

FREQUENTLY ASKED QUESTIONS RELATING TO FMCSA EMERGENCY DECLARATION

October 19, 2021

Note: This guidance document does not have the force and effect of law and is not meant to bind the public in any way. This guidance is intended only to provide clarity regarding existing requirements under the law.

Are loads that include supplies related to direct assistance under the emergency declaration mixed with other, un-related materials covered under the declaration?

Generally, yes, however, mixed loads with only a nominal quantity of qualifying emergency relief added to obtain the benefits of this emergency declaration are not covered.

How do the hours a driver worked under the emergency exemption impact the 60/70-hour rule when the driver goes back to normal operations?

The hours worked providing direct assistance under the emergency relief exemption do not count toward the 60/70- hour rule.

Is a 34-hour restart required after providing direct assistance under the emergency declaration?

No, however, upon completion of the direct assistance and prior to returning to normal operations, the driver is required to meet the requirements of §§ 395.3(a) and (c), which include, for example, the requirement to take 10 hours off duty and to comply with the on-duty limit of 60/70 hours in 7/8 days before returning to driving.

Is the driver required to use a paper logbook or ELD?

Yes. The emergency exemption does not provide relief from all regulations in 49 CFR part 395, including recordkeeping requirements (i.e., records of duty status (RODS) or electronic logging device (ELD)). Drivers must record their duty status for each 24-hour period using the method normally used by the driver when not operating under the Emergency Declaration.

If a driver normally uses an ELD to record their duty status, what should a driver do to account for their time and miles driven when operating under the Emergency Declaration?

The driver should use the ELD in its normal mode and annotate the ELD record to indicate they were driving under the emergency relief exemption.

What does a driver need to do if taking a backhaul not covered by the exemption after transporting an exempt load?

Upon completion of the direct assistance activities and prior to returning to normal operations, the driver is required to take 10 consecutive hours off duty before driving. All the time the driver spends engaged in work-related activities that are not associated with providing direct assistance must be counted under the HOS rules.

Are livestock a covered commodity under the terms of the emergency declaration?

Yes. Livestock and livestock feed are covered under the emergency declaration.

Are haulers of household waste and medical waste covered under the terms of the declaration?

Yes, transportation for removal of both household and medical waste is covered as “supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19.”

What documentation is needed to verify that the driver is operating under the exemption?

There is no specific documentation required for verification. Retention of ordinary business records, such as the bill of lading, may be useful later for the convenience of the motor carrier and driver, to document use of the exemption during a future inspection or enforcement action.

Does FMCSA have preemptive authority over states that decide/attempt to close highway rest stops?

No, however FMCSA is working closely with the States to ensure adequate truck parking and facilities are available.

Are the raw materials used to manufacture bleach, disinfectants, hand sanitizers and similar items covered under the expanded emergency declaration?

Precursor items are no longer covered under the extension of the Emergency Declaration. However, commodities covered by the extension of the Emergency Declaration include the transportation of “supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19 such as masks, gloves, hand sanitizer, soap and disinfectants.”

Does the Declaration cover packaging for food -- for example, produce containers?

No, packaging is not covered.

Are feed and fertilizer covered under the emergency declaration?

Livestock feed is covered under the latest extension of the Emergency Declaration, however fertilizer is not.

Is pet food covered under the emergency declaration?

No, pet food is not covered.

The emergency declaration states that after completing work under the declaration and returning to normal operations, a commercial vehicle driver must take 10 hours off. What if there is nowhere at the location for the driver to park?

The driver may proceed to the nearest reasonable, safe location to obtain the required 10 hours of rest.

Is the exemption from 49 CFR § 395.3 under the extension of the COVID-19 Emergency Declaration available to eligible drivers/motor carriers operating in the United States when the relief supplies are destined for a location in Canada or Mexico?

No. FMCSA does not have the authority to exempt those shipments going to Canada or Mexico as a part of relief efforts.

Should a Driver/Vehicle Examination Report (DVER), as outlined in 49 CFR § 396.9, be completed if a driver engaging in COVID-19 relief efforts is stopped and found to be in violation of a regulation specifically excluded from coverage under FMCSA's extension of the Emergency Declaration?

Yes. Motor carriers and drivers providing direct assistance to COVID-19 emergency response efforts are subject to all of the Federal Motor Carrier Safety Regulations (FMCSRs) except 49 CFR § 395.3. A DVER should be completed for violations discovered of all other regulations discovered during the inspection.

Regarding the transportation of “(7) supplies to assist individuals impacted by the consequences of the COVID-19 pandemic (e.g., building materials for individuals displaced or otherwise impacted as a result of the emergency),” does this mean anyone hauling lumber or building materials will be able to use the emergency exemption?

No. Not all lumber or building supply shipments are for individuals affected by the COVID-19 emergency. While FMCSA is aware of shortages and price increases in lumber and other essential items in certain areas, this new provision was added to address the acute need to ensure sufficient transportation of building supplies to provide direct assistance to COVID-19 emergency relief efforts. Loads intended for construction of temporary housing of individuals displaced as a result of the emergency or for temporary sheltering of overflow hospital patients as a result of the spike in COVID-19 cases, for example, would be covered. Regular shipments for routine restocking of hardware stores and building supply centers would not be covered.

Regarding the new reporting requirements to the FMCSA portal, what information must be reported?

The information to be reported will be limited to a small number of fields – USDOT number, month and year of the reporting period, the number of commercial motor vehicle trips that relied upon the Emergency Declaration in the preceding month (choosing from 5 ranges), the commodities transported (from a drop down list), and a follow up question asking which commodities were transported the most (from the same drop down list).

Do motor carriers or drivers download actual records of duty status into the portal?

No.

Under the extension of the emergency declaration, are the motor carrier and driver exempt from 49 CFR parts 390-399?

No. Motor carriers and drivers providing direct assistance in support of relief efforts related to the COVID-19 public health emergency are granted emergency relief from 49 CFR § 395.3 only. The exemption from § 395.3 provides relief from the 11-hour driving limit, the 14-hour driving window, the 10-hour off-duty requirement, the 30-minute break and the 60/70-hour rules.

Are “precursor” materials covered under the extension of Emergency Declaration No. 2020-002?

No. As the “precursor” language has been removed from the emergency declaration, declaration, only the listed commodities are covered by the Declaration.

Are butane movements covered under the COVID-19 Emergency Declarations, either nationally or regionally?

No.

If a carrier hauls propane which is used primarily as a home fuel but also can be used in some instances as a motor fuel -- are these movements covered under the COVID-19 Emergency Declaration either nationally or regionally?

No.