



THE SECRETARY OF TRANSPORTATION  
WASHINGTON, DC 20590

April 6, 2016

The Honorable John Thune  
Chairman, Committee on Commerce,  
Science, and Transportation  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Section 4 of the Reliable Home Heating Act (RHHA, P.L. 113-125) requires the Secretary of Transportation to conduct a study and transmit a report to Congress on the safety impacts of extensions to the safety regulations exemptions triggered when a governor declares an emergency. The report must include a review of the safety implications of extending exemptions and a review of the exemption process to ensure clarity and efficiency during emergencies. This letter fulfills that requirement.

Prior to RHHA, an emergency declaration issued by a governor automatically triggered a Federal exemption under section 390.23 of title 49, Code of Federal Regulations (CFR) from most safety regulations for commercial motor vehicle drivers. The exemptions were limited to a maximum of 30 days. The Federal Motor Carrier Safety Administration (FMCSA) must authorize any extensions beyond 30 days. The RHHA provided that, with regard to residential shortages of heating fuel, natural gas, and propane, a governor could extend the initial 30-day period up to two additional 30-day periods, for a total of 90 days, if the shortage persisted.

The FMCSA issued the enclosed document, "State Guidance on Relief from Federal Motor Carrier Safety Regulations in the Event of a Major Emergency," to assist States in complying with the RHHA's authorization to extend emergency declarations for fuel shortages, and in understanding the complete emergency declaration provisions pertaining to commercial motor vehicles (49 CFR 390.23). Staff from FMCSA Division Offices in each State also contacted their State counterparts to review the provisions of section 390.23, including the RHHA extensions.

During the winter of 2014-2015, only the State of Vermont was known to have issued an extension of an emergency declaration complying with the provisions of RHHA. The State's extension only lasted 3 days beyond the original 30-day emergency exemption.

The State of New Hampshire's declarations did not comply with RHHA, as they were applicable to both residential and business premises. The Commonwealth of Pennsylvania's declaration was issued originally for more than 30 days and did not specify home heating fuel. Other States

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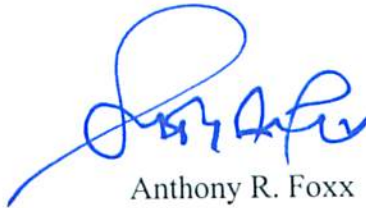
issued declarations of emergency that were not specific to heating fuels or were issued for indefinite time periods. All of these declarations were invalid for the purpose of invoking the RHHA extensions of the exemptions provided in section 390.23 for interstate operation of commercial motor vehicles, based on shortages of residential home heating fuels.

It is not possible to draw any safety conclusions because only Vermont briefly used the authority granted in RHHA. The existing crash data collection systems do not identify commercial motor vehicles that may be operating under any type of exemption.

I have sent a similar letter to the Ranking Member of the Senate Committee on Commerce, Science, and Transportation; the Chairman and Ranking Member of the Senate Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security; the Chairman and Ranking Member of the House Committee on Transportation and Infrastructure; and the Chairman and Ranking Member of the House Subcommittee on Highways and Transit.

If I can provide further information or assistance, please feel free to call me.

Sincerely,



Anthony R. Foxx

Enclosure

## State Guidance on Relief from Federal Motor Carrier Safety Regulations In the Event of a Major Emergency

Relief from certain portions of the Federal Motor Carrier Safety Regulations (FMCSRs) can enhance the ability of the motor carrier industry to provide assistance during an emergency. The following explains the circumstances in which this regulatory relief can be used.

Section 390.23 of the FMCSRs (49 CFR 390.23) allows temporary emergency relief from 49 CFR Parts 390-399 to any motor carrier or driver operating a commercial motor vehicle (CMV) to provide emergency relief during an emergency declared by a Governor or other authorized official, or by a Federal official. Emergency relief means direct assistance by a motor carrier or driver to supplement State and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency. The terms "emergency," "emergency relief," and "direct assistance" are all defined in more detail in Section 390.5.

