



This document is scheduled to be published in the Federal Register on 10/22/2014 and available online at <http://federalregister.gov/a/2014-25127>, and on [FDsys.gov](http://FDsys.gov)

**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 390**

**[Docket No. FMCSA-2014--0355]**

**RIN 2126-AB77**

**Amendment to Emergency Relief Exemptions Pursuant to the Reliable Home Heating (RHH) Act**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** FMCSA adopts, as final, certain amendments to the Federal Motor Carrier Safety Regulations (FMCSRs) required by the Reliable Home Heating (RHH) Act.

Currently, the FMCSRs include a provision which enables motor carriers providing direct assistance in responding to an emergency declared by a governor to do so without having to comply with certain Federal safety regulations. However, the duration of the relief is limited to 30 days unless FMCSA extends the exemption. This final rule amends the emergency relief provision in the FMCSRs so that the safety requirements in 49 CFR parts 390-399 will not apply if a Governor: declares a state of emergency caused by a shortage of residential heating fuel; determines at the end of the 30-day exemption period currently authorized by the regulations that the emergency shortage has not ended; and extends the declaration of emergency for up to 2 additional 30-day periods. Because the rule is a non-discretionary, ministerial action as required by the RHH Act, it is issued without prior notice and opportunity for comment, pursuant to the good cause exception in the Administrative Procedure Act (APA).

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

**ADDRESSES:** You may view material bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2014-0355 using any of the following methods:

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for viewing material.

Docket: For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Yager, Chief of Driver and Carrier Operations, by telephone (202) 366-4325 or by electronic mail at [tom.yager@dot.gov](mailto:tom.yager@dot.gov); FMCSA, Department of Transportation, 1200 New Jersey Ave.,

SE., Washington, DC 20590. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

## **SUPPLEMENTARY INFORMATION:**

### **Executive Summary**

#### Purpose and Summary of the Major Provisions

This rule makes nondiscretionary ministerial changes to FMCSA's emergency relief regulations in 49 Code of Federal Regulations (CFR) 390.23. The changes are required by Section 2(c) of the RHH Act, Pub. L. 113-125, 128 Stat. 1388, June 30, 2014. When shortages of residential heating fuel occur, the RHH amendments extend the normal 30-day exemption period for up to 90 days, provided that the Governor of the affected State determines that a second or third 30-day period must be allowed to enable motor carriers to provide residential heating fuel expeditiously.

#### Benefits and Costs

The rule provisions considered both individually and in the aggregate do not rise to the level of economic significance.

### **Legal Basis for the Rulemaking**

This rule is required by Section 2(c) of the Reliable Home Heating (RHH) Act, Pub. L. 113-125, 128 Stat. 1388, June 30, 2014.

Section 390.23(a) of title 49, CFR, provides that 49 CFR parts 390-399 of the FMCSRs shall not apply to any motor carrier or driver operating a commercial motor vehicle (CMV) to provide emergency relief during an emergency declared by certain Federal or State officials, including a Governor, subject to certain time limits. Section 390.23(a)(1)(ii) limits a regional emergency (which would include a State-wide

emergency) to a maximum of 30 days from the date of the initial declaration of the emergency.

Section 2(b) of the RHH Act provides that, if a Governor (1) declares a state of emergency caused by a shortage of residential heating fuel,<sup>1</sup> (2) determines at the end of the 30-day exemption period authorized by section 390.23(a)(1)(ii) that the emergency shortage has not ended, and (3) extends the declaration of emergency for up to 2 additional 30-day periods, FMCSA shall not apply parts 390-399 of the FMCSRs to a motor carrier or driver operating a CMV to provide residential heating fuel in the geographic area designated by the emergency declaration for those 2 additional periods.

Section 2(c) of the RHH Act requires FMCSA to amend section 390.23(a)(1)(ii) to conform to the provisions of section 2(b). This rule adopts the required conforming amendment.

Because the RHH Act leaves FMCSA no discretion in the promulgation of this amendment, the Agency finds good cause under the APA [5 U.S.C. 553(b)] to publish this final rule without prior notice and opportunity for comment. Comments are unnecessary since they could not change the amendment required by the RHH Act. For the same reason, FMCSA finds good cause to make this rule effective upon publication in the **Federal Register**, as authorized by 5 U.S.C. 553(d)(3).

## **RULEMAKING ANALYSES AND NOTICES**

---

<sup>1</sup> Although the Act states that residential heating fuel “includes” heating oil, natural gas, and propane, FMCSA believes that list was intended to be exclusive, despite the use of the vague term “includes.” The rules of statutory interpretation generally treat a list of specific items as evidence of legislative intent to exclude other items [expressio unius est exclusio alterius]. Section 390.23(a)(1)(ii) has been amended accordingly.

## **Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)**

FMCSA has determined this final rule is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and is also not significant within the meaning of DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). As explained above, this final rule promulgates nondiscretionary statutory requirements. The cost of these changes will not exceed the \$100 million annual threshold. Any costs associated with this action are attributable to the non-discretionary statutory provisions. This final rule is not expected to generate substantial congressional or public interest. Therefore, a regulatory impact analysis has not been conducted nor has there been a review by the Office of Management and Budget (OMB).

### **Regulatory Flexibility Act**

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required to prepare a regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the Agency has not issued a notice of proposed rulemaking prior to this action.

