

Hurricane Katrina Disaster Frequently Asked Questions

Question 1: How should intrastate carriers that want to assist in the relief efforts go about getting the necessary *interstate* authority at both the Federal and State levels?

Answer 1: To aid intrastate motor carriers seeking to support the emergency relief effort, FMCSA is providing expedited processing of 120-day temporary interstate operating authority and waiving the usual \$300 application fee as follows.

Process for Obtaining Temporary Emergency Federal Operating Authority¹

1. Submit MCS-150 and 150A or 150B for USDOT number to obtain new entrant registration status. (<http://www.fmcsa.dot.gov/registration-licensing/online-registration/onlineregdescription.htm>)
2. Submit OP-1 application for operating authority – filing fee will be waived.
 - a. Can retrieve copy of applications by fax from 202-366-9805.
 - b. Can print copy of applications from FMCSA Web site.
(APPLICATIONS CANNOT BE FILED ON INTERNET.)
 - c. Faxed applications will be accepted for temporary authority only but must be followed up by original applications. If original applications are not received within 10 days, the authority will be suspended.
 - d. Applications should be faxed to licensing team at 202-366-3477.
 - e. Processing fee will be waived.
 - f. 10-day protest period will be waived.
 - g. Temporary authority good for 120 days.
 - h. Submit letter (along with OP-1 application and MCS-150 and 150A or 150B) requesting emergency temporary authority stating conditions requiring emergency temporary authority.
3. Insurance companies must file proof of insurance and Designation of Process Agents, (BMC-91, 91X, 82 for bodily injury or property damage or BMC-34 or 83 for cargo liability and BOC-3 for process agent). These forms may be submitted electronically or submit original forms overnight to FMCSA, 400 Virginia Ave, SW, Room 600, Washington, DC. 20024. (Note: the insurance forms are available from the insurance companies and the BOC-3 form is available at <http://www.fmcsa.dot.gov/registration-licensing/print-forms/print-forms.htm>.)
4. As soon as application is processed FMCSA will call carrier with MC and USDOT number.
5. The operating authority will be suspended at the end of 120 days.
6. Contact the following people for assistance: Denise Ryan, Myrtle Lane, Johnnie Davis or Odessa Davis at 202-366-9805.

¹ **Note:** These procedures address Federal interstate operating authority only. Intrastate carriers seeking to operate in interstate commerce must also contact the appropriate State agencies to obtain State permits.

Question 2: Are drivers required to log their hours while providing emergency relief to the disaster area?

Answer 2: Drivers are **not** required to log their hours **while** providing direct assistance under § 390.23 of the Federal Motor Carrier Safety Regulations (FMCSRs). However, drivers should keep track of their total time providing direct assistance so that they can satisfy the requirements of § 390.23(b) and (c) with regard to returning to duty following termination of direct assistance to a regional or local emergency. The Agency has issued regulatory guidance on § 390.23, which is posted on our Web site (Rules and Regulations).

Question 3: After providing emergency relief under § [390.23](#), what on-duty hours must a driver use to determine how much off-duty time he/she must have before returning to the service of the employing motor carrier?

Answer 3: The driver must total the number of hours worked while the driver actually provided direct assistance to the emergency relief effort.

Question 4: Are drivers required to take a "rest period" after completing relief work and before coming back to work?

Answer 4: **Yes.** Section 390.23(b) and (c) give details on returning to duty after providing direct relief for emergencies as follows.

390.23 (b) Upon termination of direct assistance to the regional or local emergency relief effort, the motor carrier or driver is subject to the requirements of parts 390 through 399 of this chapter, 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 parts 390 through 399 of this chapter. 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. 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.

390.23 (c) When the driver has been relieved of all duty and responsibilities upon termination of direct assistance to a regional or local 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:

- (1) The driver has met the requirements of 395.3(a) and 395.5(a) of this chapter; and
- (2) The driver has had at least 34 consecutive hours off-duty when:
 - (i) The driver has been on duty for more than 60 hours in any 7 consecutive days at the time the driver is relieved of all duty if the employing motor carrier does not operate every day in the week, or
 - (ii) The driver has been on duty for more than 70 hours in any 8 consecutive days at the time the driver is relieved of all duty if the employing motor carrier operates every day in the week.

Question 5: Are companies exempted from the medical requirements?

Answer 5: Yes. All motor carriers providing emergency relief (as defined in 49 CFR 390.5) are exempted from the medical qualifications standards under Part 391. The emergency relief rule (§ 390.23) provides relief from 49 CFR Parts 390 through 399, including the medical requirements.

