

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 390

[Docket No. FMCSA-2022-0028]

RIN 2126-AC53

Clarification to the Applicability of Emergency Exemptions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Final rule.

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 on [Insert date 60 days after date of publication in the FEDERAL REGISTER].

Comments on the information collection in this final rule must be submitted to the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and

Budget (OMB) by [Insert date 30 days after date of publication in the FEDERAL REGISTER].

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than [Insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Sinniger, Regulatory Law Division, Office of the Chief Counsel, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, (202) 570-8062, Kathryn.sinniger@dot.gov. If you have questions on viewing material in the docket, call Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

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I. AVAILABILITY OF RULEMAKING DOCUMENTS

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2022-0028/document> and choose the document to review. To view comments, click this final rule, then click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations at U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. COMMENTS ON THE INFORMATION COLLECTION

Written comments and recommendations for the information collection discussed in this final rule should be sent within 30 days of publication to www.reginfo.gov/public/do/PRAMain. Find this information collection by clicking the link that reads “Currently under Review - Open for Public Comments” or by entering OMB control number 2126-0077 in the search bar and clicking on the last entry to reach the “comment” button.

III. EXECUTIVE SUMMARY

A. Purpose and Summary of the Regulatory Action

Section 390.23 of title 49, Code of Federal Regulations (CFR), automatically creates a 30-day exemption from 49 CFR parts 390 through 399 when the President, a

Governor, or FMCSA issues a declaration of an *emergency*, as defined in §§ 390.5 and 390.5T, and a motor carrier or driver provides direct assistance to supplement State or local emergency relief efforts in response to that emergency, as those terms are defined in §§ 390.5 and 390.5T.¹

Based on Agency subject matter expertise and input from States, affected localities, industry groups, and others, FMCSA believes most emergencies justify allowing carriers and drivers who provide direct assistance to the emergency response to receive temporary relief from the normal hours of service (HOS) limits, so that they may deliver critical supplies and services to the communities in need as quickly and safely as possible. However, other safety regulations, including the driver qualification requirements of part 391, vehicle inspection requirements of part 396, parts and accessories required by part 393, and other operating requirements such as prohibitions on operating while ill or fatigued in part 392, often have no direct bearing on the motor carrier's ability to provide direct assistance to the emergency relief effort.

Safety regulations ensure that the companies, vehicles, and drivers meet the minimum requirements to operate safely. While temporary relief from some regulations may be necessary during an emergency, waiving every regulation in parts 390 through 399 could negatively impact the safety of commercial motor vehicles (CMVs) operating on the roadways. Although the Agency has no detailed quantitative information that suggests that past or existing emergency exemptions have in fact negatively impacted road safety, it also has no information suggesting that exemptions from all safety

¹ Section 390.5 of title 49 is currently suspended and replaced by 49 CFR 390.5T, however the definitions for the listed terms are identical in both sections.

regulations in Parts 390-399 in the event of an emergency is necessary to enable the provision of emergency relief. FMCSA is committed to ensuring that the operation of CMVs in interstate commerce is conducted as safely as practicable and, therefore, presumes that its promulgated safety regulations should remain in effect absent a specific showing that exemption is necessary.

In order to provide clarity on which emergency exemptions are necessary during an emergency, FMCSA is narrowing the automatic applicability of § 390.23 to the HOS limits in §§ 395.3 and 395.5, which set the basic HOS limits for property-carrying and passenger-carrying vehicles, respectively. This change clarifies that carriers and drivers are not authorized to overlook other important safety requirements while performing direct assistance to emergency relief efforts. By limiting the scope, today's rule clarifies that the Federal Motor Carrier Safety Regulations (FMCSRs) not relevant to most emergency situations remain in effect while retaining the Agency's flexibility to tailor emergency regulatory relief to the specific circumstances of an emergency.

B. Summary of Major Provisions

This rule changes definitions in §§ 390.5 and 390.5T. It modifies the definition for *emergency* to clarify that emergency regulatory relief under § 390.23 generally does not apply to economic conditions that are caused by market forces, including shortages of raw materials or supplies, labor strikes, driver shortages, inflation, or fluctuations in freight shipment or brokerage rates, unless such conditions or events cause an immediate threat to human life and result in a declaration of an emergency. This rule also removes the definition of *emergency relief* as that term is no longer used in § 390.23 and amends the definition of *direct assistance* to incorporate the essential components of the

emergency relief definition. This rule moves the definition of *residential heating fuel* from the text of § 390.23 and places it in the definition sections, §§ 390.5 and 390.5T. These reorganizational changes simplify the text in § 390.23 without changing the regulation's meaning.

This rule revises § 390.23 in several ways. Presidential declarations of emergency will continue to trigger a 30-day exemption from all FMCSRs in parts 390 through 399. The rule limits the duration and scope of the automatic regulatory relief that takes effect upon a regional declaration of emergency by a Governor, a Governor's authorized representative, or FMCSA, however. The automatic regulatory relief applies for 14 days, as opposed to 30 days, and exempts CMV drivers only from the HOS regulations in §§ 395.3 and 395.5, as opposed to all regulations in parts 390 through 399. This change both shortens the time the automatic regulatory relief is in place and limits the scope of the relief provided, ensuring any impact on safety continues to be minimized during the period of the automatic regulatory relief. FMCSA revised this provision from the NPRM at the suggestion of commenters who expressed concern that the proposed 5-day emergency exemption period would be too short to provide emergency relief, and also too little time for FMCSA to receive and evaluate information on whether a longer FMCSA-issued emergency exemption was warranted. FMCSA believes that most emergency declarations expire within 5 days, but it is aware that climate change has impacted both the number and severity of storms that often give rise to regional declarations of emergency. Providing for 14 days of automatic relief will allow emergency relief efforts in these severe weather scenarios to continue unabated, without fear that there will be a lapse between the automatic regulatory relief and any FMCSA

action to extend or reinstate the regulatory relief. Additionally, for those emergencies that do not require an extended response period, the regulation provides that the exemption period triggered by a Governor-issued emergency declaration will end upon cessation of the emergency declaration or 14 days, whichever is sooner.

