

VI. Federal Motor Carrier Safety Regulations

The FMCSR are applicable to all employers, employees, and commercial motor vehicles which transport property or passengers in interstate commerce.¹ Whether transportation is interstate or intrastate is determined by the essential character of the commerce, manifested by a shipper's fixed and persisting intent at the time of the shipment which is ascertainable from all the facts and circumstances surrounding the transportation scheme.² The central focus in this inquiry is whether or not the ultimate destination of the shipment is identified as a location outside the state at the time the transportation is arranged.³ By statute, a State may require carriers involved in intrastate transportation or hauling exempt commodities to comply with the FMCSR.⁴

The FMCSR are minimum standards for commercial vehicles.⁵ Every interstate motor carrier and driver must be familiar with and comply with the standards contained in the FMCSR.⁶ A motor carrier cannot allow a vehicle to be operated unless it meets the minimum standards set forth in the FMCSR.⁷ Motor carriers are required to make sure all drivers comply with the provisions of the FMCSR.⁸ No one can aid, abet, encourage or require a motor carrier or driver to violate the FMCSR.⁹

****Practice Pointer:** If the trucking company operates as an intrastate carrier, review state law to determine if the state has adopted the FMCSR as applicable to all operations in the state.

A. Exemptions to the FMCSR

The FMCSR do not apply to (1) motor vehicles transporting only school children and teachers to or from school, (2) motor vehicles providing taxicab services, (3) motor vehicles operated by or for a hotel to transport hotel patrons between the hotel and a local station, (4) motor vehicles controlled and operated by a farmer and transporting the farmer's agricultural products or supplies to the farm, (5) transportation of ordinary livestock, agricultural or horticultural commodities, (6) motor vehicles used to distribute newspapers, (7) transportation of passengers or property incidental to transportation by aircraft or transportation of property by motor carrier because of adverse weather conditions or mechanical failure of the aircraft, (8) the operation of a motor vehicle in a national park or monument, (9) motor vehicles carrying less than 15 passengers to and from work, (10) transportation of used pallets and empty shipping containers, (11) transportation of natural, crushed or vesicular rock to be used for decorative purposes, wood chips, or broken, crushed or powdered glass, (12) transportation entirely within a municipality or in a commercial zone adjacent to a municipality unless part of a continuous carriage from outside the municipality or zone, (13) transportation by motor vehicle provided casually, occasionally, or reciprocally but not as a regular occupation or business.¹⁰ An entity engaged in a business other than transportation for hire does not have to comply with the FMCSR.¹¹

1 49 C.F.R. § 390.3(a).

2 Progressive Casualty Insurance Co. v. Hoover, 768 A.2d 1157 (Penn. 2001); Southern Pacific Transportation Co. v. Interstate Commerce Commission, 565 F.2d 615 (9th Cir. 1977).

3 Pittsburgh-Johnston-Altoona Express, Inc. v. Pennsylvania Public Utility Commission, 554 A.2d 137 (Penn. 1989); Progressive Casualty Insurance Co. v. Hoover, 768 A.2d 1157 (Penn. 2001).

4 Schmidt v. Royer, 574 N.W.2d 618 (S.D. 1998).

5 49 C.F.R. § 393.1(a).

6 49 C.F.R. § 393.1(b).

7 49 C.F.R. § 393.1(b).

8 49 C.F.R. § 390.11.

9 49 C.F.R. § 390.13.

10 49 U.S.C. § 13506; 49 C.F.R. § 372.101.

11 49 U.S.C. § 13505.

The FMCSR do not apply to a company that hires an independent contractor to transport goods when the company is not in the transportation business.¹²

B. Non-Exempt Commodities

Although agricultural products are generally exempt from the FMCSR, by statute, the transportation of the following products are NOT exempt from the FMCSR: animal fats, butter, canned fruits and vegetables, carnuaba wax, charcoal, cheese, coal, cocoa beans, coffee beans, cotton yarn, diatomaceous earth, frozen dinners, alfalfa pellets, certain feeds, fertilizer, fish, flagstone, flour, forest resin products such as turpentine, certain fruits and berries, popped popcorn, precooked rice, wheat germ, gravel, any product of a slaughtered animal, hay sweetened with molasses, hemp fiber, green and salted hides, insecticides, limestone, monkeys, race horses, show horses, zoo animals, lumber (rough sawed or plain), maple syrup, certain meals, meat and meat products (fresh, frozen, or canned), milk and cream (condensed or sterilized in hermetically sealed cans), chocolate, molasses, roasted or boiled peanuts, certain oils, racing pigeons, beet pulp, sugar cane pulp, rock (except to be used for decorative purposes), rubber, sand, potting soil, top soil, frozen soup, sugar, cane syrup, maple syrup, tea, cigars and cigarettes, smoking tobacco, french fried potatoes, and wool products.¹³

C. Compliance with State Law

According to the provisions of the FMCSR, every commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the State or jurisdiction in which it is being operated unless the FHWA imposes a higher standard of care in which case the federal regulation must be complied with.¹⁴ States cannot pass any law, rule or regulation relating to rates, routes or services of any motor carrier¹⁵ except that state government may impose highway route controls or limitations based on the size or weight of a motor vehicle or the hazardous nature of cargo¹⁶ and may also mandate minimum amounts of insurance in order to operate on state highways.¹⁷

D. Designating Unsafe Vehicles as Out-of-Service

A vehicle cannot be operated in such a manner as to likely cause an accident or breakdown of the vehicle except that a vehicle discovered in an unsafe condition may be driven to the nearest place where repairs can safely be performed.¹⁸ The FHWA routinely inspects commercial vehicles and will declare out-of-service any vehicle which by reason of its mechanical condition or loading would likely cause an accident or a breakdown of the vehicle.¹⁹

DOT Post-Accident Inspection

INSERT DOT INSPECTION FORM

In this case, the driver's brakes failed because they were out of adjustment.

¹² Ek v. Herrington, 939 F.2d 839 (9th Cir. 1991).

¹³ 49 C.F.R. § 372.115.

¹⁴ 49 C.F.R. § 392.2.

¹⁵ 49 U.S.C. § 14501(c).

¹⁶ 49 U.S.C. § 14501.

