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*PRACTICE WITHIN THE DISTRICT OF COLUMBIA
IS LIMITED TO MATTERS AND PROCEEDINGS
BEFORE FEDERAL COURTS AND AGENCIES

MEMORANDUM

March 23, 2020

BY ELECTRONIC MAIL

FROM: Olsson Frank Weeda Terman Matz PC

RE: U.S. Department of Transportation Emergency Declaration Concerning Shipment of Critical Goods During COVID-19 Outbreak

The U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) has issued a national emergency declaration exempting commercial truckers transporting critical goods and personnel from FMCSA regulations.¹ FMCSA has issued multiple expansions of the emergency declaration to provide regulatory relief to ease the shipment of goods and personnel deemed essential to responding to the crisis. The [latest expanded emergency declaration](#) was issued on March 18, 2020 (the Emergency Declaration).

The Emergency Declaration exempts commercial carriers from various FMCSA regulations codified in 49 C.F.R. parts 390 – 399, including hours of service limitations, driver qualifications, and inspection and maintenance requirements. The Emergency Declaration applies to commercial carriers transporting critical goods, including medical supplies and equipment, food, livestock and poultry, and feed.

The Emergency Declaration is in effect until the President withdraws the declaration of emergency or April 12, 2020, whichever occurs sooner. However, FMCSA may extend the Emergency Declaration if the United States remains in a state of emergency.

¹ President Trump declared a national emergency pursuant to 42 U.S.C. § 5191(b) on March 13, 2020. FMCSA is authorized to issue relief from FMCSA regulations pursuant to 49 C.F.R. § 390.23(a)(1)(i) when an emergency has been declared by the President or a state governor.

What Shipments Are Exempted?

The Emergency Declaration provides that motor carriers and drivers providing “direct assistance” in support of relief efforts relating to COVID-19 are granted emergency regulatory relief from FMCSA regulations. Under the Emergency Declaration, “direct assistance” includes transportation and other relief services provided by a motor carrier or its driver(s) for the immediate restoration of essential services (such as medical care) or essential supplies (such as food or fuel) during the COVID-19 emergency. Routine commercial deliveries are not considered “direct assistance.”

The below cargo provided in direct assistance of the emergency relief qualifies for exemption of the FMCSA regulations:

1. Medical supplies and equipment related to the testing, diagnosis and treatment of the transmission of COVID-19.
2. 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
3. Food, paper products and other groceries for emergency restocking of distribution centers or stores.
4. Immediate precursor raw materials—such as paper, plastic or alcohol—that are required and to be used for the manufacture of items in categories (1), (2), (3), (5) and (6)
5. Fuel.
6. Equipment, supplies and persons necessary to establish and manage temporary housing, quarantine, and isolation facilities related to COVID-19.
7. Persons designated by Federal, State or local authorities for medical, isolation, or quarantine purposes.
8. Persons necessary to provide other medical or emergency services, the supply of which may be affected by the COVID-19 response.

Notably, FMCSA has clarified that it considers livestock an “immediate precursors to food,” which is covered under the Emergency Declaration. FMCSA has not addressed whether grain for animal food is covered under the Emergency Declaration.

FMCSA has not provided any forms or documents for drivers to carry with them to demonstrate that they are covered by the Emergency Declaration. However, FMCSA advises that records of bills of lading or other business records will be helpful during a later inspection to demonstrate that drivers were operating under the Emergency Declaration.

The exemptions provided by the Emergency Declaration cease to apply when the driver or commercial carrier is no longer transporting goods in direct assistance to COVID-19 response efforts. Furthermore, when a driver returns to their “normal reporting location,” the driver must receive a minimum of 10 hours off duty to rest if hauling cargo. Drivers transporting persons in response to the emergency must receive at least 8 hours off duty to rest.

What Requirements Are Relaxed During the Emergency?

The FMCSA regulations (49 C.F.R. parts 390 – 399) serve as the basis of regulation for commercial motor carriers and drivers. These regulations cover: qualifications of drivers, driving of commercial motor vehicles, part and accessories necessary for safe operation, hours of service of drivers, inspection, repair, and maintenance, transportation of hazard materials, transportation of migrant workers, and employee safety and health standards. FMCSA is exempting these requirements with respect to carriers and their drivers that are providing direct assistance in response to COVID-19.

The Emergency Declaration does not provide exemption for controlled substance and alcohol use and testing requirements under 49 C.F.R part 382, or the commercial driver’s license requirements under 49 C.F.R. Part 383, or the financial responsibility (insurance) requirements under 49 C.F.R. Part 387, or the hazardous material regulations in 49 C.F.R. Parts 100-180, or applicable size and weight requirements, or any other regulation not specifically exempted by the Emergency Declaration.

Motor carriers or drivers currently subject to an out-of-service order are not eligible for the relief granted by the Emergency Declaration until they have met the applicable conditions for its rescission and the order has been rescinded by FMCSA.

Relevant Guidance

FMCSA has prepared a [FAQ guidance document](#) to assist companies in understanding the effect of the Emergency Declaration. Some of the relevant responses include:

- *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.
- *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.
- *Are livestock a covered commodity under the terms of the emergency declaration?*
 - Yes, Livestock are covered as a precursor to food. The emergency declaration covers “immediate precursor raw materials—such as paper, plastic or alcohol—that are required and to be used for the manufacture of items” including food needed for the emergency restocking of stores.



- *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.”

- *Is the driver required to use a paper logbook or ELD?*
 - No, the emergency exemption includes relief from all the hours-of-service regulations in 49 CFR part 395, including the recordkeeping requirements (i.e., records of duty status (RODS)).

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We trust this information is useful. If you have any questions, please do not hesitate to contact us.