Section 390.23 maintains the statutory requirement from the Reliable Home Heating Act (49 U.S.C. 31136 note) that when a Governor declares a state of emergency due to a shortage of residential heating fuel, the automatic regulatory relief lasts for a period of 30 days and exempts any motor carrier or driver operating a CMV to provide residential heating fuel in the geographic area so designated as under a state of emergency from all regulations in parts 390 through 399. Consistent with the statute, the initial automatic exemption may be extended two times by the Governor, for a total of 90 days, if the Governor determines that the emergency shortage has not ended.

Third, for local emergencies under section 390.23(c), the automatic regulatory relief is limited by this rule to the HOS regulations in §§ 395.3 and 395.5. This regulatory relief is already limited to 5 days, thus no change to the length of the automatic relief is needed. This change ensures that any impact on safety continues to be minimized during the period of the automatic regulatory relief.

Finally, this rule simplifies the language in § 390.25, allowing FMCSA to extend and modify the automatic regulatory relief outlined in § 390.23, either on its own volition or upon request. All requests for modifications and extensions must be made via email. FMCSA will still establish a time limit for the extended or modified emergency exemption, and the Agency may place any restrictions upon the emergency relief. This final rule adds, specifically, that FMCSA may include reporting requirements as one of

these restrictions. FMCSA is requesting approval from OMB for a collection of information as part of this rulemaking.

C. Costs and Benefits

The Agency does not expect this rule will result in substantive incremental impacts relative to the baseline established in the FMCSRs. Most of the changes in this rule have already been in practice through modifications to previous automatic exemptions, including those related to the Coronavirus Disease 2019 (COVID-19) emergency. FMCSA presents a qualitative analysis of the potential costs and benefits of limiting emergency exemptions, as there is uncertainty surrounding the number of motor carriers and drivers who currently utilize exemptions beyond HOS waivers.

Limiting the automatic regulatory relief to the HOS regulations in §§ 395.3 and 395.5, as opposed to all the FMCSRs in 49 CFR parts 390 through 399, may result in costs to certain motor carriers and drivers who currently rely on the automatic regulatory relief, beyond the HOS regulations. However, as most emergency exemptions are either issued or modified to be limited to cover only the HOS regulations, including the COVID-19 emergency exemption, the Agency believes this change will not result in incremental costs relative to the baseline.

Because automatic regulatory relief is decreasing from 30 days to 14 days in the case of regional emergencies, the rule may result in an increase in the number of extension requests from motor carriers and drivers. An increase in the number of extension requests would increase the burden on drivers and motor carriers to prepare and submit extension requests, as well as the burden on the Agency to review and respond to

them. FMCSA presents a quantitative analysis of the impacts of this rule for individuals who request extensions to exemptions via email.

IV. ABBREVIATIONS

AASHTO	American Association for State Highway and Transportation Officials
AECC	Arkansas Electric Cooperatives Corporation
AECI	Arkansas Electric Cooperatives, Inc.
AHAS	Advocates for Highway and Auto Safety
ANPRM	Advance Notice of Proposed Rulemaking
ATA	American Trucking Associations
CBI	Confidential Business Information
CE	Categorical Exclusion
CFR	Code of Federal Regulations
CMV	Commercial Motor Vehicle
COVID-19	Coronavirus Disease 2019
CRASH	Citizens for Reliable and Safe Highways
CVSA	Commercial Vehicle Safety Alliance
IDOT	Iowa Department of Transportation
DOT	U.S. Department of Transportation
EI	Edison Electric Institute
EMA	Energy Marketers of America
E.O.	Executive Order
FHP	Florida Highway Patrol – Office of Commercial Vehicle Enforcement
FMA	Fuel Merchants Association of New Jersey
FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FMCSRs	Federal Motor Carrier Safety Regulations
FPMA	Florida Petroleum Marketers Association
FR	Federal Register
HOS	Hours of Service
MCS	Montana Department of Transportation – Motor Carrier Services Division
MEMA	Mississippi Emergency Management Agency
MMTA	Maine Motor Transport Association
NAICS	North American Industry Classification System
ND	State of North Dakota
NEFI	National Energy & Fuels Institute
NPGA	National Propane Gas Association
NPRM	Notice of Proposed Rulemaking
NWRA	National Waste & Recycling Association

OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
OOIDA	Owner-Operator Independent Drivers Association
PATT	Parents Against Tired Truckers
PTA	Privacy Threshold Assessment
SBA	Small Business Administration
SC	Shippers Coalition
SWANA	Solid Waste Association of North America
TSC	Truck Safety Coalition
UMRA	Unfunded Mandates Reform Act of 1995
U.S.C.	United States Code

V. LEGAL BASIS FOR THE RULEMAKING

Under 49 U.S.C. 31136(a)(1), DOT is required to adopt regulations to ensure that “commercial motor vehicles are maintained, equipped, loaded, and operated safely,” but in accordance with 31136(e) may “grant in accordance with section 31315 waivers and exemptions from, or conduct pilot programs with respect to, any regulations prescribed under this section.” Section 31315(a) of 49 U.S.C. provides that the Secretary may grant waivers or exemptions from compliance in whole or in part with a regulation issued under section 31136 in certain situations. Section 31502(e) of 49 U.S.C. provides that certain regulations issued under 49 U.S.C. 31502 or 31136 shall not apply to the driver of a utility service vehicle during an emergency period, as declared by an elected official of one or more State or local governments having jurisdiction.

Title 49 U.S.C. 31136 note requires that the Secretary issue the regulations found within this document as 49 CFR 390.23(a)(1)(ii)(B).

Finally, 49 U.S.C. 31133 provides that the Secretary of Transportation may perform other acts the Secretary considers appropriate. These responsibilities and authorities have been delegated by the Secretary to FMCSA. (49 U.S.C. 113 and 49 CFR 1.87)

VI. DISCUSSION OF PROPOSED RULEMAKING AND COMMENTS

A. Proposed Rulemaking

On December 8, 2022, FMCSA published in the *Federal Register* (Docket No. FMCSA-2022-0028, 87 FR 75206) an NPRM titled “Clarification to the Applicability of Emergency Exemptions.” The NPRM proposed to revise, remove, and add definitions to reflect other changes proposed to the emergency exemption rules. These changes included removing an obsolete term, moving the definition of one term to the definition section, and revising two definitions.

FMCSA also proposed to shorten, in certain situations, the duration and limit the scope of the initial, automatic regulatory relief triggered by an emergency declaration. Under the NPRM, the scope of relief would be limited to specific provisions of the HOS regulations, unless the emergency declaration is made by the President under the authority of 42 U.S.C. 5191(b). As proposed, the relief would be limited to a period of 5 days, unless the emergency declaration is made by the President under the authority of 42 U.S.C. 5191(b). Presidential declarations would continue to trigger a 30-day exemption from all FMCSRs in parts 390 through 399.