¹⁷ 49 U.S.C. § 14501.

¹⁸ 49 C.F.R. § 396.7.

¹⁹ 49 C.F.R. § 396.9(c).

FHWA inspectors must record the results of any Driver Equipment Compliance Check²⁰ and place an out-of-service sticker on any vehicle which fails an inspection.²¹ A vehicle marked out-of-service may not be operated until all repairs required by the out-of-service notice have been satisfactorily completed.²² No person may remove an out-of-service sticker prior to completion of the repairs required by the out-of-service notice.²³ A driver must deliver an inspection report at his next stop at the carrier's terminal or facility.²⁴ If the driver is not scheduled to stop at a terminal or facility within 24 hours of receipt of an inspection report, then the driver must immediately mail a copy of the report to the motor carrier.²⁵ A carrier must certify to the FHWA within 15 days of the inspection that all violations noted in the report have been corrected and retain a copy of the report for one year from the date of the inspection.²⁶

E. Unsafe Dispatch

A motor carrier cannot schedule a run or require the operation of a commercial vehicle between points in such period of time as would necessitate the vehicle being operated at speeds greater than those prescribed by the jurisdictions in or through which the vehicle is being operated.²⁷

****Practice Pointer:** Compare bills of lading and driver logs to determine the average speed of the driver on his runs.

F. Pre-Trip Inspections & End of Day Reports

A driver cannot operate a commercial motor vehicle until he has inspected the following parts and satisfied himself that the parts are in good working order: (1) Service brakes including trailer brake connections, (2) Parking brakes, (3) Steering mechanism, (4) Lighting devices and reflectors, (5) Tires, (6) Horn, (7) Windshield wipers, (8) Rear vision mirrors, and (9) Coupling devices.²⁸ A driver must also inspect and be satisfied that all emergency equipment is working properly.²⁹ Before operating a vehicle, a driver must be satisfied that the vehicle is in safe operating condition, review the last driver vehicle inspection report, and if defects were noted and repaired, sign the report.³⁰

Every driver must prepare a report in writing at the completion of each day on each vehicle operated by the driver concerning the condition of the same parts and accessories examined during the pre-trip inspection.³¹

Daily Inspection Report

INSERT PICTURE Daily Inspection Report

20 49 C.F.R. § 396.9(b).

21 49 C.F.R. § 396.9(c)(1).

22 49 C.F.R. § 396.9(c).

23 49 C.F.R. § 396.9(c)(3).

24 49 C.F.R. § 396.9(d).

25 49 C.F.R. § 396.9(d).

26 49 C.F.R. § 396.9(3).

27 49 C.F.R. § 392.6.

28 49 C.F.R. § 392.7.

29 49 C.F.R. § 392.8.

30 49 C.F.R. § 396.13.

31 49 C.F.R. § 396.11(a).

The Daily Inspection Report is usually on the back of the Driver's Log in the logbook.

The report must identify the vehicle and list any defect which would affect the safe operation of the vehicle or result in its mechanical breakdown.³² The driver must sign the report and must complete a report for each vehicle operated during the workday.³³ Prior to requiring or permitting a driver to operate a vehicle, the motor carrier must examine the driver's report and repair any defect which would likely affect the safe operation of the vehicle.³⁴ The original driver inspection report and the certification of any repairs performed to correct the defects identified in the report must be retained for three months from the date the report was prepared.³⁵

****Practice Pointer:** Request copies of all daily inspection reports for the three-month period preceding the accident.

G. Annual Inspections

A commercial vehicle must undergo an annual inspection at least once during the preceding 12-month period, and an annual inspection report must be kept with the vehicle.³⁶

Annual Inspection

INSERT PICTURE Annual Inspection

The trucking company may perform the inspection itself or choose to have a commercial garage, leasing company, truck stop, or other similar commercial business perform the inspection.³⁷ A periodic inspection performed by an FHWA agent may substitute for the annual inspection as long as the FHWA inspection meets the minimum standards for annual inspections.³⁸ A motor carrier must insure that any work performed on the brakes of a commercial vehicle, including all inspections, maintenance, service or repairs to the brakes, is completed by a qualified brake inspector who has completed an apprenticeship program and has brake-related experience and training of at least one year.³⁹

****Practice Pointer:** Request a copy of the annual inspection report covering the date of the accident.

H. Accident Register

For accidents that occur after April 29, 2003, trucking companies are required to maintain an accident register listing information about each accident involving its drivers for a three year period.⁴⁰ The accident register must contain the following information for each accident: (1) the date of the accident, (2) the city and state where the accident occurred, (3) the driver's name, (4) the number of injuries, (5) the number of fatalities, and (6) the involvement of hazardous materials.⁴¹ The company

32 49 C.F.R. § 396.11(b).

33 49 C.F.R. § 396.11(b).

34 49 C.F.R. § 396.11(c).

35 49 C.F.R. § 396.11(c)(2).

36 49 C.F.R. § 396.17(c).

37 49 C.F.R. § 396.17(d)-(e).

38 49 C.F.R. § 396.23.

39 49 C.F.R. § 396.25.

40 49 C.F.R. § 390.15(b).

41 49 C.F.R. § 390.15(b).

must also keep copies of all accident reports generated by or on behalf of State or other governmental entities or insurers for each accident listed on the accident register.⁴²

****Practice Pointer:** Request a copy of the accident register for the three year period preceding the accident and any related documentation.

