

Mr. Mike Kautz
Operations Manager
Yellowstone Association
P.O. Box 350
Gardiner, MT 59715

Dear Mr. Kautz:

I am writing in response to the Yellowstone Association's (the Association) July 1, 2012 letter seeking guidance on Federal Motor Carrier Safety Administration (FMCSA) regulation of its transportation activities.

You indicate that the Association "is the official non-profit partner of the National Park Service ... in Yellowstone National Park." Further, you note that the Association operates 12 bookstores in the Park, has over 35,000 members, and operates a field school which provides "field education to registered students."

According to your letter, the Association provides passenger transportation "using seven 15-passenger minibuses with Gross Vehicle Weight Ratings (GVWRs) under 10,001 pounds and three 15-passenger minibuses with GVWRs over 10,001 pounds." The Association transports passengers across state lines (Montana/Wyoming) within the boundaries of the Park. The minibuses also operate in Montana outside the boundaries of the Park on their way to and from activities in the Wyoming section of the Park.

Additionally, the Association uses 2 box trucks to transport books to its bookstores. One vehicle is under 10,001 pounds and the other is 12,300 pounds. According to your letter, "[t]ransportation begins in Montana, within 2 miles of the entrance to Yellowstone National Park, and state boundaries are not crossed except when operating within the boundaries of the Park."

You seek FMCSA guidance on the following specific questions, which are numbered below as they are numbered in your letter.

1. Question: Is the passenger transportation, as described above, interstate or intrastate in nature?

Answer: The transportation is interstate. The Association provides transportation of passengers between 2 states, Montana and Wyoming. Pursuant to statute, FMCSA has jurisdiction over passenger transportation “between a place in . . . a State and a place in another State” 49 U.S.C. 13501(1)(A); *see also* 49 C.F.R. 390.5 (interstate commerce is defined in part as transportation “[b]etween a place in a State and a place outside of such State”). FMCSA is not aware of any authority which indicates that transportation is not deemed interstate because the crossing of state lines takes place within a National Park.

2. Question: Is the passenger transportation, as described above, subject to interstate operating authority? Are we required [to] register and obtain an MC number?

Answer: Yes, the passenger transportation is subject to interstate operating authority and the Association is required to register for operating authority and obtain an MC number. Entities may provide interstate passenger transportation for compensation only when registered with the Agency. 49 U.S.C. 13901(a). Notwithstanding the Association’s status as a non-profit enterprise, FMCSA has jurisdiction over the Association’s transportation operations. 49 U.S.C. 13102(14), 13501(1)(A); *I.C.C. v. International Shippers Ass’n of New Jersey, Inc.*, 249 F. Supp. 66, 69 (D.N.J. 1965) (non-profit association provided transportation for compensation and was subject to economic regulation by FMCSA’s predecessor, the Interstate Commerce Commission), *aff’d*, 363 F.2d 878 (3d Cir. 1966). While FMCSA does not require registration pertaining to motor vehicle operations within national parks, *see* 49 U.S.C. 13506(a)(9), the Association’s interstate service extends outside of the Park into the State of Montana. Therefore, the Association is required to obtain operating authority from FMCSA. FMCSA’s records reflect that the Association obtained reinstated FMCSA operating authority, with MC number 503788, on July 20, 2012.

3. Question: For the minibuses with GVWRs under 10,001 pounds, does the passenger transportation, as described above, qualify for the exception to the Federal Motor Carrier Safety Regulations [FMCSRs] found in 49 CFR 390.3(f)(6)?

Answer: Yes. The limited exception to the FMCSRs in 49 CFR 390.3(f)(6) applies to the 15-passenger minibuses that have GVWRs under 10,001 pounds. FMCSA is basing this response upon the assumption that the 15 passenger count includes the driver of the vehicle. Section 390.3(f)(6) provides that the exception applies to 9-15 passenger vehicles (including the driver) that do not otherwise meet the definition of commercial motor vehicle (e.g., GVWR of 10,001 pounds or more). Moreover, the exception applies only to service that is not provided for direct compensation, defined in Section 390.5 as payment “made to the motor carrier by the passengers . . . for the transportation services provided, and not included in a total package charge or other assessment for highway transportation services.” The Association has indicated by telephone that the cost of its transportation services is included in an overall package price, which also covers other services for which the Association charges its students. So the transportation is not provided for direct compensation.

4. Question: For the minibuses with GVWRs above 10,001 pounds, does the passenger transportation, as described above, qualify for the exception to the Federal Motor Carrier Safety Regulations found in 49 CFR 390.3(f)(6)?

Answer: No. Section 390.3(f)(6) provides that the exception applies to 9-15 passenger vehicles (including the driver) that do not otherwise meet the definition of commercial motor vehicle (e.g., GVWR of 10,001 pounds or more). Here, the vehicles are over 10,001 pounds so the exception does not apply.

5. Question: For the minibuses with GVWRs under 10,001 pounds, does the passenger transportation, as described above, meet the definition (as found in 49 CFR 390.5) of a private motor carrier? If so, is it subject to the FMCSRs as a private motor carrier of passengers (business) or as a private motor carrier of passengers (nonbusiness)?

Answer: The Association is not providing the passenger transportation as a private motor carrier. It is providing the transportation as a for-hire motor carrier. According to 49 CFR 390.5, a “[p]rivate motor carrier” is a “person who provides transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier.” Section 390.5 defines a “[f]or-hire motor carrier” as a “person engaged in the transportation of goods or passengers for compensation.” The Association provides the passenger transportation pursuant to a charge which includes the educational activities and transportation in one price and, hence, the Association provides the transportation for compensation.

6. Question: For the minibuses with GVWRs over 10,001 pounds, does the passenger transportation, as described above, meet the definition (as found in 49 CFR 390.5) of a private motor carrier? If so, is it subject to the FMCSRs as a private motor carrier of passengers (business) or as a private motor carrier of passengers (nonbusiness)?

Answer: As noted in the answer to the previous question, the Association is a for-hire motor carrier of passengers, not a private motor carrier of passengers. The weight of the vehicle does not impact whether a carrier is considered private or for-hire.

7. Question: 49 CFR 387.27 indicates that Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, applies to for-hire motor carriers transporting passengers in interstate or foreign commerce. If the operation of Yellowstone Association, as described above, meets the definition of a private motor carrier of passenger (business) or (nonbusiness), is the Association subject to Part 387?

Answer: As noted above, the Association is not considered a private motor carrier of passengers. The Association is subject to Part 387.

8. Question: Is the private transportation of property, as described above, in the vehicle with a GVWR in excess of 10,001 pounds, subject to the FMCSRs as interstate transportation?

Answer: Yes. The FMCSRs apply to “all employers, employees, and commercial motor vehicles, which transport property or passengers in interstate commerce.” 49 CFR 390.3(a). The 12,300 pound vehicle is a commercial motor vehicle because it has a GVWR over 10,001 pounds. 49 CFR 390.5. As noted above, it is used to transport books (property). Finally, the transportation is in interstate commerce. Interstate commerce is defined in part as transportation within the United States “[b]etween a place in a State and a place outside of such State” 49 CFR 390.5. Here, the Association notes that the truck operates between Montana and Wyoming so it operates in interstate commerce.

Please contact Valerie Beck of my office at 202-366-9307 or at valerie.beck@dot.gov if you have any further questions.

Sincerely,
/signed/
Charles J. Fromm
Deputy Chief Counsel