Question 6: How many types of Federal emergency declarations have been issued? What Federal Motor Carrier Safety Regulations (FMCSRs) exemptions apply to each of these declarations? How do I, as an interstate motor carrier, know which declaration applies to my specific trucking operation?

Answer 6: Three sets of Federal emergency declarations have been issued: two (2) presidential and (1) regional as follows.

- Presidential Emergency Declaration to Supplement State and Local Efforts and Provide Assistance To Save Lives Or Property Or To Protect Public Health And Safety (AL, AR, FL, LA, MS, and TX)
 - Exemptions from FMCSRs
 - Who is eligible for an exemption?
 - ❖ (*Part 390.5, Definition of Emergency Relief*)
 - What are the exemptions?
 - ❖ (*Part 390.2,3 Relief from Regulations*)
- Presidential Declaration to Provide Assistance to Supplement State and Local Efforts to Help Evacuate the Areas Struck by Hurricane Katrina (CO, GA, NC, OR, TN, UT, AND WV)
 - Exemptions from the FMCSRs
 - Same as above
- Emergency Declaration for Motor Carriers Transporting Gasoline, Diesel Fuel, Jet Fuel, Propane, Natural Gas/CNG, and Ethanol in, from, or within the Eastern and Southern Regions (Eastern- CT, DC, DE, MD, MA, NH, ME, NJ, NY, RI, VT, PA,VA, WV; Southern- AL, AR, FL, GA, KY, LA, MS, NM, NC, OK, SC, TN, TX)
 - Exemptions from the FMCSRs
 - What are the exemptions?
 - ❖ (*Part 390.23, Relief from Regulations*)

Question 7: What type(s) of documentation/evidence is acceptable for a motor carrier to prove that a driver was hauling loads under the emergency declaration?

Answer 7: At roadside, the bill of lading, invoice, or other shipping document describing the cargo would be sufficient. Some cargoes should be given the benefit of the doubt, even if a law enforcement officer can't really be certain that the load is destined for emergency relief. For example, bottled water, canned or packaged food, bedding and portable cots, relatively basic clothing, auxiliary engines, water pumps, power poles, transformers, wire, lumber, structural steel, etc., could all be used for emergency relief.

A carrier using the exemption should prepare right now for a subsequent CR. After the emergency ends, the supporting documents will again be the shipping papers associated with a given movement. FMCSA won't enforce the HOS rules if there's real evidence that the trip was part of the emergency relief operation. But the Agency will need something to show that the driver didn't just decide to ignore the HOS rules. Companies should staple the shipping documents for a trip to the Gulf to the driver's pay or duty records.

Question 8: If a company that wants to hire drivers from the disaster area (LA, MS, AL) to help with the disaster relief, but cannot find employment history, drug and alcohol testing results, etc.(49 CFR 390.23) for potential drivers due to records being destroyed, can they hire those drivers? If so, how should they account for information missing from driver files?

Answer 8: If this motor carrier is providing emergency relief to an area covered by Part 390.23 then they are exempt from Parts 390-399. This includes Part 391, driver qualifications. So therefore, the carrier could hire drivers without doing employment history checks and establishing driver qualification files.

However, the carrier would not be exempt from the drug and alcohol testing requirements of Part 382 and Part 40 (if CDL drivers are used by the carrier). The carrier would still need to conduct pre-employment controlled substance tests on these drivers and obtain the results prior to first using the drivers to operate CDL vehicles. These drivers would also need to be enrolled in a random controlled substances testing program.

Part 40.25 requires the motor carrier to obtain certain drug and alcohol records from the driver and/or the driver's previous employer. Since the emergency exemption does not exempt Part 40, a carrier would still have to make attempts to obtain this information. Motor carriers providing relief under this emergency exemption should keep in mind the following two sections:

Part 40.25(b): If feasible, you must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, you must obtain and review the information as soon as possible. However, you must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless you have obtained or made and documented a good faith effort to obtain this information.

40.25(i): As the employer requesting the information required under this section, you must maintain a written, confidential record of the information you obtain or of the good faith efforts you made to obtain the information. You must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for you.

Therefore, the carrier must still make all attempts to gather this information and document their good faith efforts.

Question 9: What should companies do whose drivers are already on emergency fuel movements when the regional declarations in the Midwest and Western regions expire at 1:00 on September 14?

Answer 9: Anyone transporting fuel into or out of the Eastern or Southern region is exempt for the entire trip, even if it's outside that region. If, for example, a driver is going from Seattle, Washington to Billings, Montana, the exemption for States located in FMCSA's Western or Midwest regions ends at 1:00 p.m. on Sept. 14, 2005. If the driver is over hours, he must stop driving at that time.