The emergency relief allowed by Section 390.23 is often described by States as a waiver of the driver hours-of-service (HOS) limits; in fact, it is much broader in scope. For motor carriers and CMV drivers qualifying for the exemption, a declaration of a qualifying emergency by the Federal Motor Carrier Safety Administration (FMCSA) or an authorized State official triggers an exemption from all of the interstate safety regulations in 49 CFR Parts 390-399, not just the HOS rules. This is true whether or not the emergency declaration specifically states the full extent of the Federal exemption.

When an emergency is declared, truck and bus activities involving transportation and other relief services for the immediate restoration of essential services (such as electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as food and fuel) are exempt from most of the FMCSRs.<sup>1</sup> The emergency relief does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed. Motor Carriers are not required to obtain approval from the FMCSA prior to participating in the emergency relief effort.

### What is an Emergency?

Under 49 CFR 390.5, the definition of an emergency is "any hurricane, tornado, storm (e.g. thunderstorm, snowstorm, ice storm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout or other occurrence, natural or man-made, which interrupts the delivery of essential services (such as, electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in a declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by the FMCSA Field Administrator for the geographical area in which

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<sup>1</sup> The emergency exemptions do not apply to the commercial driver license regulations, the drug and alcohol testing requirements, or FMCSA insurance requirements. They also do not apply to State size and weight limits, licensing and permitting requirements.

the occurrence happens; or by other Federal, State or local government officials having authority to declare emergencies.”

**Do Governors need to take an action beyond issuing the emergency or disaster declaration?**

Once an emergency is declared, the regulatory relief provided by Section 390.23 is automatically in effect, even if the State does not explicitly request that this relief be granted. A State may **not** place limits on the interstate exemption provided by 49 CFR 390.23. For example, the State cannot limit the exemption to hours-of-service only. It is the State’s responsibility to designate if the emergency is declared in all or only part of the State.

**Are motor carriers exempt under Section 390.23 even though they may be driving through one or more States in order to provide relief to another State?**

A declaration of emergency by FMCSA or the Governor (or other authorized person) provides the temporary exemption to anyone providing relief to the designated State(s) (or affected area of the State), even when operating in another State. This means that trucks and their drivers passing through one or more States to assist another State where an emergency or disaster has been declared, are covered by the regulatory relief if they are transporting cargo needed for the recovery effort. The only requirement is that the motor carrier be providing direct assistance to the area in which an emergency has been declared.

However, trucks and drivers transporting exactly the same cargo toward the State where the emergency exists, but with a destination beyond that State and no intention of delivering the cargo to assist in the emergency relief effort, are not exempt under Section 390.23.

Vehicle registration and fuel tax compliance are administered by the States through the International Registration Plan (IRP) and International Fuel Tax Agreement (IFTA) respectively, and are not covered by the Section 390.23 exemption. Motor carriers should work with the States along their route to determine whether trip permits or emergency relief are available for registration and fuel tax.

Truck size and weight relief is a State-by-State matter, and the Federal Highway Administration (FHWA) is the lead Federal agency. Some States may have size and weight or procedural relief in place for the emergency. Motor carriers needing oversize/overweight permits should work with the States along their route. FHWA has size and weight information available at [www.ops.fhwa.dot.gov/freight/sw/](http://www.ops.fhwa.dot.gov/freight/sw/).

**Are motor carriers required to have documentation on-board their vehicles identifying the drivers and vehicles used in the emergency relief effort?**

No. However, motor carriers have the burden of proof to demonstrate that they are supporting emergency relief efforts and not simply trying to evade Federal regulations. FMCSA recommends that motor carriers have documents to show to enforcement officials in the event the vehicle is stopped prior to reaching the scene of the emergency. The documents may also be needed to enter into the emergency area.

Drivers should have a manifest with them that clearly show a destination for delivery of essential service/commodity in the State declaring the emergency. When the emergency declaration ends or the

driver no longer provides direct support, drivers must resume their compliance with all safety regulations.