The NPRM proposed that any party, including a State or local official, could request additional relief and/or an extension from FMCSA. The Agency would evaluate any such request and approve, modify, or deny the request, as appropriate. No formal request or form would be required to request relief. Requests would be submitted to FMCSA’s emergency declaration email inbox (FMCSAdeclaration@dot.gov). FMCSA would also have retained independent authority to extend or modify the emergency relief.

FMCSA also proposed adding language to § 390.25 to expressly note that one of the conditions FMCSA may include when extending/modifying an emergency declaration exemption is to collect information from those carriers and drivers relying upon the regulatory relief.

B. Comments and Responses

FMCSA solicited comments concerning the NPRM for 60 days ending February 6, 2023. Twenty-nine comments were received, from the following parties: American Association of State Highway and Transportation Officials (AASHTO), Arkansas Electric Cooperative Corporation (AECC), Arkansas Electric Cooperatives, Inc. (AECI), Advocates for Highway and Auto Safety (AHAS), American Trucking Associations (ATA), Citizens for Reliable and Safe Highways (CRASH), Commercial Vehicle Safety Alliance (CVSA), Edison Electric Institute (EEI), Energy Marketers of America (EMA), Florida Highway Patrol – Office of Commercial Vehicle Enforcement (FHP), Florida Petroleum Marketers Association, Inc. (FPMA), Fuel Merchants Association of New Jersey (FMA), Iowa Department of Transportation (IDOT), Montana Department of Transportation—Motor Carrier Services Division (MCS), Mississippi Emergency Management Agency (MEMA), Maine Motor Transport Association (MMTA), the State of North Dakota (ND), National Energy & Fuels Institute, Inc. (NEFI), National Propane Gas Association (NPGA), National Waste & Recycling Association (NWRA), Oncor², Owner-Operator Independent Drivers Association (OOIDA), Parents Against Tired Truckers (PATT), Powell Transportation Co., Inc., Shippers Coalition (SC), Solid Waste

² Oncor submitted their comment after the comment period officially closed via an email, which FMCSA placed in the docket for this rulemaking.

Association of North America (SWANA), Suburban Propane, Truck Safety Coalition (TSC), and two private citizens³ [REDACTED]. The Agency also received a letter signed by twenty-seven Members of Congress, which was added to the docket.

Request to Extend Comment Period

One commenter, EMA, requested an extension of the comment period, citing a lack of awareness on the part of State associations. However, several States and associations submitted comments to the docket prior to its closing date, including a second, substantive comment from EMA. FMCSA ensured that the docket would stay open beyond February 6, 2023, so all interested parties would have time to file their comments. FMCSA considered all comments it received, whether those comments were filed in the docket before or after February 6, 2023. For these reasons, FMCSA did not extend the comment period.

General Comments

The majority of commenters agreed with the proposal to limit the automatic exemption to the HOS requirements triggered by a declaration of emergency. Most of the commenters who agreed with the idea of limiting the application of the automatic emergency exemption to the HOS requirements had additional comments, which are addressed below. Seven commenters opposed all aspects of the NPRM.

Reason for Making Changes

Five commenters questioned FMCSA's stated reasons for proposing changes to the emergency exemption regulations. NPGA noted that "the stated basis for this

³ One commenter submitted a duplicate comment, which contained numerous attachments that were not included in their initial filing. FMCSA counted these two comments as one.

rulemaking lacks evidence, and evidence to the contrary is provided by FMCSA itself.” NEFI recommended that FMCSA analyze safety data from the COVID-19 emergency declaration to see if there was a rise in fatigue related incidents prior to making any changes. OOIDA, EMA, FPMA, and the Members of Congress all noted a lack of evidence that the current emergency exemption rules impact safety.

FMCSA acknowledges that there is no specific quantitative evidence that the current emergency exemption rules have led to a degradation of safety. Data collected during the COVID-19 emergency declaration was of limited scope and does not allow for a specific safety impact analysis of those carriers operating under the emergency exemption. However, it is generally accepted that driver fatigue increases risk of safety incidents, and that one of the leading causes of driver fatigue is driving for too long and working long hours without adequate opportunities for restorative sleep. FMCSA is committed to ensuring the safety of commercial vehicle transportation, both for CMV drivers and for others sharing the roads with CMVs. The FMCSRs exist in order to ensure safety, and there is published research that indicates the FMCSRs overall have a solid safety basis. (See research studies on the Safety Measurement System, the Behavior Analysis and Safety Improvement Categories from which are rooted in the FMCSRs).⁴ Any time FMCSA agrees to lower a safety standard by issuing an exemption, there must be a compelling reason. While responding to emergency situations is a compelling reason to issue relief from some FMCSRs, FMCSA does not believe that it is a compelling reason to exempt motor carriers and drivers from all FMCSRs. Nor does it provide a

⁴ “The Carrier Safety Measurement System (CSMS) Effectiveness Test by Behavior Analysis and Safety Improvement Categories (BASICS)” from January 2014, available in the docket for this rulemaking.

compelling reason to extend that relief for a longer period than is necessary to respond. In the absence of specific data showing an increased safety risk for CMVs operating under an emergency exemption, FMCSA determined that the potential for increased safety risk under the current emergency exemption regulation, as reflected by the removal of all FMCSR requirements during an emergency exemption, was enough to warrant the changes made by this rule.

Additionally, in recent years FMCSA saw emergency declarations from state Governors or their representatives that do not warrant the emergency exemptions from the Federal regulations in § 390.23. Examples include an emergency exemption covering all interstate shipments of goods during the month of December, to counteract supply chain issues and help increase the supply of toys and other items for Christmas, and an exemption for all shipments of gasoline to encourage more travel after the pandemic. FMCSA considered the increase in the number of inappropriate emergency declarations as another reason to initiate this rulemaking, to clarify those instances when emergency exemptions are appropriate.