I. Loading Procedures

Commercial vehicles must be loaded in such a manner as to prevent its cargo from leaking, spilling, blowing or falling from the vehicle.⁴³ The cargo must be immobilized or secured to prevent shifting to the extent that the vehicle's stability or maneuverability is affected.⁴⁴ All vehicle structures, systems, parts and components used to secure cargo must be in proper working order with no damaged or weakened components that will adversely affect their performance.⁴⁵ Cargo must be firmly immobilized or secured on or within a vehicle by structures of adequate strength, dunnage or dunnage bags, shoring bars, tiedowns or a combination of these.⁴⁶ Articles of cargo that are likely to roll must be restrained by chocks, wedges, a cradle or equivalent means to prevent rolling.⁴⁷ Federal regulations provide for specific means of securing logs,⁴⁸ building products,⁴⁹ metal coils,⁵⁰ paper rolls,⁵¹ concrete pipes,⁵² intermodal containers,⁵³ automobiles,⁵⁴ heavy equipment,⁵⁵ crushed vehicles,⁵⁶ and boulders.⁵⁷ Cargo must be secured so that when a vehicle decelerates at a rate of 20 feet per second, the cargo will remain on the vehicle and will not penetrate the vehicle's front-end structure.⁵⁸ Any vehicle having a load or component which extends beyond the sides more than 4 inches or more than 4 feet beyond the rear must have the extremities marked with a red or orange fluorescent warning flag.⁵⁹ If the projecting load is 2 feet in width or less, then only one flag is required at the extreme rear of the load.⁶⁰ If the projecting load is greater than 2 feet in width, two flags must be used at the extreme width and length on each side of the load.⁶¹

J. Responsibilities for Proper Loading

A driver cannot operate a commercial vehicle unless (1) the cargo is properly distributed and adequately secured, (2) the means of fastening the cargo is secured, and (3) the cargo does not obscure the driver's view or interfere with the movement of his arms or legs.⁶² A driver must assure himself that

42 49 C.F.R. § 390.15(b).

43 49 C.F.R. § 393.100(b).

44 49 C.F.R. § 393.100(c).

45 49 C.F.R. § 393.104(b).

46 49 C.F.R. § 393.106(b).

47 49 C.F.R. § 393.106(c).

48 49 C.F.R. § 393.116.

49 49 C.F.R. § 393.118.

50 49 C.F.R. § 393.120.

51 49 C.F.R. § 393.122.

52 49 C.F.R. § 393.124.

53 49 C.F.R. § 393.126.

54 49 C.F.R. § 393.128.

55 49 C.F.R. § 393.130.

56 49 C.F.R. § 393.132.

57 49 C.F.R. § 393.136.

58 49 C.F.R. § 393.114(d).

59 49 C.F.R. § 393.87.

60 49 C.F.R. § 393.87(b).

61 49 C.F.R. § 393.87(b).

62 49 C.F.R. § 392.9(a).

the load is adequately secured before he drives the vehicle and must examine the cargo and its load-securing devices within the first 50 miles after beginning a trip and adjust the load-securing devices as needed.⁶³ The driver must also reexamine the cargo and its securing devices when he makes a change of his duty status, after the vehicle has been driven for three hours, or after the vehicle has been driven 150 miles whichever comes first.⁶⁴ The load inspection procedures do not apply to a sealed trailer when the driver has been ordered not to open it or to a trailer that has been loaded in a manner that makes inspection of the cargo impracticable.⁶⁵

If a member of the public is injured because of improperly loaded cargo, both the shipper who loaded the cargo and the carrier may be held liable for the injury.⁶⁶ A shipper that assumes responsibility for loading the vehicle can be held liable for improperly securing a load under a common law theory of negligence, and federal regulations will provide evidence of the proper standard of care to be utilized by the shipper in loading the vehicle.⁶⁷ When the driver himself is injured in an accident, the shipper cannot be held liable for the improper loading of the vehicle unless the loading defects are latent and concealed and cannot be discerned by ordinary observation by the agents of the carrier.⁶⁸ In determining if the defect in loading is patent and should have been discovered by the driver, a court will take into consideration the experience of the driver⁶⁹ and whether the driver is given assurances by the shipper's employees that there is no defect in the loading of the cargo.⁷⁰ A motor carrier cannot be held liable for improperly loading a sealed trailer since the driver does not have the opportunity to inspect the load.⁷¹ When a person is injured during the loading or unloading process at the shipper or consignee's facility, the trucking company's liability will be determined according to the rules applicable to the facility owner, and the company will be subject to the same liability or freedom from liability as the owner.⁷²

****Practice Pointer:** Consider a cause of action against the entity that loaded the vehicle in addition to the trucking company.

K. Warning Devices for Stopped Vehicles

A vehicle must be equipped with three bi-directional emergency reflective triangles or at least 6 fusees or 3 liquid-burning flares.⁷³ Liquid-burning flares, fusees, oil lanterns, or any signal produced by a flame shall not be carried on a commercial vehicle transporting hazardous materials, flammable gas, or flammable liquid whether loaded or empty.⁷⁴ Whenever a commercial vehicle is stopped upon the traveled portion of a highway or the shoulder of a highway, the driver of the stopped vehicle shall immediately activate the hazard warning flashers and continue the flashing until the driver places

63 49 C.F.R. § 392.9(b)(2).

64 49 C.F.R. § 392.9(b)(3).

65 49 C.F.R. § 392.9(b)(4).

66 Burke v. J.F. Allen Company, 182 F.3d 907 (W.Va. 1999); Skeie v. Mercer Trucking Co., Inc., 61 P.3d 1207 (Wash. 2003).

67 Reed v. Ace Doran Hauling & Rigging Co., 1997 WL 177849 (N.D. Ill. 1997); Symington v. Great Western Trucking Co., Inc., 668 F.Supp. 1278 (S.D. Iowa 1987); Locicero v. Interpace Corp., 266 N.W.2d 423 (Wis. 1978).

68 Decker v. New England Public Warehouse, Inc., 749 A.2d 762 (Maine 2000); Fontanne v. Federal Paper Board Co., Inc., 434 N.E.2d 331 (Ill. 1982).

69 Alitalia v. Arrow Trucking Co., 977 F.Supp. 973 (D.Ariz. 1997).

70 Franklin Stainless Corp. v. Marlo Transportation Corp., 748 F.2d 865 (4th Cir. 1984); Ebasco Services, Inc. v. Pacific Intermountain Express Co., 398 F.Supp. 565 (S.D.N.Y. 1975).

71 Miller v. Rollins Leasing Corp., 1999 WL 739539 (Ohio 1999).

72 Zuniga v. Pay Less Drug Stores, N.W., Inc., 917 P.2d 584 (Wash. 1996); Taylor v. Duke, 713 N.E.2d 877 (Ind. 1999).

73 49 C.F.R. § 393.95(f)(2).

