

Emergency Exemptions final rule effective December 12, 2023 (390.5, 390.23, 390.25)

SUMMARY: FMCSA revises the emergency exemption rules to narrow the scope of safety regulations from which relief is automatically provided for motor carriers and drivers providing direct assistance when an emergency has been declared. This rule ensures that the relief granted through emergency declarations is appropriate and tailored to the specifics of the circumstances and emergencies being addressed. This rule also revises the process for extending automatic emergency regulatory relief where circumstances warrant and allows for potential reporting requirements when FMCSA issues an extension or modification.

DATES: Effective December 12, 2023.

List of Subjects in 49 CFR Part 390 Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting, and recordkeeping requirements.

For the reasons set forth in the preamble, FMCSA amends 49 CFR part 390 as follows:

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS: GENERAL ■

1. The authority citation continues to read as follows:

Authority: 49 U.S.C. 113, 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744), 113 Stat. 1748, 1773; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87. ■

2. Amend § 390.5 as follows:

- a. Lift the suspension of the section;
- b. Revise the definitions of “Direct assistance” and “Emergency”;
- c. Remove the definition of “Emergency relief”;
- d. Add in alphabetical order a definition for “Residential heating fuel”; and
- e. Suspend the section indefinitely.

The revisions and addition read as follows:

§ 390.5 Definitions.

* * * * *

Direct assistance means transportation operations in which a motor carrier or driver of a CMV is supplementing State and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency as defined in this section involving transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services (e.g., electricity, medical care, sewer, water, telecommunications,

and telecommunication transmissions) or essential supplies (e.g., food and fuel). It 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.

* * * * *

Emergency means 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 (e.g., electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (e.g., 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 FMCSA; or by other Federal, State, or local government officials having authority to declare emergencies; or a request by a police officer for tow trucks to move wrecked or disabled motor vehicles. Emergency does not include events arising from economic conditions that are caused by market forces, including shortage of raw materials (e.g., driver shortages, computer chip shortages, other supply chain issues) or labor strikes, unless such event causes an immediate threat to human life and 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 FMCSA; or by other Federal, State, or local government officials having authority to declare emergencies.

* * * * *

Residential heating fuel includes heating oil, natural gas, and propane (also known as Liquefied Petroleum Gas or Petroleum Gas, Liquefied).

* * * * *

■ 3. Amend § 390.5T as follows:

- a. Revise the definitions of “Direct assistance” and “Emergency”;
- b. Remove the definition of “Emergency relief”; and
- c. Add in alphabetical order a definition for “Residential heating fuel”.

The revisions and addition read as follows: § 390.5T Definitions.

* * * * *

Direct assistance means transportation operations in which a motor carrier or driver of a commercial motor vehicle is supplementing State and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency as defined in this section involving transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services (e.g., electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (e.g., food and fuel). It 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.

* * * * *

Emergency means 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 (e.g., electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (e.g., 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 FMCSA; or by other Federal, State, or local government officials having authority to declare emergencies; or a request by a police officer for tow trucks to move wrecked or disabled motor vehicles. Emergency does not include events arising from economic conditions that are caused by market forces, including shortage of raw materials (e.g., driver shortages, computer chip shortages, other supply chain issues) or labor strikes, unless such event causes an immediate threat to human life and 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 FMCSA; or by other Federal, State, or local government officials having authority to declare emergencies.

* * * * *

Residential heating fuel includes heating oil, natural gas, and propane (also known as Liquefied Petroleum Gas or Petroleum Gas, Liquefied).

* * * * *

■ 4. Revise § 390.23 to read as follows:

§ 390.23 Automatic relief from regulations.

(a) Presidential declaration of emergency. Parts 390 through 399 of this chapter, or any section thereof, shall not apply to any motor carrier or driver operating a commercial motor vehicle so long as the motor carrier or driver is providing direct assistance during an emergency declared by the President of the United States pursuant to 42 U.S.C. 5191(b) during the emergency period or 30 days from the date of the initial declaration of the emergency, whichever is less.

(b) Regional declarations of emergency. Except as provided in paragraph (b)(1) of this section, §§ 395.3 and 395.5 of this chapter shall not apply to a motor carrier or driver operating a commercial motor vehicle so long as the motor carrier or driver is providing direct assistance during an emergency declared by the Governor of a State, their authorized representative, or FMCSA during the emergency period or 14 days from the date of the initial declaration of emergency, whichever is less.

(1) Residential heating fuel shortages. Parts 390 through 399 of this chapter, or any section thereof, shall not apply to a motor carrier or driver operating a commercial motor vehicle to provide residential heating fuel in the geographic area designated in an emergency declaration issued by the Governor of a State. If the Governor of a State declares an emergency caused by a shortage of residential heating fuel and, at the conclusion of the 30-day period immediately following the declaration, determines that the emergency shortage has not ended, and extends the declaration of an emergency for up to two additional 30-day periods, this regulatory relief shall remain in effect up to the end of such additional periods. The total length of the emergency shall not exceed 90 days.

(2) [Reserved]

(c) Local emergencies. Sections 395.3 and 395.5 of this chapter shall not apply to a motor carrier or driver operating a commercial motor vehicle so long as the motor carrier or driver is providing direct assistance during an emergency declared by a Federal, State, or local government

official having authority to declare an emergency for the period of such assistance or 5 days from the date of the initial declaration of emergency, whichever is less.

(d) Tow trucks responding to emergencies. Section 395.3 of this chapter shall not apply to a motor carrier or driver operating a commercial motor vehicle so long as the motor carrier or driver is providing direct assistance during an emergency when a request has been made by a Federal, State, or local police officer for tow trucks to move wrecked or disabled motor vehicles. This regulatory relief shall not exceed the length of the motor carrier's or driver's direct assistance in providing emergency relief or 24 hours from the time of the initial request for assistance by the Federal, State, or local police officer, whichever is less.

(e) Termination of regulatory relief.

(1) Upon termination of direct assistance to the emergency relief effort, the motor carrier or driver is subject to all previously exempted sections with the following exception: A driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with the previously exempted sections. However, a driver who informs the motor carrier that he or she needs immediate rest must be permitted at least 10 consecutive hours off duty before the driver is required to return to such terminal or location. Having returned to the terminal or other location, the driver must be relieved of all duty and responsibilities.

(2) Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo not destined for the emergency relief effort, or when the motor carrier dispatches such driver or commercial motor vehicle to another location to begin operations in commerce.

(3) When the driver has been relieved of all duty and responsibilities upon termination of direct assistance to an emergency relief effort, no motor carrier shall permit or require any driver used by it to drive, nor shall any such driver drive in commerce, until the driver has met the requirements of §§ 395.3(a) and (c) and 395.5(a) of this chapter.

■ 5. Revise § 390.25 to read as follows:

§ 390.25 Extension or Modification of relief from regulations—emergencies.

(a) FMCSA may extend the period of the regulatory relief or modify the scope of emergency relief contained in § 390.23. Interested parties may also request an extension or modification by providing a detailed explanation of the need for an extension or modification of the relief. Any interested party seeking to extend the period of regulatory relief shall send its request to the FMCSA emergency declarations mailbox, FMCSAdeclaration@dot.gov, before the expiration of the period of relief. FMCSA will determine if such relief is necessary by evaluating the circumstances of the ongoing emergency, the need for relief, and the nature of the relief to be provided.

(b) If FMCSA initiates or approves an extension of the regulatory relief, it shall establish a new time limit and may place terms and conditions on motor carriers or drivers relying upon the continued or modified relief. These terms and conditions may include reporting requirements.