Limitation of Regional Exemption to 5 Days

Twenty-two commenters opposed shortening the duration of the automatic exemption triggered by regional emergency declarations by governors, their authorized representative, or FMCSA. These commenters included Powell Transportation, MMTA, CVSA, AASHTO, SC, MCS, IDOT, FHP, AECC/AEC, MEMA, Suburban Propane, ATA, NPGA, NWRA, SWANA, EEI, NEFI, OOIDA, EMA, FPMA, and the Members of Congress. These commenters noted that 5 days may not be long enough to deal with certain emergencies, citing various examples of emergencies from recent years, where

emergency relief efforts extended beyond 5 days. They noted that the effects of climate change make it likely that storms will become more frequent and stronger, requiring longer response times. Many added that a 5-day exemption does not provide enough time for responders to plan and prepare for a response before they might need to pause to ensure that the exemption will be extended to cover their entire response time.

Additionally, they argued that this shortened time period will require responders to focus on requesting an extension at the very time when they should be focusing on relief efforts. ATA suggested that the duration for these regional emergency exemptions be revised to 14 days; NWRA suggested 15 days. They argued that this would still be a shorter period than is currently in regulation but would be long enough to ensure that most regional emergencies were covered completely without the need for an extension.

As FMCSA stated in the NPRM, the Agency believes most direct assistance to emergencies requiring regulatory relief ends within 5 days. However, FMCSA acknowledges there are circumstances that may result in the need for more time for responders to complete their emergency relief efforts. The Agency also acknowledges that in certain cases, coordination efforts may take longer than a 5-day exemption period would allow. Therefore, FMCSA is revising the duration of the automatic regulatory relief that is triggered by a regional declaration of emergency to 14 days, as suggested by ATA. FMCSA notes that, as is the case now, these exemptions will expire earlier if the emergency declaration expires before the end of 14 days. Additionally, while this limitation also applies to declarations issued by FMCSA, the Agency retains the ability to issue a modified emergency exemption from day one of an emergency, with an initial expiration beyond 14 days.

One commenter, AWM Associates, thought FMCSA should go further and apply this temporal limit even to Presidential declarations of emergency. FMCSA questions its legal authority to limit Presidential declarations by rulemaking, and it, therefore, declines to make such a change. The Agency notes, however, that the emergency exemption will expire in less than 30 days where the Presidential declaration expires in less than 30 days.

Limitation of Emergency Exemption to HOS Rules

Four commenters questioned the limitation of the automatic exemption to just the HOS rules. The State of North Dakota and OOIDA opposed this change on the basis of a lack of data, a point addressed previously above. IDOT listed several additional FMCSRs from which CMVs might need relief, including medical certificate and DOT number requirements, as well as the CDL requirement waivers that were issued during the COVID-19 emergency declaration. Oncor, an intrastate carrier, noted that they rely on the automatic exemption from rules in parts 391, 392, 393, and 396 when responding to emergencies in other states, noting its efforts in response to several hurricanes that hit Florida in recent years.

FMCSA understands that, in certain situations, there may a need to grant additional regulatory relief to one or more entities in order to facilitate emergency response. However, the Agency is confident that such relief can be provided using other existing authorities, as was the case of the CDL waivers during the COVID-19 emergency declaration. For this reason, FMCSA is not revising the proposal to include additional regulatory provisions in the automatic emergency regulatory relief. In response to the situation presented by Oncor, FMCSA notes that the regulations covering registration allow for the issuance of temporary authority in emergency situations

(§ 365.107T), which would allow intrastate motor carriers to travel interstate when responding to an emergency.

Comments on Changes to Definitions

FMCSA received several requests to revise definitions included in the NPRM. AASHTO and NPGA requested changes to the definition of *emergencies*. AASHTO requested the definition of *emergencies* be broadened to cover health and cybersecurity emergencies; NPGA requested clarity on the conditions that would constitute an immediate threat to human life, which would allow for emergency regulatory relief even though a declaration is based on economic conditions caused by market forces (as opposed to a natural disaster).

FMCSA believes that the proposed definition could cover health and cybersecurity emergencies, as it retains the phrase “or other occurrence, natural or man-made” found in the current definition. As such, no revision is being made. As for NPGA’s request, FMCSA notes that the term “immediate threat to human life” is intended to be read literally – as was the case during the COVID-19 emergency declaration, as the related emergency exemptions issued were limited to commodities that were tied to human health and safety, such as vaccines, food supplies, public sanitation and hygiene products. They did not cover all commodities, as not all commodities impact human health and safety.

AASHTO also requested that the definition of *direct assistance* be revised to cover shipments of emergency supplies before an event occurs, and to cover debris removal.

FMCSA notes that in some cases, emergency declarations are issued in advance of an event that can be reliably predicted, such as a hurricane, blizzard, or flooding. In those cases, the emergency regulatory relief would also start prior to the event. However, in instances where the emergency declaration is not made prior to the event, FMCSA does not believe it is appropriate for the emergency regulatory relief exemption to start prior to an emergency declaration. FMCSA also notes that there is no reason why debris removal couldn't be included in the term "essential services," which is used in the definition of *emergencies*, even if it isn't included in the list of examples within that definition. So long as the debris in question immediately threatens human life or public welfare, its removal would qualify as direct assistance. However, if the debris is not posing such threat, its removal would not qualify.

EMA requested that the term "biodiesel blends" be added to the definition of *residential heating fuels*, to ensure that carriers transporting those fuels are included in the statutory exemption. FMCSA disagrees with this change as it creates redundancy in the definition. The term "heating oil," as previously discussed in the rule, has already been defined and will encompass those "biodiesel blends" that are used for or in "residential heating fuel." Accordingly, there is no need to specifically include "biodiesel blends" as an example of a "heating oil" that could be used as a residential heating fuel.

Comments on Requests for Exemption Extensions/Modifications

Three commenters questioned the proposed requirement that requests for extension and modification of an emergency exemption be made using a specified email address (FMCSADeclarations@dot.gov). EMA requested that the current procedures, using phone numbers, be retained. EEI had several questions on how the new procedure

would work, including what would happen if the end of an automatic exemption occurs on a weekend or holiday, how long FMCSA will need to respond to the request, and what basis FMCSA will use to make their decision. NPA questioned whether FMCSA would be able to respond in a timely manner to a “flood of email requests.”

FMCSA disagrees with the suggestion that extension and modification requests be made via telephone calls. The Agency believes it will be easier for motor carriers and CMV drivers to remember one email address than it is to know which service center should be called, and to have access to the correct phone number at that service center, as the current regulation requires. Additionally, FMCSA will have several individuals continuously monitor the single email address, ensuring continuity of coverage through weekends and holidays, and ensuring that it can respond in a timely manner. FMCSA notes that the extension of the automatic emergency exemption for regional declarations from 5 days to 14 days will also mitigate against the need for numerous extension requests.

