and
3. The transportation service is generally available to the public at large.

Even 9-passenger vans can be subject to significant bodies of regulation.

For-hire motor carriers of passengers are subject to all the FMCSRs, with possible exceptions based on vehicle size and method of compensation. But as noted below, even nine-passenger vans can be subject to significant bodies of regulation.

Private Motor Carriers

The FMCSA has regulated for-hire passenger carriers since the 1930s, but private carriers

are a more recent addition to the agency's purview. Private motor carriers of passengers (PMCPs) became subject to the FMCSRs in 1995, and they are separated into two groups — business and non-business.

Capacity*	Weight/ Rating	Payment Type	Which FMCSRs apply?
16+	Any	Any	Subject to all FMCSRs, including rules for CDL licensing, electronic logs, drug and alcohol testing, insurance, driver qualification, hours of service, and vehicle maintenance and inspection.
9 to 15	Any	Direct**	Subject to all FMCSRs, including rules for insurance, driver qualification, electronic logs and hours of service, and vehicle maintenance and inspection. Exempt from CDL licensing and drug and alcohol testing if weight remains under 26,001 pounds.
	10,000 lbs. or less	Indirect	Exempt from most FMCSRs but must keep an accident log, mark vehicles with a USDOT number, and comply with prohibitions on texting and use of hand-held cell phones.
	10,000 lbs. or more	Indirect	Subject to all FMCSRs based on weight of the vehicle. Exempt from CDL licensing and drug and alcohol testing if weight remains under 26,001 pounds.
8 or fewer	10,000 lbs. or less	Any	May be subject to insurance requirements.
<p>* Including driver, and based on either the manufacturer's design or the actual use.</p> <p>**Direct compensation means payment made to the motor carrier by the passengers or a person acting on behalf of the passengers for the transportation services provided, and not included in a total package charge or other assessment for highway transportation services.</p>			

Private motor carriers of passengers became subject to the FMCSRs in 1995.

Business PMCPs

Like for-hire carriers, business PMCPs transport passengers as part of a commercial operation but they do not provide passenger transportation services to the general public. Examples include companies that use buses to transport their own employees and professional musicians who use buses for concert tours. Again, this does NOT include commercial businesses that provide transportation to the general public.

Business PMCPs are subject to the same regulations and exceptions as for-hire carriers as described above, except that:

- The insurance requirements do not apply; and
- There are “grandfathering” provisions for certain drivers who have been employed by the same company for at least the past 20 years.

Non-business PMCPs

Non-business PMCPs also provide private transportation of passengers but not for the benefit of a commercial purpose. Examples include churches and other religious groups, sports clubs, charitable organizations, private schools and other educational organizations, fraternal societies or lodges, scouting groups, civic or scientific organizations, and other charitable groups that may purchase or lease buses for the private transportation of their respective groups.

This does not include individuals providing personal conveyance of passengers for recreational purposes; a non-business PMCP must be engaged in some type of group activity.

Non-business PMCPs are subject to many of the same regulations and exceptions as for-hire carriers as described above, but are exempt from insurance, most paperwork requirements, and other restrictions such as:

- Employment applications, driving-record checks, previous-employer inquiries, annual reviews, and annual list of driver violations;
- Road tests;
- Certain medical-related requirements;
- Driver qualification and investigation files;
- Drivers' logs;
- Certain vehicle maintenance records; and
- Daily post-trip vehicle inspection reports.

Though exempt from the above requirements, non-business PMCPs may choose to enact a safety program that includes compliance with all the safety rules as a way to mitigate risk and liability.

HOS and ELog Compliance

The FMCSA and roadside enforcement personnel pay particular attention to Hours of Service (HOS) compliance. In fact, the top two most-cited violations discovered during passenger-carrier audits in 2015 were for false logs and for failing to prepare logs in the form and manner required. Such violations can result in thousands of dollars in penalties.

Fortunately, as a whole, the passenger-carrier industry has an excellent track record when it comes to compliance with the actual HOS limits:

- 10 hours of driving allowed after 8 hours off duty,
- All driving completed within the first 15 on-duty hours of the day, and
- No more driving after working 60 on-duty hours in any 7 consecutive days (or after 70 hours in 8 days for companies that operate every day of the week).

The top 5 roadside HOS violations all relate to logs.

The record has not been quite as clean with logs, also known as records of duty status. Log “form and manner” violations consistently rank among the top 10 roadside violations for passenger carriers, and the top 5 roadside HOS violations from 2015 all relate to logs.

The ELD rule will require most motor carriers — including passenger carriers — to install and use ELDs in place of paper logs by December 18, 2017.

The new federal mandate for electronic logging devices (ELDs) will solve many of these issues. The ELD rule will require most motor carriers — including passenger carriers — to install and use ELDs in place of paper logs by December 18, 2017. Not only will ELDs

virtually eliminate these top HOS violations overnight, they will also provide a variety of other benefits for compliance and risk management.

Who will need ELDs?

The ELD rules will apply to almost all interstate commercial motor vehicle drivers who are required to use logs, whether working for private or for-hire transporters. The rules will extend to most in-state-only drivers as well, depending on how and when the states choose to implement the ELD rules.

Top 5 Roadside HOS Violations for Passenger Carriers		
Rank	Violation	Description
1	395.8	Log Violation (General/Form and Manner)
2	395.8(f)(1)	Driver's Log Not Current
3	395.8(a)	No Log
4	395.8(k)(2)	Driver Failing To Retain Previous 7 Days' Logs
5	395.8(e)	Log Falsification

Implementation

Implementing an ELD solution is not as simple as “plug and play.” The transition from paper to electronic logs takes an investment of time and resources and a lot of upfront planning. The clock is ticking fast, and the December 18, 2017 deadline is looming.