74 49 C.F.R. § 393.95(g).

warning devices next to the unit.⁷⁵

The driver must place warning devices as soon as possible after stopping his vehicle, but in any case no less than 10 minutes, at the following points: (1) 10 feet away from the vehicle in the direction of approaching traffic, (2) 100 feet away from the vehicle in the center of the traffic lane or the shoulder of the road occupied by the vehicle in the direction of approaching traffic, and (3) 100 feet away from the vehicle in the direction away from approaching traffic.⁷⁶ The placement of warning devices is not required within the business or residential district of a municipality except at night or times when highway lighting is insufficient to make a vehicle discernable at a distance of 500 feet.⁷⁷ If a vehicle is stopped within 500 feet of a curve, crest of a hill or other obstruction to view, the driver shall place a warning signal up to 500 feet in the direction of the obstruction to give ample warning to other drivers.⁷⁸ If the vehicle is stopped on a divided or one-way highway, the driver must place one warning device at a distance of 200 feet and one warning device at a distance of 100 feet in a direction toward approaching traffic and one warning device within 10 feet of the rear of the vehicle.⁷⁹ The requirements for activating flashers and placing warning markers is not applicable to business and residential districts during daylight hours.⁸⁰

Warning Triangles

INSERT PICTURE OF WARNING DEVICES

Most truck drivers use warning triangles to alert a motorist approaching from the rear.

If gasoline or other flammable liquid leaks from a stopped vehicle, no emergency signal producing a flame shall be lighted or placed except at such a distance as will assure the prevention of a fire or explosion.⁸¹ A lighted fusee or other flame-producing emergency signal cannot be attached to any part of the commercial vehicle.⁸² Flame producing emergency signals cannot be used for any commercial vehicle transporting explosive material, any cargo tank vehicle used for the transportation of flammable, explosive or poisonous material (whether loaded or empty), and instead a driver must use emergency reflective triangles, red electric lanterns or red emergency reflectors.⁸³

When an injured party's vehicle collides with a stopped tractor-trailer which has no warning signals or devices in place, the federal regulations requiring the placement of warning signals near the vehicle can be used to establish the carrier's negligence.⁸⁴ A carrier can be held liable for an accident involving a stopped commercial vehicle if the driver fails to place warning markers next to a stopped vehicle, even if the vehicle has been stopped for less than 10 minutes, since regulations require the driver to place the signals as soon as possible.⁸⁵ A failure to place warning signs after remaining stopped in the roadway for more than 10 minutes may subject a carrier to punitive damages on the basis

⁷⁵ 49 C.F.R. § 392.22(a).

⁷⁶ 49 C.F.R. § 392.22(b)(1).

⁷⁷ 49 C.F.R. § 392.22(b)(2).

⁷⁸ 49 C.F.R. § 392.22(b)(2).

⁷⁹ 49 C.F.R. § 392.22(b)(2).

⁸⁰ Merzigian v. Sunbury Transport, Ltd., 523 F.Supp.2d 116 (D.Mass. 2007).

⁸¹ 49 C.F.R. § 392.22(b)(2).

⁸² 49 C.F.R. § 392.24.

⁸³ 49 C.F.R. § 392.25.

⁸⁴ Kimberlin v. PM Transport, Inc., 563 S.E.2d 665 (Va. 2002); Hageman v. TSI, Inc., 786 P.2d 452 (Col. 1989); Brandes v. Burbank, 613 F.3d 658 (7th Cir. 1980); Bruno v. Jackson, 2005 WL 1240979 (M.D. Pa.).

⁸⁵ Johnson v. Gmeinder, 2000 WL 246585 (D.Kan. 2000); Wallace v. Ener, 521 F.2d 215 (5th Cir. 1975).

that the failure to comply with this guideline demonstrates a conscious indifference to public safety.⁸⁶ A driver can be held liable for stopping in an emergency lane on the shoulder of the roadway at night near lanes of high traffic because of the probability that his vehicle will not be seen by other drivers and the availability of safer resting spots.⁸⁷

****Practice Pointer:** Determine if the tractor was equipped with emergency warning devices if the driver did not place them out before the accident.

L. Lights, Reflectors & Retroreflective Sheeting

Headlights must be capable of steady burning at all times.⁸⁸ All lighting devices required on vehicles must be capable of being operated at all times.⁸⁹ Guidelines for the color and positioning of lights on commercial vehicle are located in 49 C.F.R. § 393.11. Lights and reflectors on the vehicle must meet visibility requirements under nighttime conditions.⁹⁰ Reflectors must be applied to the side and rear of the trailer.⁹¹ The required lamps and reflectors may not be obscured by the tailboard, by any part of the load, by dirt or otherwise.⁹²

Retroreflective sheeting must be applied to each side of a trailer from as close to the front and rear as practicable.⁹³ The rear of each trailer must be equipped with retroreflective sheeting across the full width of the trailer and must have two pairs of white strips at the top corners of the trailer.⁹⁴ Every vehicle must be equipped with a hazard warning signal that will cause all turn signals to flash simultaneously as a hazard warning when necessary.⁹⁵ The wiring for the electrical system must comply with all applicable engineering standards.⁹⁶ If a claimant collides with the rear of a trailer in nighttime conditions, then the carrier can be held liable if the reflectors and lights are not operating properly or if there is no retroreflective sheeting on the trailer.⁹⁷

Retroreflective Taping

INSERT RETROREFLECTIVE TAPING

Retroreflective taping is supposed to reflect headlights to warn approaching motorists of the trailer in the roadway.

****Practice Pointer:** Retain a conspicuity expert to demonstrate the problems caused by lack of reflectors on a trailer.

M. Brakes

⁸⁶ Fowler v. Smith, 516 S.E.2d 845 (Ga. 1999); Alfonso v. Robinson, 514 S.E.2d 615 (Va. 1999).

⁸⁷ Heatherly v. Alexander, 421 F.3d 638 (8th Cir. 2005).

⁸⁸ 49 C.F.R. § 393.24.

⁸⁹ 49 C.F.R. § 393.9.

⁹⁰ 49 C.F.R. § 393.25.

⁹¹ 49 C.F.R. § 393.13(d).

⁹² 49 C.F.R. § 392.33 & 393.9(b).

⁹³ 49 C.F.R. § 393.13(c).