In regard to what information needs to be included in a request, this final rule requires only a “detailed explanation of the need for an extension or modification;” because disasters that spur emergency declarations are universal only in their uniqueness, FMCSA does not want to provide a prescriptive list of elements to include in a request. FMCSA encourages an interested party to include all facts and rationale as they deem relevant. As noted in this final rule, “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.”

AHAS requested that FMCSA include reporting requirements in future emergency exemptions and that the Agency commit to sharing data as quickly as possible. Once this final rule takes effect, FMCSA will determine on a case-by-case basis whether or not to include a reporting requirement in any modified and/or extended emergency exemptions. The Agency will follow all current information sharing requirements in regard to the reports, and the data included.

AASHTO questioned FMCSA's estimates of the administrative burden associated with requesting extensions of emergency exemptions and with the potential reporting requirements on extended/modified emergency exemptions. They commented that they found FMCSA's estimates to be "unrealistically low" but provided no alternate estimates for the Agency to use. In the absence of an alternative, FMCSA believes that relying upon the estimates developed by Agency experts, which built upon estimates developed when reporting requirements were added to the COVID-19 emergency declaration, is reasonable.

Comments on the Regulatory Evaluation

EEI had several questions on the cost assessment, which are addressed below in the "Regulatory Analyses" section.

Miscellaneous Comments

EEI requested clarification that the changes in this rule would not impact the HOS exemption for utility service vehicles found in §§ 395.1(n) and 395.2. FMCSA confirms that nothing in today's rule impacts the utility service vehicle HOS exemptions cited. AECC and AECI requested a utility specific exemption to allow for prompt restoration of power. FMCSA notes that the exemptions cited by EEI already exists and covers both

AECC and AECI when responding to emergencies within their coverage areas. When responding to emergencies outside of their coverage areas, the automatic exemption in today's rule should, in most cases, provide adequate time for the restoration of power. Where additional time is needed, this final rule would allow for the extension of the exemption.

NPGA requested that FMCSA declare that State waivers in adjoining States have the same effect as an FMCSA regional waiver. FMCSA notes that this rule only applies to the automatic emergency regulatory relief from Federal regulations triggered by emergency declarations. Should Governors in neighboring States declare emergencies for the same event (such as a storm), then the automatic emergency relief would be triggered in both States, allowing for a lifting of the HOS restrictions on interstate travel providing direct assistance to the emergency to or from both States.

SWANA requested that solid waste carriers receive a special "carve out" in the same way that home heating does. However, the home heating "carve out" was created by Congress, not FMCSA. Therefore the Agency does not believe it is appropriate to create an additional "carve out" without Congressional action. Additionally, as noted above, certain solid waste removal would qualify as an essential service under the definition of *emergencies* if the solid waste threatens human life or public welfare, making an additional "carve out" unnecessary in the contexts where the solid waste threatens human life or public welfare.

One private citizen commented that FMCSA does not declare emergencies. This is incorrect. While many emergency declarations are made by Presidential, gubernatorial,

or other local decree, FMCSA also has authority to issue emergency declarations, in accordance with 49 CFR 390.23(a)(1)(i)(B), and has done so on numerous occasions.

VII. CHANGES FROM THE NPRM

As noted above in the discussion of comments and responses, this final rule contains changes from the NPRM. In response to the commenters, FMCSA is extending the length of time of the automatic regulatory relief from Federal regulations that is triggered by a regional declaration of emergency by a Governor of a State, their authorized representative, or FMCSA. The NPRM proposed that this period be 5 days, but this final rule extends that to 14 days, and this change can be found in section 390.23(b). FMCSA is also making minor grammatical changes in the definition of “emergency” and in section 390.23.

VIII. SECTION-BY-SECTION ANALYSIS

This section-by-section analysis describes the changes to the regulatory text in numerical order.

49 CFR 390.5/49 CFR 390.5T

This final rule changes the definitions found in §§ 390.5 and 390.5T. The definition for *emergency relief* is removed, as this term no longer appears in §§ 390.23 or 390.25. FMCSA adds a definition for *residential heating fuel*. The definition previously appeared in § 390.23; it is moved to the definition section to make § 390.23 easier to read, and to ensure all definitions appear in one section. The definition itself remains substantively unchanged.

The definition for *direct assistance* is revised to incorporate the definition of *emergency relief*, which is deleted. The definition of *emergency* is revised to clarify what

does and does not qualify as an emergency that could trigger the automatic exemptions of § 390.23.

49 CFR 390.23

This final rule makes several revisions to § 390.23. Paragraph (a) is limited to addressing Presidential declarations of emergency issued under 42 U.S.C. 5191(b). These declarations will continue to trigger automatic regulatory relief from parts 390 through 399 for the period of assistance, or 30 days from the declaration, whichever is less.

Paragraph (b) addresses regional declarations of emergencies issued by a Governor, their authorized representative, or FMCSA, and limits the automatic regulatory relief to the HOS regulations in §§ 395.3 and 395.5 for the period of direct assistance or 14 days from the declaration, whichever is less. This paragraph includes an exception for declarations by a Governor of a State when there is an emergency caused by a shortage of residential heating fuel, as required by statute. Residential heating fuel declarations trigger automatic regulatory relief from all regulations in parts 390 through 399, and the Governor may extend the declaration for up to two additional 30-day periods. (49 U.S.C. 31136 note).

Paragraph (c) covers local emergencies, whether declared by a Federal, State, or local government official with authority to declare an emergency. The automatic regulatory relief in this case continues to be limited to a period of 5 days or for the period of assistance (whichever is less), and now provides relief only from the HOS requirements in §§ 395.3 and 395.5 rather than all the FMCSRs.

Paragraph (d) of § 390.23 carries forward the special provision for tow trucks from previous paragraph (a)(3). The emergency regulatory relief provided in this

paragraph only applies to the HOS regulations in § 395.3 and lasts for no more than 24 hours. No substantive changes are made except to narrow the provision to granting relief from the HOS restrictions in § 395.3 only.

Paragraph (e) carries forward the provisions in previous paragraph (b), outlining the details of when direct assistance to an emergency effort terminates, and the impact of that termination on the terms of the emergency regulatory relief, no matter which entity makes the declaration of emergency. Changes to this paragraph are intended only to clarify the rule; no substantive changes are made.