**How long does the emergency relief last?**

FMCSA's emergency relief remains in effect for the duration of the emergency (as defined in 49 CFR 390.5) or 30 days, whichever is less. With one exception for home heating fuel, only FMCSA Field Administrators may extend the 30-day limit. For home heating fuel (fuel oil, natural gas, and propane) a governor may issue up to two 30-day extensions for a total of 90 days. Any additional extensions must be issued by FMCSA.

**What specific safety regulations are covered by the exemption in Section 390.23?**

The following is a summary of the safety regulations that are covered by the emergency exemption.

**49 CFR Part 390 – General Applicability**

- Defines which drivers and vehicles are covered by 49 CFR Parts 390-399
- Establishes requirements for maintaining an accident register
- Establishes registration requirements to obtain a USDOT number
- Defines marking (identification) requirements for CMVs
- Defines recordkeeping locations

**49 CFR Part 391 – Qualification of Drivers**

- Establishes qualification standards for drivers to operate a CMV including:
  - Age and driver's license (but not CDL requirements)
  - Employment application process
  - Employment background checks
  - Annual review of driving record
  - Road tests
  - Medical qualifications
- Establishes requirements for maintaining a complete driver qualification file

**49 CFR Part 392 – Driving of Commercial Motor Vehicles *[However, similar State laws are NOT waived]***

- Requires drivers of CMVs to comply with all State and Local traffic laws
- Establishes prohibition from operating a CMV while ill, fatigued, or while using or recently used alcohol or drugs
- Establishes standards for slowing and stopping at railroad grade crossings
- Establishes standards for using emergency signals and flares when a CMV stops or becomes inoperable at the roadside
- Establishes general precautions for the operation of CMVs

**49 CFR Part 393 – Parts and Accessories Necessary for Safe Operation of a CMV**

- Establishes CMV equipment standards, including:
  - Lights, reflectors and electrical equipment
  - Brakes and braking systems
  - Window/windshield glazing and construction
  - Fuel systems

- Coupling devices
- Tires and wheels
- Frame and suspension systems
- Mirrors, windshield wipers, horns, exhaust systems and
- Other miscellaneous CMV parts and accessories
- Establishes standards for the proper loading and securement of freight

**49 CFR Part 395 – Hours of Service of Drivers**

- Establishes maximum driving limits for drivers of CMVs
- Establishes record-keeping requirements for drivers' hours-of service
- Establishes standards for hours-of service automatic on board recorders

**49 CFR Part 396 – Inspection, Repair and Maintenance**

- Establishes requirements for the proper inspection, repair and maintenance of CMVs
- Establishes prohibitions for operating a CMV in an unsafe mechanical condition
- Establishes record-keeping requirements for inspection, repair and maintenance activities
- Establishes qualification standards for persons performing inspection, repair and maintenance duties

**49 CFR Part 397 – Transportation of Hazardous Materials – Driving and Parking Rules**

- Establishes requirements for the safe parking and monitoring of CMVs when transporting hazardous materials
- Establishes prohibitions regarding smoking in or around a CMV when transporting hazardous materials
- Establishes requirements for safe routing of a CMV when transporting hazardous materials

**49 CFR Part 398 – Transportation of Migrant Workers**

- Establishes standards for the safe transportation of migrant workers
- Standards are a "streamlined" version of 49 CFR Parts 391-396 defined above

**49 CFR Part 399 – Employee Safety and Health Standards**

- Establishes standards for safe entry and egress from a CMV
- Establishes testing and maintenance standards for the steps, handholds, and or deck plates used for safe entry and egress from a CMV

While 49 CFR 390.23 allows for temporary relief from the safety regulations, it does not suspend the requirements for a Commercial Driver's License (49 CFR Part 383), controlled substances and alcohol testing (49 CFR Part 382) or motor carrier financial responsibility/insurance (49 CFR Part 387).

**Who can I contact for more Information?**

For more information contact the nearest FMCSA field office. That contact information is available at [www.fmcsa.dot.gov/mission/field-offices](http://www.fmcsa.dot.gov/mission/field-offices).