⁹⁴ 49 C.F.R. § 393.13(c)(2)-(3).

⁹⁵ 49 C.F.R. § 393.19.

⁹⁶ 49 C.F.R. § 393.28.

⁹⁷ Quay v. Crawford, 788 So.2d 76 (Miss. 2001).

A commercial vehicle or combination of vehicles must have brakes adequate to control the movements of the vehicle or combination of vehicles and to stop and hold the vehicle.⁹⁸ Each vehicle must meet applicable service, parking and emergency brake system requirements.⁹⁹ Every commercial vehicle, except an agricultural commodity trailer or pulpwood trailer, must be equipped with a parking brake system adequate to hold the vehicle under any condition of loading.¹⁰⁰ The driver of an agricultural commodity trailer or pulpwood trailer must carry chocking blocks sufficient to prevent movement when the trailer is parked.¹⁰¹ Every commercial vehicle must have brakes on all wheels¹⁰² and have an emergency braking system sufficient to stop a breakaway trailer independent of brake air, hydraulics and other pressure and controls.¹⁰³

Brake tubing and hosing must be installed in such a manner that insures proper and continued function of the tubing or hosing and must be secured against chafing, kinking, or other mechanical damage.¹⁰⁴ All connections for air, vacuum or hydraulic braking must be secure and free of leaks, constrictions or other defects.¹⁰⁵ Brake lining must be installed on the brakes in such a manner as to prevent fading and grabbing and must be of adequate thickness to provide safe and reliable stopping of the vehicle.¹⁰⁶ The pushrod travel cannot exceed 80% of the rated stroke listed by the chamber manufacturer.¹⁰⁷ The reservoirs in the braking system must maintain adequate air pressure.¹⁰⁸ All brakes must be capable of operating at all times.¹⁰⁹ A vehicle must be equipped with a pressure gauge for the brake system, and a signal that provides a warning to the driver when a failure occurs in the vehicle's service brake system.¹¹⁰ Automatic adjusting brakes are required to have an out-of-adjustment indicator light which activates if the brakes are out of adjustment.¹¹¹ The service brakes must be capable of generating a percentage of braking force and stopping distance in relation to the weight of the vehicle.¹¹²

A carrier can be held liable for an accident which occurs because a vehicle's brakes have not been properly maintained¹¹³ or because the brakes do not meet the minimum braking force requirements.¹¹⁴ A carrier can be held liable for punitive damages if the driver fails to conduct a pre-trip inspection and as a result fails to discover and correct problems with the vehicle's brakes.¹¹⁵ A maintenance facility cannot be held liable for negligent maintenance of a vehicle's brakes if the driver fails to conduct the necessary pre-trip inspection to determine the condition of the brakes prior to the vehicle's operation and the driver operates the vehicle despite the brakes feeling funny.¹¹⁶

98 49 C.F.R. § 393.40(a).

99 49 C.F.R. § 393.40(a).

100 49 C.F.R. § 393.41(a).

101 49 C.F.R. § 393.41(a).

102 49 C.F.R. § 393.42.

103 49 C.F.R. § 393.43.

104 49 C.F.R. § 393.45.

105 49 C.F.R. § 393.45(d).

106 49 C.F.R. § 393.47.

107 49 C.F.R. § 393.47(e).

108 49 C.F.R. § 393.50.

109 49 C.F.R. § 393.48(a).

110 49 C.F.R. § 393.51(a).

111 49 C.F.R. § 393.53.

112 49 C.F.R. § 393.52.

113 Brannan v. Nevada Rock & Sand Co., 823 P.2d 291 (Nev. 1992).

114 Schmidt v. Royer, 574 N.W.2d 618 (S.D. 1998).

115 Burrows v. Core-Mark International, Inc., 54 F.3d 785 (9th Cir. 1995).

116 Id.

****Practice Pointer:** Trailer brakes are usually manually adjusted, and the slack adjusters are often outside of federal minimum limits. Retain a trucking expert to inspect the unit to determine if the brakes are properly adjusted.

N. Rear Guards

Every trailer must have a rear impact guard to protect against a vehicle going under the trailer during a rear impact collision with the exception of pole trailers, pulpwood trailers, low-chassis vehicles, special purpose vehicles and wheels back vehicles.¹¹⁷ For trailers manufactured after January 26, 1998, the outermost surfaces of the horizontal member of the guard must extend within 4 inches of the side extremities of the trailer,¹¹⁸ and the bottom edge of the guard must be less than 22 inches from the ground¹¹⁹ with the guard itself within 12 inches of the rear extremity of the trailer.¹²⁰ For trailers manufactured after December 31, 1952, the guard must be within 18 inches of the side extremities of the trailer, 30 inches from the ground, and within 24 inches of the rear extremity of the trailer.¹²¹ The rear impact guard must be substantially constructed and attached by means of bolts, welding, or other comparable means.¹²² If the rear impact guard breaks in a rear-end collision, then the carrier can be held liable for improper welding and attachment of the guard and aggravation of the claimant's injuries resulting from the vehicle going under the trailer.¹²³

Rear Guard

INSERT PICTURE OF REAR GUARD from Internet

The rear guard is designed to keep a vehicle from traveling under the trailer in a rear end collision.

Although the FMCSR only apply to carriers, a manufacturer can also be held liable for a trailer that fails to meet federal guidelines requiring rear guards since this failure is evidence that a jury can consider in determining if the trailer is a defective product.¹²⁴ Federal regulations require a rear bumper or guard designed to provide protection during rear-end collisions with the trailer, and a trailer without a bumper or guard does not comply with this provision even though the trailer is less than the minimum height from the ground.¹²⁵ A manufacturer can be held liable for a defective rear guard, even if it conforms to minimum federal standards, if the claimant can prove that the industry standard required stricter guidelines than the federal rules or that the guard was still unreasonably dangerous despite compliance with the federal guidelines.¹²⁶

****Practice Pointer:** If the accident involves crush damage from riding under the rear of a trailer, consider a cause of action based on a defective rear guard. Preserve the rear guard, if present, and consider filing an action against both the trucking company and manufacturer.

117 49 C.F.R. § 393.86.

118 49 C.F.R. § 393.86(a)(2).