49 CFR 390.25

Paragraph (a) of § 390.25 provides that FMCSA may extend or modify any of the emergency regulatory relief issued under § 390.23 on its own authority, or upon request by an interested party who provides a detailed explanation of the need for an extension or modification through the FMCSA emergency declarations email address (FMCSAdeclaration@dot.gov). This change affords FMCSA greater flexibility to consider requests for extensions of emergency regulatory relief, beyond current language in § 390.25, which is limited to requests from drivers and motor carriers only. Additionally, FMCSA may continue to extend or modify emergency relief upon its own volition. This would include issuing an initial emergency declaration and regulatory relief from Federal regulations that extends beyond 14 days, if the Agency determines such additional time will be necessary.

Paragraph (b) carries forward the pre-existing language requiring any FMCSA official approving an extension to set a new expiration date for the emergency regulatory relief and allowing the FMCSA official to include any other restriction deemed

necessary. This final rule adds explicitly that these additional restrictions may include reporting requirements.

IX. SEVERABILITY

As noted in the Legal Authority section above, Congress mandated that FMCSA adopt regulations to ensure that “commercial motor vehicles are maintained, equipped, loaded, and operated safely,” but that it may also “grant...waivers and exemptions from, or conduct pilot programs with respect to, any regulations prescribed under this section.” Consistent with that authority, FMCSA is revising its regulations covering automatic, emergency relief from Federal regulations that is triggered by an emergency declaration. The purpose of this rule is to ensure that the automatic regulatory relief is limited in scope to providing relief from only those regulations most likely to inhibit emergency relief operations during an emergency declaration, and that the automatic relief lasts only as long as is necessary for those providing direct assistance during an emergency declaration. However, FMCSA recognizes that certain provisions focus on unique scenarios. Therefore, FMCSA finds that the various provisions of this final rule are severable and able to operate functionally if severed from each other. In the event a court were to invalidate one or more of this final rule’s unique provisions, FMCSA intends that the remaining provisions would stand, thus allowing FMCSA to continue to fulfill its Congressionally authorized role of promoting safe operation of CMVs.

X. REGULATORY ANALYSES

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has considered the impact of this final rule under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, E.O. 14094 (88 FR 21879, Apr. 11, 2023), Modernizing Regulatory Review, and DOT's regulatory policies and procedures. OIRA at OMB determined that this final rulemaking is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563 and E.O. 14094, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. Accordingly, OMB has not reviewed it under that E.O.

Baseline for This Analysis

The Agency does not expect this final rule to result in substantive incremental impacts relative to the baseline established in the FMCSRs. Most of the changes in this rule have already been in practice through modifications to existing exemptions, including the COVID-19 emergency exemption.

Since the publication of the 1992 final rule, the FMCSRs have provided a mechanism for motor carriers and drivers to be exempt from the requirements in parts 390 through 399 following a declaration of a Presidential, regional, or local emergency. Beginning in 2020, the COVID-19 related emergency exemption was utilized to aid with supply chain shortages during the pandemic, as well as with distributing medical products for dealing with COVID-19 (such as tests, treatments, and vaccines). The unprecedented need to continually extend an emergency exemption prompted FMCSA to reevaluate the rule for exemptions issued in response to an emergency declaration.

In September 2021, FMCSA modified the COVID-19 exemption to narrow the issued relief to just the HOS requirements in §§ 395.3 and 395.5. Based on Agency

experience and expertise, and input from industry stakeholders, FMCSA believes the HOS limits are the primary, immediate constraints drivers and carriers face when providing direct assistance during an emergency. As such, any driver operating under the COVID-19 exemption from September 2021 until its expiration in October 2022 was already afforded only HOS-related exemptions and not a broad exemption from all requirements of parts 390 through 399.

Need for this Final Rule

The COVID-19 pandemic highlighted the value of effective exemptions from the HOS rules. This rule emphasizes the need for ensuring that relief granted by emergency declarations is appropriate and tailored to the specific emergency being addressed. FMCSA believes that a blanket relief from all FMCSRs in parts 390 through 399 is not necessary. Most often, motor carriers and drivers of CMVs need relief from only the HOS regulations in §§ 395.3 and 395.5 in order to provide direct assistance to emergency relief efforts.

Uncertainties

FMCSA presents a qualitative analysis of the costs and benefits of limiting emergency exemptions to HOS waivers. There is uncertainty surrounding the number of motor carriers and drivers who currently utilize exemptions beyond the HOS regulations in §§ 395.3 and 395.5, because FMCSA has not previously collected data on the use of the exemptions, and, therefore, cannot quantitatively inform the potential impacts of limiting emergency exemptions. While the Agency did begin collecting data on COVID-19 exemption use in September of 2021, this data is insufficient to quantitatively estimate these impacts. The data provides FMCSA with a basis for the number of respondents to

potential data collections on extensions of emergency exemptions, but it does not provide insight into the use of exemptions beyond HOS exemptions. In order to quantify these impacts, the Agency would need historical data on how many motor carriers and drivers operating during emergency declarations use exemptions from the requirements in parts 390 through 399, excluding the HOS regulations in §§ 395.3 and 395.5, as well as data on how many trips drivers make during those periods. Comprehensive and verifiable data in this area are not currently available to the Agency.

Costs

In narrowing the exemptions to the HOS regulations in §§ 395.3 and 395.5, as opposed to all of parts 390 through 399, this rule will result in costs to certain motor carriers and drivers using those additional exemptions. As mentioned above, FMCSA does not have data to indicate how many carriers and drivers are using emergency-related exemptions beyond the HOS exemptions. However, most emergency exemptions are limited to HOS requirements, including the COVID-19 emergency exemption; therefore, this change will not result in incremental costs relative to the baseline.

