

Guidance: Yes. The CDL requirement applies to every person who operates a CMV in interstate, foreign or intrastate commerce. Driving a CMV on a road, street or way which is open to public travel, even though privately-owned or subject to military control, is *prima facie* evidence of operation in commerce.

Question 20: Does the FHWA include the Space Cargo Transportation System (SCTS) off-road motorized military equipment under the definitions of "motor vehicle" and "commercial motor vehicle" as used in §383.5?

Guidance: No. Although the SCTS has vehicular aspects (it is mechanically propelled on wheels), the SCTS is obviously incompatible with highway traffic and is found only at locations adjacent to military bases in California and Florida, and is operated by skilled technicians. The SCTS is moved to and from its point of manufacture to its launch site by "driving" the "vehicles" short distances on public roads at speeds of five MPH or less. This is only incidental to their primary functions; the SCTS is not designed to operate in traffic; and its mechanical manipulation often requires a different set of knowledge and skills. In most instances, the SCTS has to be specially marked, escorted, and attended by numerous observers.

Question 21: Are police officers who operate buses and vans which are designed to carry 16 or more persons and are used to transport police officers during demonstrations and other crowd control activities required to obtain a CDL?

Guidance: Yes. The CMVSA applies to anyone who operates a CMV, including employees of Federal, State and local governments. Crowd control activities do not meet the conditions for a waiver of operators of firefighting and other emergency vehicles in §383.3(d).

Question 22: May fuel be considered "farm supplies" as used in §383.3(d)(1)?

Guidance: Yes. The decision to grant the waiver is left to each individual State.

Question 23: Is the transportation of seed-cotton modules from the cotton field to the gin by a module transport vehicle considered a form of custom harvesting activity that may be included under the FRSI waiver (§383.3(f))?

Guidance: Yes. The transportation of seed-cotton modules from field to gin may, at the State's discretion, be considered as custom harvesting and therefore eligible for the FRSI waiver. However, cotton ginning operations as an industry and, specifically the transport of cotton from the gin, are not eligible activities under the FRSI waiver because these activities are not considered appropriate elements of custom harvesting.

Question 24: Does the amendment of the CMVSA by the Motor Carrier Act of 1991 exempt all custom harvesting operations from the CDL requirements or only the operation of combines?

Guidance: Section 4010 of the Motor Carrier Act of 1991 (Title IV of Pub. L. 102-240, 105 Stat 1914, 2156, December 18, 1991) modifies the definition of a "motor vehicle" in 49 U.S.C. 31301(11) by excluding "custom harvesting farm machinery" from the definition. The conference report clarifies the intent of the exclusion by stating: "The substitute[provision] removes custom harvesting farm machinery from the Act. Operators of such machinery are not covered by the Commercial Motor Vehicle Safety Act of 1986. A State, however, may still impose a requirement for a commercial driver's license if it so desires. The change does not apply to vehicles used to transport this type of machinery." (H.R. Conf. Rep. No. 404, 102d Cong., 1st Sess. 449 (1991)).

Therefore, the intent of Congress was only to exempt operators of combines and other equipment used to cut the grain and not the operators of trucks, tractors, trailers, semitrailers or any other CMV.

Question 25: May a State (1) require an applicant for a CDL farmer waiver (§383.3(d)) to take HM training as a condition for being granted a waiver and (2) reduce the 150-mile provision in the waiver to 50 miles if the driver is transporting HM?

Guidance: Yes. The Federal farm waiver is permissive, not mandatory.

Question 26: Do active duty military personnel, not wearing military uniforms, qualify for a waiver from the CDL requirements if the CMVs are rental trucks or leased buses from the General Services Administration?

Guidance: Yes. The drivers in question do not need to be in military uniforms to qualify for the waivers as long as they are on active duty. In regard to the vehicles, they may be owned or operated by the Department of Defense.

Question 27: Are custom harvesters who harvest trees for tree farmers eligible to be considered "custom harvesters" for purposes of the FRSI waiver from selected CDL requirements?

Guidance: If the State considers a firm that harvests trees for tree farmers to be a custom harvesting operation, then its employees could qualify for the FRSI-restricted CDLs, subject to the stringent conditions and limitations of the waiver provisions in §383.3(f).

Question 28: May a farmer who meets all of the conditions for a farm waiver be waived from the CDL requirements when transporting another farmer's products absent any written contract?

Guidance: If a farmer is transporting another farmer's products and being paid for doing so, he or she is acting as a contract carrier and does not meet the conditions for a farm waiver. The existence of a contract, written or verbal, is not relevant to the CDL waiver provisions.

Question 29: May a State exempt commercial motor vehicle drivers employed by a partnership, corporation or an association engaged in farming from the CDL requirements under the farmer waiver (49 CFR 383.3(d)) or is the waiver only available to drivers employed by a family-owned farm?

Guidance: The purpose of the farmer exemption was to give relief to family farms (53 FR 37313, September 26, 1988). The conditions for the waiver were established to ensure that the waiver focused on this type of farm operation. However, "farmer" is defined in §390.5 as "any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which (a) [a]re owned by that person; or (b) [a]re under the direct control of that person." Since farming partnerships, corporations and associations are legal "persons," States may exempt drivers working for these organizations from the CDL requirements, provided they can meet the strict limits imposed by the waiver conditions.