119 49 C.F.R. § 393.86(a)(3).

120 49 C.F.R. § 393.86(a)(4).

121 49 C.F.R. § 393.86(b)(1).

122 49 C.F.R. § 393.86(b)(2).

123 Quay v. Crawford, 788 So.2d 76 (Miss. 2001).

124 Hagan v. Gemstate Manufacturing, Inc., 982 P.2d 1108 (Or. 1998).

125 Id.

126 Detillier v. Sullivan, 714 So.2d 244 (La. 1998); Rapp v. Singh, 152 F.Supp.2d 694 (E.D. Pa. 2001); Garcia v. Rivera, 160 A.D.2d 274 (N.Y. 1990).

O. Windows & Mirrors

Windows and windshields may be tinted as long as the tinted glazing is not less than 70 percent of the light at normal incidence.¹²⁷ No device may be mounted on the windshield lower than 6 inches below the upper edge of the windshield.¹²⁸ Decals must be placed within 4 inches of the bottom of the windshield.¹²⁹

Every commercial vehicle must be equipped with a windshield wiping system with at least two windshield wiper blades.¹³⁰ The vehicle must be equipped with a method to remove ice, snow or frost on the outside of the windshield and condensation on the inside of the windshield from the driver's view.¹³¹ Every vehicle must be equipped with two rear-vision mirrors, one at each side, firmly attached to the outside of the vehicle, and the mirrors must reflect to the driver a view of the highway to the rear and along both sides of the vehicle.¹³²

P. Fuel Systems

Liquid fuel tanks must comply with construction guidelines and meet pressure and performance requirements.¹³³ The fuel system must be located within the width of the motor vehicle, and the fuel line must be flexible and secured against chafing, kinking or other causes of mechanical damage.¹³⁴ No driver or employee of a motor carrier may smoke or use an open flame in the vicinity of a motor vehicle being fueled or fuel a vehicle with the engine running, except when necessary.¹³⁵ When fueling a vehicle, the nozzle of the fuel hose must be in continuous contact with the intake pipe of the fuel tank, and the driver may not permit any person to engage in such activities as would be likely to result in fire or explosion.¹³⁶ No person shall dispatch or drive a commercial vehicle where an occupant has been affected by carbon monoxide, where carbon monoxide has been detected in the interior of the vehicle, or when a mechanical condition of the vehicle is discovered which would be likely to produce a hazard to the occupants by reason of carbon monoxide.¹³⁷

Q. Frames, Axles & Steering Systems

The frame of any commercial vehicle cannot be cracked, loose, sagging or broken.¹³⁸ Bolts or brackets securing the cab or the body of the vehicle to the frame cannot be loose, broken or missing.¹³⁹ The cab compartment doors or door parts used as an entrance or exit cannot be missing or broken or wired shut.¹⁴⁰ The hood must be securely fastened and the front bumper cannot be missing, loosely attached or protruding beyond the confines of the vehicle so as to create a hazard.¹⁴¹ Wheels and rims

127 49 C.F.R. § 393.60(d).

128 49 C.F.R. § 393.60(e)(1).

129 49 C.F.R. § 393.60(e)(2).

130 49 C.F.R. § 393.78(a).

131 49 C.F.R. § 393.79.

132 49 C.F.R. § 393.80(a).

133 49 C.F.R. § 393.67.

134 49 C.F.R. § 393.65.

135 49 C.F.R. § 392.50.

136 49 C.F.R. § 392.50.

137 49 C.F.R. § 392.66(a).

138 49 C.F.R. § 393.201(a).

139 49 C.F.R. § 393.201(b).

140 49 C.F.R. § 393.203(a).

141 49 C.F.R. § 393.203(c) & (e).

cannot be cracked or broken and no nuts or bolts may be missing or loose.¹⁴² No axle positioning part can be cracked, broken, loose, missing or out of alignment.¹⁴³ Adjustable axle assemblies cannot have locking pins missing or disengaged and the leaf springs, coil springs and torsion bars cannot be cracked, broken, or out of position.¹⁴⁴ The air pressure regulator valve cannot allow air into the suspension system until at least 55 psi is in the braking system, and air leakage shall not be greater than 3 psi in a 5 minute time period when the air gauge shows normal pressure.¹⁴⁵ A carrier can be held liable for the rear axle separating from the chassis and striking another vehicle without proof of negligence since the separation of the axle would not have happened without the negligence of the driver in failing to properly maintain the chassis and axles.¹⁴⁶

The steering wheel must be secured and cannot have any spokes cracked through or missing.¹⁴⁷ The steering column must be securely fastened and universal joints cannot be worn, faulty or repaired by welding.¹⁴⁸ All components of the power steering system must be in operating condition and have sufficient fluid in the reservoir.¹⁴⁹

R. Towing Devices

Coupling devices connecting vehicles must be designed, constructed, and installed so that when the combination is operated in a straight line the path of the towed vehicle will not deviate more than 3 inches to either side of the path of the vehicle that tows it.¹⁵⁰ The fifth wheel is the device on the back of the tractor that locks onto the kingpin on the trailer to connect the tractor to the trailer. Every fifth wheel must have a locking mechanism to prevent separation of the upper and lower half of the fifth wheel assembly.¹⁵¹ A trailer must be connected with a tow-bar that is structurally adequate for the weight being drawn and is properly and securely mounted with a locking device that prevents accidental separation of the trailer.¹⁵² A trailer must be connected to the towing vehicle by a safety device to prevent the trailer from breaking loose in the event the tow-bar fails or is disconnected.¹⁵³

****Practice Pointer:** If the accident involves detachment of a trailer, consider a cause of action based on a defective tow bar. Remember to preserve the tow bar, if present, and consider filing an action against both the trucking company and manufacturer.

S. Tires

No commercial motor vehicle may be operated on any tire that (1) has body ply or belt material exposed through the tread or sidewall, (2) has any tread or sidewall separation, (3) is flat or has an audible leak, or (4) has a cut to the extent that the ply or belt material is exposed.¹⁵⁴ Any tire on the front wheels of a bus, truck, or truck tractor must have a tread groove pattern depth of at least 4/32 of

142 49 C.F.R. § 393.205.

