
Guidance Regarding Emergency Relief from Regulations

During Emergency Relief from Regulations

Question: Can a carrier transporting emergency supplies as well as non-emergency supplies take advantage of the emergency relief from regulations?

Guidance: The relief from regulations applies to motor carriers, drivers and vehicles providing direct assistance to the emergency. If the purpose of the trip is to provide direct assistance, but other non-emergency supplies are also in the vehicle, the carrier/driver/vehicle may nevertheless be eligible for the relief. FMCSA will use the primary intent of the shipment and the total composition of the load when making this determination. The shipment would qualify for the emergency exemption if:

- Absent the emergency the trip would not have occurred, or
- At least 50% of the shipment consists of emergency supplies.

Question: Are shipments intended to restock store shelves exempt?

Guidance: While there is no prohibition on restocking of items, the intent of the provision is to expedite the delivery of items that need to be replenished within a few days, not weeks. The nature of the cargo is often decisive. Because “direct assistance” “does not include long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed,” a truck carrying plywood and plastic sheeting could be contributing to temporary shelter for people displaced by a storm, while a truck carrying porcelain bathroom fixtures probably would not qualify for the exemption, since these products would only be used for long-term reconstruction. Similarly, a cargo of bottled water (or even soft drinks) could be part of an “emergency relief” effort, but a truckload of beer could not.

Question: Who has the burden of proof? Are motor carriers operating in an emergency area presumed to be exempt?

Guidance: No. Drivers and motor carriers claiming the emergency exemption bear the burden of proving to enforcement officers that they are in fact providing emergency relief consistent with the definitions in § 390.23.

Question: §390.23(a) provides that parts 390 through 399 do not apply to any motor carrier or driver operating a CMV to provide direct assistance in an emergency. Is a motor carrier or driver required to keep a record of the driver’s on-duty or driving time while providing relief?

Guidance: Not necessarily, but documentation of time worked is required if the driver intends to resume non-emergency operations without taking a restart. See the next question and answer for more details.

Following Emergency Relief from Regulations

Question: After providing emergency relief under §390.23, what on-duty hours must a driver use to determine how much off-duty time he/she must have before returning to the service of the employing motor carrier?

Guidance: When resuming normal service not subject to the emergency relief, the driver must comply with the hours-of-service regulations for bus and truck drivers in §§ 395.3 or 395.5. To be in compliance, a truck driver must either:

1. Take 34 consecutive hours off-duty (thus resetting all of the hours of service limits), or
2. If intending to resume normal non-exempt service in an operation requiring a record of duty status without taking 34 hours off duty, reconstruct his or her on-duty time (but not driving time) during the previous 7 or 8 days to determine compliance with the 60- or 70-hour rules. The total the number of hours worked while the driver actually provided direct assistance to the emergency relief effort can be recorded as on-duty, not driving time. The driver may resume regular non-exempt service without a restart if his or her total on-duty time is below the 60- or 70-hour threshold; if above that threshold, the driver must take a 34-hour restart.

Similarly, a bus driver intending to resume regular non-exempt service in an operation requiring a record of duty status must reconstruct his or her on-duty time (but not driving time) during the previous 7 or 8 days to determine compliance with the 60 or 70 hour rules. The driver may resume regular non-exempt service only if his or her total on-duty time is below the 60 or 70 hour threshold.