As discussed in the Paperwork Reduction Act (PRA) section below, FMCSA estimates that there could be 477 monthly respondents if the Agency adds a reporting requirement to an extension or modification of an exemption as proposed in the NPRM and included in this final rule. This estimate is based on the average number of responses the Agency received from the COVID-19 emergency exemption data collection. This figure represents an upper-bound estimate for the number of motor carriers the Agency expects will be required to report their use of an HOS exemption extension and thus be

subject to an information collection. This figure cannot be used to estimate the total number of affected entities, however, because FMCSA does not have information on whether any of the individuals who reported their use of the COVID-19 emergency exemption from the HOS limits would also have relied upon exemptions from other portions of the FMCSRs if a broader exemption had remained in place. Based on comments received on the NPRM, which generally supported limiting emergency relief to the HOS limits, FMCSA does not believe that all 477 respondents would have relied upon relief from requirements beyond the HOS limits. The Agency does not have a means of inferring how many individuals will be affected by the changes proposed in this rulemaking and, therefore, does not use the estimate of 477 respondents as a basis for a quantitative analysis.

The final rule will result in an increase in the number of extension requests from motor carriers and drivers, as the automatic exemption period resulting from a regional declaration of emergency by a Governor will be reduced from 30 to 14 days. This rule will require individuals to request extensions or modifications to exemptions via email whenever they seek such action from FMCSA. These requests are currently made to local FMCSA offices, but they may be made by any means.

A requirement for drivers and motor carriers to submit extension requests will increase the burden on drivers and motor carriers to prepare and submit such requests, as well as the burden on the Agency to review and respond to them. As mentioned in the

PRA section below, the Agency estimates that 50 individuals⁵ will submit requests for extensions per year. These extension requests will take 15 minutes to complete and total to 12.5 hours of labor (50 respondents × 15 minutes). A motor carrier employee equivalent to General and Operations Managers with a loaded hourly wage of \$80.88 will submit the extension request.⁶ As such, there will be a total annual cost of \$1,011 (\$80.88 × 12.5 hours) to submit extension requests. Requests for extensions will take 15 minutes each to review. The requests will be reviewed by a GS-13, step 5 in the Washington, DC area with a loaded hourly wage of \$127.13. The total annual cost to review these extension requests is \$1,589 (\$127.13 × 12.5 hours).⁷

Benefits

While the existing FMCSRs offer relief from safety regulations in parts 390 through 399, FMCSA believes that most exemptions used during emergencies have been related to HOS requirement relief. The Agency has no information that suggests that existing emergency exemptions have negatively impacted road safety, but likewise it has no information suggesting that exemptions from all safety regulations are necessary to provide emergency relief. This rule provides clarity on which exemptions are necessary during an emergency and ensures the public continues to benefit from the other important

⁵ FMCSA consulted with its Crisis Management Center, which is responsible for monitoring emergency declarations. Based on that expertise, the Agency is estimating 50 requests per year.

⁶ The loaded hourly wage is a product of the median hourly wage of a General and Operations multiplied by the fringe benefits rate of 50.5 percent and overhead costs of 21 percent. The median hourly wage of a General and Operations Manager is \$47.16. A General Operations Manager falls under the Bureau of Labor Statistics Occupation Code 11-1021.

⁷ The hourly wage for a GS-13 Step 5 in the Washington, DC region was multiplied by the federal government fringe benefits rate of 45 percent and the federal government overhead rate of 64 percent to arrive at the loaded hourly wage. The hourly wage denoted in the OPM schedule for a GS-13 step 5 is \$60.83. Located at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/DCB_h.pdf (accessed May 16, 2023).

safety requirements in parts 390 through 399. In addition, in requiring that individuals request extensions or modifications to exemptions via email, the Agency will be able to more efficiently track exemption requests.

Comments on the Regulatory Evaluation

EEI disagreed with FMCSA's estimate that 50 individuals would submit requests for extensions annually at an estimated cost of \$1,047⁸ but provided no alternate estimates for the Agency to use. In the absence of an alternative, FMCSA believes that relying upon the estimates developed by Agency experts, which built upon estimates developed when reporting requirements were added to the COVID-19 emergency declaration, is reasonable. EEI asserted that this estimate is "based on current regulations, with no projections based on the impact of the proposed rule." FMCSA disagrees with this assertion based on observations during the COVID-19 exemption. FMCSA's crisis management center predicts, based on past experience, that owners/operators will utilize the exemptions, if available, but would seldom request an extension. It has also been observed that direct assistance to most emergencies is often concluded within 5 days. However, based on the suggestion of commentors, FMCSA has opted to revise the automatic regulatory relief as proposed in the NPRM from 5 to 14 days for regional declaration of emergencies. Providing for 14 days of automatic relief for regional emergencies should serve to abate fears of a lapse between the automatic regulatory relief and any FMCSA action to extend or reinstate the regulatory relief due to federal holidays, weekends, or other circumstances. The regulatory relief for local emergencies is already

⁸ As described in the cost section, the estimated annual cost for these extensions has been updated to \$1,011 for this final rulemaking.

limited to 5 days, thus no change to the length of the automatic relief is needed, as this period has been observed to be appropriate.

EEI also objected that the regulatory evaluation does not account for possible delays of restoration. This argument erroneously assumes that extensions or modifications will not be made during the automatic relief period and that FMCSA will take no action to extend or reinstate regulatory relief if needed. FMCSA disagrees with this assertion but considered it in revising the automatic regulatory relief for regional emergencies. FMCSA cannot account for costs in delayed restoration due to lack of available data supporting this claim and the dynamic nature of each emergency.

B. Congressional Review Act

This rule is not a *major rule* as defined under the Congressional Review Act (5 U.S.C. 801–808).⁹

C. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996¹⁰ requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term *small entities* comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of

⁹ A *major rule* means any rule that OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 802(4)).

¹⁰ Pub. L. 104–121, 110 Stat. 857, (Mar. 29, 1996).

less than 50,000 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses.

This rule applies to motor carriers and drivers subject to the FMCSRs. Drivers are not considered small entities because they do not meet the definition of a small entity in section 601 of the RFA. Specifically, drivers are considered neither a small business under section 601(3) of the RFA, nor are they considered a small organization under section 601(4) of the RFA. The Small Business Administration's (SBA) size standard for a small entity (13 CFR 121.201) differs by industry code. The entities affected by this rule fall into many different industry codes. In order to determine if this rule impacts a significant number of small entities, FMCSA examined the 2012 and 2017 Economic Census data for two different North American Industry Classification System (NAICS) subsectors: Truck Transportation (subsector 484) and Transit and Ground Transportation (subsector 485).

As shown in the table below, the SBA size standards for the national industries under the Truck Transportation and Transit and Ground Transportation subsectors range from \$19.0 million to \$43.0 million in revenue per year.