### **Assistance for Small Entities**

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the rule would affect your small business, organization, or governmental

jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Thomas Yager, listed in the **For Further Information Contact** section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the SBA's Small Business and Agriculture Regulatory Enforcement 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 ensuring the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

#### **Unfunded Mandates Reform Act of 1995**

This final rule will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 et seq.), that will result in the expenditure by a State, local, or tribal governments, in the aggregate, or by the private sector of \$151 million (which is the value of \$100 million in 2013 after adjusting for inflation) or more in any one year.

#### **E.O. 13132 (Federalism)**

A rule has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. This action has been analyzed in accordance with E.O. 13132. FMCSA has determined that this rule would

not have a substantial direct effect on States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation.

**E.O. 12988 (Civil Justice Reform)**

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988 to minimize litigation, eliminate ambiguity, and reduce burden.

**E.O. 13045 (Protection of Children)**

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing "economically significant" rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not believe that this action could create an environmental or safety risk that would disproportionately affect children.

**E.O. 12630 (Taking of Private Property)**

FMCSA reviewed this final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have takings implications.

**Privacy Impact Assessment**

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that

will affect the privacy of individuals. This rule does not require the collection of personally identifiable information (PII).

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. That provision is not applicable to this rule.

**E.O. 12372 (Intergovernmental Review)**

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

**Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. This rule requires no information collection.

**National Environmental Policy Act and Clean Air Act**

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and FMCSA's NEPA Implementing Procedures and Policy for Considering Environmental Impacts, Order 5610.1 (FMCSA Order), March 1, 2004 (69 FR 9680). FMCSA's Order states that "[w]here FMCSA has no discretion to withhold or condition an action if the action is taken in accordance with specific statutory criteria and FMCSA lacks control and responsibility over the effects of an action, that action is not subject to this Order." *Id.* at chapter 1(D). Because the RHH Act requires the action taken here, FMCSA has no jurisdiction or control over, or

responsibility for, the effects of this action, and the rulemaking falls under chapter 1(D). Therefore, no further analysis is considered.

In addition to the NEPA requirements to examine impacts on air quality, the Clean Air Act (CAA) as amended (42 U.S.C. 7401, et seq.) also requires FMCSA to analyze the potential impact of its actions on air quality and to ensure that FMCSA actions conform to State and local air quality implementation plans. This non-discretionary action is expected to fall within the CAA de minimis standards and is not subject to the Environmental Protection Agency's General Conformity Rule (40 CFR parts 51 and 93).

Additionally, FMCSA evaluated the effects of this final rule in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impacts resulting from its promulgation. Environmental justice issues would be raised if there were a "disproportionate" and "high and adverse impact" on minority or low-income populations. This final rule is exempt from analysis under the National Environmental Policy Act. This final rule simply makes ministerial, mandatory changes and would not result in high and adverse environmental impacts.

**E.O. 13211 (Energy Supply, Distribution, or Use)**

FMCSA analyzed this action under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA determined that it is not a "significant energy action" under that E.O. because it is not economically significant and is not likely to have an adverse effect on the supply, distribution, or use of energy.

### **E.O. 13175 (Indian Tribal Governments)**

This final 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.

### **National Technology Transfer and Advancement Act (Technical Standards)**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This final rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### **List of Subjects in 49 CFR Part 390**

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA amends 49 CFR part 390 as follows:

### **PART 390 – FEDERAL MOTOR CARRIER SAFETY REGULATIONS;**

#### **GENERAL**

1. The authority citation for part 390 is revised to read as follows:

**Authority:** 49 U.S.C. 504, 508, 31132, 31133, 31136, 31144, 31151, 31502; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677-1678; sections 212, 217, 229, Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106-159 (as transferred by sec. 4114 and amended by sections 4130-4132, Pub. L. 109-59, 119 Stat. 1144, 1726, 1743-1744); sec. 4136, Pub. L. 109-59, 119 Stat. 1144, 1745; sections 32101(d) and 34934, Pub. L. 112-141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113-125, 128 Stat. 1388; and 49 CFR 1.87.

2. Amend § 390.23 by revising paragraph (a)(1)(ii) to read as follows:

**§ 390.23 Relief from regulations.**

(a) \* \* \*

(1) \* \* \*

(ii)(A) Except as provided in paragraph (a)(1)(ii)(B) of this section and § 390.25, the exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 30 days from the date of the initial declaration of the emergency or the exemption from the regulations by the FMCSA Field Administrator, whichever is less.

(B) If a Governor who declares an emergency caused by a shortage of residential heating fuel (namely heating oil, natural gas, and propane), subsequently determines at the end of the 30-day period immediately following the declaration that the emergency

shortage has not ended, and extends the declaration of an emergency for up to 2 additional 30-day periods, this exemption shall remain in effect up to the end of such additional periods, not to exceed 60 additional days, for a motor carrier or driver providing residential heating fuel in the geographic area designated by the Governor's declaration of emergency.

\* \* \* \* \*

Issued under the authority delegated in 49 CFR 1.87: October 14, 2014

---

T.F. Scott Darling, III  
Acting Administrator

[FR Doc. 2014-25127 Filed 10/21/2014 at 8:45 am; Publication Date: 10/22/2014]