143 49 C.F.R. § 393.207(a).

144 49 C.F.R. § 393.207(b)-(e).

145 49 C.F.R. § 393.207(f).

146 Gautreaux v. W.W. Rowland Trucking Co., Inc., 757 So.2d 87 (La. 2000).

147 49 C.F.R. § 393.209(a).

148 49 C.F.R. § 393.209(c) & (d).

149 49 C.F.R. § 393.209(e).

150 49 C.F.R. § 393.70(a).

151 49 C.F.R. § 393.70(b).

152 49 C.F.R. § 393.70(c).

153 49 C.F.R. § 393.70(d).

154 49 C.F.R. § 393.75(a).

an inch at any point in a major tread groove.¹⁵⁵ All other tires must have a tread groove pattern depth of at least 2/32 of an inch when measured in a major tread groove.¹⁵⁶ Motor vehicles cannot be operated with loads that exceed a weight greater than the tire's capacity.¹⁵⁷

****Practice Pointer:** In dry weather, tires with less tread depth actually stop a vehicle faster than tires with more tread depth. The lack of tread depth is only a factor in an accident involving wet conditions.

T. Speedometer & Radar Detectors

Every vehicle must be equipped with a speedometer indicating vehicle speed in miles per hour and operating within 5 mph of the actual speed.¹⁵⁸ A carrier can be held liable for its failure to have an operating speedometer in a vehicle if speed is a contributing factor in the collision.¹⁵⁹ No driver shall use a radar detector in a commercial vehicle or operate a commercial vehicle that is equipped with or contains any radar detector.¹⁶⁰ No motor carrier shall allow a driver to operate a motor vehicle that is equipped with a radar detector.¹⁶¹

****Practice Pointer:** The use of a radar device is strictly forbidden by the federal regulations and provides an aggravating circumstance that usually allows the imposition of punitive damages.

U. Miscellaneous Equipment & Accessories

A sleeper berth must be equipped with a means of preventing ejection of the occupant of the sleeper berth during deceleration of the vehicle.¹⁶² Every vehicle must be equipped with a horn in such a condition as to give an adequate and reliable warning signal.¹⁶³ Any exhaust system must be designed where its location will not result in burning, charring or damaging the electrical wiring, the fuel supply, or any combustible part of the motor vehicle.¹⁶⁴ The flooring of all vehicles must be substantially constructed so as to be free of unnecessary holes and openings to minimize the entrance of fumes, exhaust gases or fire.¹⁶⁵

Any television viewer or screen must be placed in the vehicle in such a position that it is not visible to the driver while he is operating the vehicle and cannot be operated by the driver from his seat.¹⁶⁶ The noise level within the interior of the vehicle cannot exceed 90 decibels.¹⁶⁷ Every power unit must be equipped with a fire extinguisher that is properly filled and located so that it is readily accessible for use.¹⁶⁸ Each commercial vehicle must be equipped with a seatbelt.¹⁶⁹ A driver must be properly restrained with a seat belt when operating a commercial vehicle.¹⁷⁰ No open flame heater may

155 49 C.F.R. § 393.75(b).

156 49 C.F.R. § 393.75(c).

157 49 C.F.R. § 393.75(f).

158 49 C.F.R. § 393.82.

159 Greist v. Phillips, 906 P.2d 789 (Or. 1995).

160 49 C.F.R. § 392.71(a).

161 49 C.F.R. § 392.71(b).

162 49 C.F.R. § 393.76(h).

163 49 C.F.R. § 393.81.

164 49 C.F.R. § 393.83(a).

165 49 C.F.R. § 393.84.

166 49 C.F.R. § 393.88.

167 49 C.F.R. § 393.94(b).

168 49 C.F.R. § 393.95(a).

169 49 C.F.R. § 393.93.

170 49 C.F.R. § 392.16.

be used while the vehicle is in motion.¹⁷¹ Every motor vehicle must be properly lubricated and free of oil and grease leaks.¹⁷²

V. Crossing Railroad Tracks

A driver may not shift gears while crossing railroad tracks.¹⁷³ A driver must stop within 50 feet and not closer than 15 feet from a railroad crossing and listen and look for an oncoming train before crossing the tracks if he is operating (1) a bus transporting passengers, (2) a commercial vehicle transporting flammable, explosive or poisonous materials, (3) a cargo tank motor vehicle, whether loaded or empty, used for the transportation of any hazardous material, or (4) a cargo tank motor vehicle loaded with an exempt commodity or a commodity which has a temperature above its flashpoint at the time of loading.¹⁷⁴ A stop is not necessary at a streetcar crossing or railroad tracks used exclusively for switching purposes, at a railroad crossing when an officer or flagman directs traffic, at a crossing where a functioning traffic signal is transmitting a green light, at an abandoned railroad crossing, or at a spur line railroad grade crossing marked with a sign reading "Exempt."¹⁷⁵ In every other situation, a commercial vehicle approaching a railroad crossing must be driven at a rate of speed which will permit the vehicle to be stopped before reaching the nearest rail of such crossing and cannot be driven over such crossing until due caution has been taken to ascertain that the course is clear.¹⁷⁶

W. Adverse Weather Conditions

A driver must exercise extreme caution when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust or smoke, adversely affect visibility or traction.¹⁷⁷ Speed must be reduced when such conditions exist, and the operation of the vehicle must be discontinued if conditions become sufficiently dangerous.¹⁷⁸ When stopping a vehicle in adverse weather conditions endangers passengers, then the vehicle may be operated to the nearest point at which the safety of passengers is assured.¹⁷⁹ Federal regulations governing driving in adverse weather conditions set the standard of care for a commercial driver.¹⁸⁰ A driver who is involved in an accident during inclement weather is held to the standard of extreme care because of the regulations governing driving in adverse weather conditions.¹⁸¹

****Practice Pointer:** A strong argument can be made that a commercial driver must use extreme care rather than ordinary care when driving in adverse weather conditions based on the federal regulations.

X. Unauthorized Passengers

Unless specifically authorized in writing by the motor carrier, no driver shall transport any

171 49 C.F.R. § 392.67.

172 49 C.F.R. § 396.5.

173 49 C.F.R. § 392.10(a).

