

DOT Suspends FMCSR Enforcement for COVID-19 Supply and Passenger Transportation; Ohio Suspends Intrastate HOS Enforcement

By Phillip Sarnowski

In an unprecedented move, the Department of Transportation (DOT) issued an Emergency Declaration that suspends the enforcement of most Federal Motor Carrier Safety Regulations (FMCSR) for COVID-19 supply and passenger transportation. The Emergency Declaration went into effect on March 13, 2020 and will remain in effect until the termination of the emergency (as defined in 49 CFR § 390.5) or until 11:59 P.M. (ET) on April 12, 2020, whichever occurs sooner.¹

Limitations

The Emergency Declaration only applies to motor carriers and drivers “providing direct assistance in support of relief efforts related to the COVID-19 outbreaks” and only relieves them from specific portions of the FMCSR.

Motor Carriers and Drivers Affected

FMCSR enforcement is suspended for commercial motor vehicle operators² providing transportation for:

- (1) medical supplies and equipment related to the testing, diagnosis and treatment 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 for emergency restocking of stores;
- (4) equipment, supplies and persons necessary to establish and manage temporary housing, quarantine, and isolation facilities related to COVID-19;
- (5) persons designated by Federal, State or local authorities for medical, isolation, or quarantine purposes; and
- (6) persons necessary to provide other medical or emergency services, the supply of which may be affected by the COVID-19 response.

However, the Emergency Declaration specifically does not include “routine commercial deliveries, or transportation of mixed loads that include essential supplies, equipment and persons, along with supplies,

¹ The complete Emergency Declaration can be read here: <https://www.fmcsa.dot.gov/emergency/emergency-declaration-under-49-cfr-ss-39023-no-2020-002>.

² Motor carriers or drivers currently subject to an out-of-service order are not eligible for the relief granted by this declaration until they have met the applicable conditions for its rescission and the order has been rescinded by FMCSA.

equipment and persons that are not being transported in support of emergency relief efforts related to the COVID-19 outbreaks.”

The Emergency Declaration’s application terminates when a driver or commercial motor vehicle is used for anything unrelated to the COVID-19 outbreaks or when it is dispatched to another location to begin operations in commerce. Upon termination, the FMCSRs apply in full effect, except that a driver may return empty to the motor carrier’s terminal or the driver’s normal work reporting location without complying with the regulations. However, if the driver informs the motor carrier that he or she needs immediate rest, the driver must be permitted at least 10 consecutive hours off duty before the driver is required to return to the motor carrier’s terminal or the driver’s normal reporting location. Once the driver has returned to the terminal or other location, the driver must be relieved of all duty and responsibilities and must receive a minimum of 10 hours off duty if transporting property, and 8 hours if transporting passengers.

FMCSRs Not Suspended:

The Emergency Declaration specifically excluded the following regulations from the enforcement suspension:

- (1) the controlled substances and alcohol use and testing requirements (49 CFR Part 382);
- (2) the commercial driver’s license requirements (49 CFR Part 383);
- (3) the financial responsibility (insurance) requirements (49 CFR Part 387);
- (4) the hazardous material regulations (49 CFR Parts 100-180);
- (5) applicable size and weight requirements;
- (6) or any other portion of the regulations not specifically exempted under to 49 CFR § 390.23.

The most significant FMCSR affected by the Emergency Declaration is the Hours-of-Service (HOS) regulation for commercial motor vehicle operators. But motor carriers and their drivers must carefully review the above requirements pertaining to what loads are exempt (i.e., those providing direct assistance to COVID-19 relief) and those that are not (i.e., mixed loads, etc.) to avoid violating the FMCSRs that are still in effect and may apply to their operations.

Ohio’s Suspension of HOS Enforcement

The Public Utilities Commission of Ohio (PUCO) similarly granted regulatory relief from the Ohio intrastate HOS requirements under R.C. 4923.02(C) and Rule 4901:2-5-05(A)(3) “for the intrastate transportation of relief supplies including consumer goods and medical supplies.”³ Commercial motor vehicle operators that seek exemption under this rule must carry a copy of the PUCO announcement in their vehicles at all times. Otherwise, the intrastate HOS exemption will not apply. The intrastate HOS exemption will continue until 11:59 P.M. (ET) on March 27, 2020.

³ The Ohio declaration can be found here: <https://www.puco.ohio.gov/information-by-industry/motor-carrier-industry-information/puco-extends-hours-of-service-relief-to-intrastate-truckers/>.

If you would like more information on this or other issues relating to transportation, please contact any of the listed attorneys.

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