To determine the percentage of firms that have revenue at or below SBA's thresholds within each of the NAICS national industries, FMCSA examined data from the 2017 Economic Census.¹¹ In instances where 2017 data were suppressed, the Agency

¹¹ U.S. Census Bureau. *2017 Economic Census*. Table EC1700SIZEEMPfirm - Selected Sectors: Employment Size of Firms for the U.S.: 2017. Available at <https://www.census.gov/data/tables/2017/econ/economic-census/naics-sector-48-49.html> (accessed Apr. 25, 2023).

imputed 2017 levels using data from the 2012 Economic Census.¹² Boundaries for the revenue categories used in the Economic Census do not exactly coincide with the SBA thresholds. Instead, the SBA threshold generally falls between two different revenue categories. However, FMCSA was able to make reasonable estimates as to the percentage of small entities within each NAICS code.

The percentages of small entities with annual revenue less than the SBA's threshold ranged from 96.3 percent to 100 percent. Specifically, approximately 96.3 percent of Specialized Freight (except Used Goods) Trucking, Long Distance (484230) firms had annual revenue less than the SBA's revenue threshold of \$34 million and would be considered small entities. FMCSA estimates 100 percent of firms in the Mixed Mode Transit Systems (485111) national industry had annual revenue less than \$29 million and would be considered small entities. The table below shows the complete estimates of the number of small entities within the national industries that may be affected by this rule.

¹² U.S. Census Bureau. *2012 Economic Census*. Table EC1248SSSZ4 - Transportation and Warehousing: Subject Series - Estab & Firm Size: Summary Statistics by Revenue Size of Firms for the U.S.: 2012. Available at <https://www.census.gov/data/tables/2012/econ/census/transportation-warehousing.html> (accessed Apr. 25, 2023).

Estimates of Number of Small Entities

NAICS code	Description	SBA size standard in millions	Total number of firms	Number of small entities	Percent of all firms
484110	General Freight Trucking, Local	\$34.0	22,066	21,950	99.5%
484121	General Freight Trucking, Long Distance, Truckload	\$34.0	23,557	23,045	97.8%
484122	General Freight Trucking, Long Distance, Less Than Truckload	\$43.0	3,138	3,050	97.2%
484210	Used Household and Office Goods Moving	\$34.0	6,097	6,041	99.1%
484220	Specialized Freight (except Used Goods) Trucking, Local	\$34.0	22,797	22,631	99.3%
484230	Specialized Freight (except Used Goods) Trucking, Long Distance	\$34.0	7,310	7,042	96.3%
485111	Mixed Mode Transit Systems	\$29.0	25	25	100.0%
485113	Bus and Other Motor Vehicle Transit Systems	\$32.5	318	308	96.9%
485210	Interurban and Rural Bus Transportation	\$32.0	309	302	97.7%
485320	Limousine Service	\$19.0	3,706	3,694	99.7%
485410	School and Employee Bus Transportation	\$30.0	2,279	2,226	97.7%
485510	Charter Bus Industry	\$19.0	1,031	1,013	98.3%
485991	Special Needs Transportation	\$19.0	2,592	2,567	99.1%
485999	All Other Transit and Ground Passenger Transportation	\$19.0	1,071	1,059	98.9%

Therefore, FMCSA has determined that this rule would apply to a substantial number of small entities. However, as emergencies are generally infrequent and the primary impact of the rule would be to marginally limit the breadth of the automatic regulatory relief that applies after a regional or local emergency declaration, FMCSA has determined that this rule would not have a significant impact on the affected entities.

Consequently, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA wants to assist small entities in understanding this final rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under FOR FURTHER INFORMATION CONTACT.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration’s Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see <https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman>) and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$192 million (which is the value

equivalent of \$100 million in 1995, adjusted for inflation to 2022 levels) or more in any 1 year. Though this final rule would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

This final rule contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). As defined in 5 CFR 1320.3(c), *collection of information* comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions.

FMCSA received two comments on the proposed information collection requirements, which are discussed previously. The Agency makes no changes to the proposed requirements as a result of those comments.

The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

TITLE: Emergency Declaration Exemption Reporting under 49 CFR 390.25.

OMB CONTROL NUMBER: 2126-0077

SUMMARY OF THE INFORMATION COLLECTION: Section 390.25 of 49 CFR, as revised, allows FMCSA to add a reporting requirement to an extension of an emergency exemption, requiring motor carriers operating under the extensions terms to report their continued use of and reliance on the exemption. It also requires that

individuals request extensions or modifications to exemptions via an email whenever they seek such action from FMCSA.

NEED FOR INFORMATION: The collection of information is necessary for FMCSA to determine the extent to which motor carriers continue to rely upon an extended emergency exemption.

PROPOSED USE OF INFORMATION: FMCSA would use the information collected as datapoint to help determine whether to extend emergency exemptions under 49 CFR 390.25.

DESCRIPTION OF THE RESPONDENTS: Motor carriers that operate under the terms of an extended emergency exemption, originally triggered by a declaration of emergency. Individuals who want to request an extension or modification of an emergency exemption.

NUMBER OF RESPONDENTS: 477 per month.

FREQUENCY OF RESPONSE: Monthly.

BURDEN OF RESPONSE: 15 minutes per response.

ESTIMATE OF TOTAL ANNUAL BURDEN: The public burden for this information collection is estimated to average 1,431 hours per year.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), FMCSA will submit a copy of this final rule to OMB for review. OMB has not yet completed its review of this collection. If OMB does not complete its review prior to the effective date set for this final rule, FMCSA will publish a final rule delaying the effective date for § 390.25.

G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

FMCSA has determined that this rule will not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy

The Consolidated Appropriations Act, 2005,¹³ requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This rule would not require the collection of personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002,¹⁴ requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology will

¹³ Pub. L. 108-447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

¹⁴ Pub. L. 107-347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

In addition, the Agency submitted a Privacy Threshold Assessment (PTA) to evaluate the risks and effects the rulemaking might have on collecting, storing, and sharing personally identifiable information. The DOT Privacy Office has determined that this rulemaking does not create privacy risk.

I. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

J. National Environmental Policy Act of 1969

FMCSA analyzed this rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), Appendix 2, paragraph 6.y(4). The categorical exclusion (CE) in paragraph 6.y(4) covers relief during regional and local emergencies. This rule is covered by this CE.

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 of “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 of “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.

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

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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.

Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,
Administrator.