174 49 C.F.R. § 392.10(a).

175 49 C.F.R. § 392.10(b).

176 49 C.F.R. § 392.11.

177 49 C.F.R. § 392.14.

178 49 C.F.R. § 392.14.

179 49 C.F.R. § 392.14.

180 Weaver v. Chavez, 35 Cal.Rptr. 514 (2005).

181 Crooks v. Sammons Trucking, Inc., 2001 WL 1654986 (Cal. 2001); Kimberlin v. PM Transport, Inc., 563 S.E.2d 665 (Va. 2002); Fisher v. Swift Transportation Co., Inc., 181 P.3d 601 (Mt. 2008).

person or permit any person to be transported on any commercial vehicle other than a bus.¹⁸² No written authorization shall be necessary for the transportation of employees or other persons assigned to a vehicle by the motor carrier, any person transported when aid is being rendered in case of an accident or emergency, or an attendant delegated to care for livestock.¹⁸³ A carrier cannot be held liable for an accident based solely on the presence of an unauthorized passenger in a tractor-trailer absent evidence that the passenger caused the accident.¹⁸⁴

****Practice Pointer:** An unauthorized passenger can distract a driver causing an accident and may also void insurance coverage.

Y. Hazardous Materials Transportation

Every motor vehicle transporting hazardous materials must be driven and parked in compliance with the laws, ordinances, and regulations of the State or jurisdiction in which it is being operated unless the Department of Transportation requires a more stringent obligation or restraint.¹⁸⁵ A vehicle transporting hazardous materials of any kind cannot be operated near an open fire unless the driver has first taken precautions to ascertain that the vehicle can pass safely without stopping.¹⁸⁶ A vehicle transporting hazardous materials cannot be parked within 300 feet of an open fire.¹⁸⁷ No person may smoke or carry a lighted cigarette within 25 feet of a motor vehicle containing flammable or explosive materials.¹⁸⁸ When a vehicle transporting hazardous materials is being fueled, its engine must be turned off and a person must be in control of the fueling process while the fuel tank is filled.¹⁸⁹

A driver transporting hazardous materials must examine the tires at the beginning of the trip and each time the vehicle is parked.¹⁹⁰ If a tire is flat, leaking or improperly inflated, the driver must cause the tire to be repaired, replaced or properly inflated before the vehicle is driven, except the vehicle may be driven to the nearest safe place.¹⁹¹ If a tire is found to be overheated, the driver shall immediately remove the overheated tire and discontinue operation of the vehicle until the cause of the overheating is corrected.¹⁹²

A motor carrier that transports hazardous materials must provide its drivers with instructions concerning the federal regulations governing hazardous materials and procedures to be followed in the event of an accident or delay.¹⁹³ States may designate certain routes for the transportation of non-radioactive hazardous material (NRHM)¹⁹⁴ and carriers shall comply with the State designations in transporting NRHM loads.¹⁹⁵

A vehicle transporting explosive hazardous material must be attended by its driver or a qualified representative at all times unless the vehicle is located on the property of the carrier, shipper or

182 49 C.F.R. § 392.60(a).

183 49 C.F.R. § 392.60(a).

184 *Fox v. Lyte*, 143 A.D.2d 390 (N.Y. 1988).

185 49 C.F.R. § 397.3.

186 49 C.F.R. § 397.11.

187 49 C.F.R. § 397.11.

188 49 C.F.R. § 397.13.

189 49 C.F.R. § 397.15.

190 49 C.F.R. § 397.17(a).

191 49 C.F.R. § 397.17(b).

192 49 C.F.R. § 397.17(c).

193 49 C.F.R. § 397.19.

194 49 C.F.R. § 397.71.

195 49 C.F.R. § 397.67.

consignee.¹⁹⁶ The vehicle may not be parked (1) within 5 feet of a traveled portion of a public street or highway, (2) on private property without the knowledge and consent of the person in charge of the property and who is aware of the hazardous nature of the materials, or (3) within 300 feet of a bridge, tunnel, dwelling or place where people work, congregate or assemble except for brief periods when the necessities of operation require the vehicle to be parked in such a manner.¹⁹⁷

A vehicle containing hazardous materials other than explosive materials must be attended by its driver while located on a public street, highway or shoulder of a public highway.¹⁹⁸ The motor vehicle is considered to be attended if the person in charge of the vehicle is awake on the vehicle or within 100 feet of the vehicle with an unobstructed view.¹⁹⁹ The vehicle cannot be parked within 5 feet of the travel portion of a public street or highway except for brief periods when the necessities of operation require the vehicle to be parked in such a manner.²⁰⁰

Z. Buses

Every bus shall have a 2 inch wide line drawn at the rear of the driver's seat indicating that passengers may not occupy a space forward of the line.²⁰¹ A sign shall be posted near the front of the bus stating that it is a violation of the Federal Highway Administration's regulations for a bus to be operated with persons occupying the prohibited area.²⁰² Buses may not have any seat that is not securely fastened to the vehicle.²⁰³ A bus may not be operated unless (1) all standees are rearward of the standee line, (2) all aisle seats conform to federal requirements, and (3) baggage and freight on the bus is stowed and secured in a manner which assures unrestricted freedom of movement to the driver and his proper operation of the bus, unobstructed access to all exits by any occupant of the bus, and protection of occupants of the bus against injury resulting from the falling or displacement of articles transported in the bus.²⁰⁴

Buses are required to have push-out windows or emergency exits.²⁰⁵ Emergency exits on a bus must be clearly marked with the words "Emergency Door" or "Emergency Exit" and operating instructions on how to open the door.²⁰⁶ These provisions do not apply to the transportation of prisoners.²⁰⁷

196 49 C.F.R. § 397.5(a) & (b).

197 49 C.F.R. § 397.7(a).

198 49 C.F.R. § 397.5(c).

199 49 C.F.R. § 397.5(d).

200 49 C.F.R. § 397.7(b).

201 49 C.F.R. § 393.90.

202 49 C.F.R. § 393.90.

203 49 C.F.R. § 393.91.

204 49 C.F.R. § 392.62.

205 49 C.F.R. § 393.62.

206 49 C.F.R. § 393.62(e).

207 49 C.F.R. § 393.62(f).