“Where do you see yourself in three to five years?”

Preparation starts with the question, “Where do you see yourself in three to five years?” Do you want a barebones ELD solution that only does logs, or do you want asset tracking, fuel-tax reporting, log auditing, vehicle inspection tracking, recordkeeping management, and other key tools that can streamline your operations? You need to decide what you want your ELD system to accomplish for you and what that will mean for your current staffing and practices.

Once you have unwavering buy-in from senior management, gather a team and start researching the solution that will work best for you. Be sure to consider what each solution will mean for your business in terms of hardware and software needs, installation difficulty, training, staffing, and so on.

Once you pick an ELD solution, develop an implementation timeline that gets you up and running well in advance of the ELD compliance deadline. Remember, December 2017 will arrive much sooner than you think! Schedule your resources, train everyone involved (including supervisors and maintenance personnel), and then roll out the ELDs in phases, starting with your best and/or most receptive drivers.

Benefits

Once your ELD solution is in place, you should see a variety of benefits such as:

- Time savings from going paperless, which can translate into more driving time, less frustration, and better customer service;
- Better CSA scores and fewer roadside HOS violations (most common log violations will simply go away, and your dispatchers and drivers will always know where they stand on HOS compliance);
- Quicker log auditing, especially for team drivers;
- Easier and quicker roadside inspections;
- More efficient scheduling;
- Quicker daily vehicle inspections;
- Easier fuel-tax compliance and reporting; and
- Liability protection from the tracking of vehicle location, engine use, speed, and other data captured by the ELD.

Some ELD providers may even offer additional tools and benefits that can make compliance easier and your operations more efficient.



Don't Delay — Now is the Time!

If you operate passenger-carrying commercial motor vehicles, your operation is “under the microscope” like never before. With Congress, federal and state regulators, attorneys, and even the news media cracking down on passenger carriers — and with the clock ticking on the ELD mandate — now is the time to take action. Don't wait until you see your company name in the headlines, get a call from the DOT, or procrastinate too long to implement an effective ELD solution by the 2017 deadline.

About the Author



Daren Hansen, J. J. Keller & Associates, Inc.

A Senior Editor in the Transportation Publishing Department of Editorial Resources at J. J. Keller & Associates, Inc., Daren Hansen is responsible for writing and editing a variety of safety- and compliance-related publications, products and services for the trucking and busing industries. Daren's primary areas of expertise include the Federal Motor Carrier Safety Regulations related to hours of service, cargo securement, drug and alcohol testing, and driver qualification. He has spoken and written extensively on these topics, both for clients and for industry groups, and has contributed to trade publications and radio programming. Daren is a member of the National Private Truck Council's Legislative & Regulatory Advisory Committee.

About J. J. Keller & Associates, Inc.

Since its beginning as a one-man consulting firm in 1953, J. J. Keller & Associates, Inc. has grown to become the most respected name in safety and regulatory compliance. Now over 1,400 associates strong, J. J. Keller serves over 560,000 customers — including over 90% of the Fortune 1000® companies. The company's subject-matter expertise spans nearly 1,500 topics, and its diverse solutions include ELogs and mobile technology; training via online courses, streaming video or DVD; online management tools; managed services; consulting services; online and print publications; forms and supplies.

Transportation professionals rely on J. J. Keller in-house expertise and wide selection of products and services to reduce risk and improve regulatory compliance, performance management and operational efficiency. For more information, visit JJKeller.com, JJKellerElogs.com and JJKellerservices.com.

How We Can Help

As the nation's leading regulatory compliance and best practice experts, you can rely on us to help you comply with motor carrier safety requirements, reduce violations, and prevent crashes.

Encompass® ELog & Fleet Compliance System

Using J. J. Keller's electronic logging devices (ELDs), this system accurately records driver time, eliminating some of the most common Hours of Service violations. Plus, the electronic DVIR function helps drivers conduct complete vehicle inspections to prevent related violations. The system also offers back-office compliance and performance reporting and works with virtually any smart device, including our J. J. Keller® Compliance Tablet™.

J. J. Keller® Driver DataSense™ Service

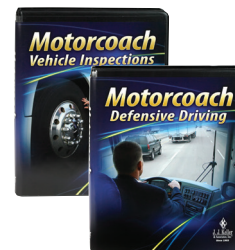
Larger fleets today have to manage a significant amount of data, often coming from multiple sources, including ELDs, driver log books, and time sheets. With the J. J. Keller® Driver DataSense™ Service, we consolidate your Hours-of-Service data, audit all of it, and provide you with expert regulatory guidance to keep your fleet in compliance. Our team of knowledgeable Client Service Specialists will analyze your ELD data, paper logs, and time sheets to provide:

- Guidance on how to fix driver compliance and performance issues
- A holistic view of your Hours of Service compliance, combining all of your driver data
- Complete visibility to all of your data through our online Client Information Center
- Automatic notifications of compliance issues

How We Can Help *(continued)*

Motorcoach Driver Training

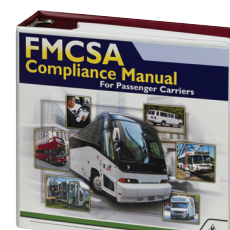
Teach drivers to operate safely with J. J. Keller's vehicle inspection and defensive driving training programs specific to the motorcoach industry. Available in multiple formats.



FMCSA Compliance Manual for Passenger Carriers

This online manual provides comprehensive information regarding FMCSRs specific to passenger-carrying vehicles, including the word-for-word regulations, how-to-comply explanations, and DOT's official interpretations.

We also cover a wide range of federal and state government regulatory agencies including OSHA, EPA, DOL and others. Visit us at JJKeller.com or call 800-327-6868.



Multiple formats available.



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