Question 30: May a State exempt commercial motor vehicle drivers employed by farm cooperatives from the commercial driver's license (CDL) requirements under the farmer waiver 49 CFR 383.3(d)?

Guidance: No. The waiver covers only operators of farm vehicles which are controlled and operated by "farmers" as defined in §390.5. The waiver does not extend to ancillary businesses, like cooperatives, that provide farm-related services to members. As stated in the waiver notice (53 FR 37313, September 26, 1988), "[t]he waiver would not be available to operators of farm vehicles who operate over long distances, operate to further a commercial enterprise, or operate under

(5) The operation of fire trucks and rescue vehicles while involved in emergency and related operations;

(6) The operation of commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver), not for direct compensation, provided the vehicle does not otherwise meet the definition of a commercial motor vehicle, except that motor carriers and drivers operating such vehicles are required to comply with §§390.15, 390.19, 390.21(a) and (b)(2), 391.15(f), 392.80 and 392.82 of this chapter.

(7) Either a driver of a commercial motor vehicle used primarily in the transportation of propane winter heating fuel or a driver of a motor vehicle used to respond to a pipeline emergency, if such regulations would prevent the driver from responding to an emergency condition requiring immediate response as defined in §390.5.

(g) **Motor carriers that transport hazardous materials in intrastate commerce.** The rules in the following provisions of sub-chapter B of this chapter apply to motor carriers that transport hazardous materials in intrastate commerce and to the motor vehicles that transport hazardous materials in intrastate commerce:

(1) Part 385, subparts A and E, for carriers subject to the requirements of §385.403 of this chapter.

(2) Part 386, Rules of practice for motor carrier, broker, freight forwarder, and hazardous materials proceedings, of this chapter.

(3) Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in §387.3 of this chapter.

(4) Section 390.19, Motor carrier identification report, and §390.21, Marking of CMVs, for carriers subject to the requirements of §385.403 of this chapter. Intrastate motor carriers operating prior to January 1, 2005, are excepted from §390.19(a)(1).

(h) **Intermodal equipment providers.** On and after December 17, 2009, the rules in the following provisions of subchapter B of this chapter apply to intermodal equipment providers:

(1) Subpart F, Intermodal Equipment Providers, of Part 385, Safety Fitness Procedures.

(2) Part 386, Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings.

(3) Part 390, Federal Motor Carrier Safety Regulations; General, except §390.15(b) concerning accident registers.

(4) Part 393, Parts and Accessories Necessary for Safe Operation.

(5) Part 396, Inspection, Repair, and Maintenance.

[53 FR 18052, May 19, 1988, as amended at 54 FR 12202, Mar. 24, 1989; 58 FR 33776, June 21, 1993; 59 FR 8752, Feb. 23, 1994; 59 FR 67554, Dec. 29, 1994; 62 FR 1296, Jan. 9, 1997; 63 FR 33276, June 18, 1998; 64 FR 48516, Sept. 3, 1999; 66 FR 2766, Jan. 11, 2001; 68 FR 47875, Aug. 12, 2003; 69 FR 39372, June 30, 2004; 72 FR 36790, July 5, 2007; 73 FR 76820, Dec. 17, 2008; 75 FR 5002, Feb. 1, 2010; 75 FR 59135, Sept. 27, 2010; 76 FR 75487, Dec. 2, 2011]

DOT Interpretations—§390.3

Question 1: Does the government exception in §390.3(f)(2) apply to motor carriers doing business with the government?

Guidance: No. The exception applies only when the government is the motor carrier.

Question 2: Are the FMCSRs applicable to drivers and CMVs which transport tools, equipment, and supplies across State lines in a CMV?

Guidance: Yes, the FMCSRs are applicable to drivers and CMVs in interstate commerce which transport property. The property in this situation is the tools, equipment and supplies.

Question 3: Are the operations of a church which provides bus tours to the general public for compensation subject to the FMCSRs as a for-hire motor carrier?

Guidance: Yes, the church is a for-hire motor carrier of passengers subject to the FMCSRs.

Question 4: Are the FMCSRs applicable to the rail movement of trailers and inter modal container chassis that previously or subsequently were moved by highway by a motor carrier in interstate commerce?

Guidance: No. They are only subject when being moved as a motor vehicle by highway by a motor carrier.

Question 5: Are personnel involved in road testing CMVs across a State line subject to the FMCSRs?

Guidance: Yes, any driver (including mechanics, technicians, driver trainees and other personnel) operating a CMV in interstate commerce must be in compliance with the FMCSRs.

Question 6: How does one distinguish between intra- and interstate commerce for the purposes of applicability of the FMCSRs?

Guidance: Interstate commerce is determined by the essential character of the movement, manifested by the shipper's fixed and persistent intent at the time of shipment, and is ascertained from all of the facts and circumstances surrounding the transportation. When the intent of the transportation being performed is interstate in nature, even when the route is within the boundaries of a single State, the driver and CMV are subject to the FMCSRs.

Question 7: Are Red Cross vehicles/drivers subject to the FMCSRs?

Guidance: Red Cross vehicles/drivers used to provide emergency relief under the provisions of §390.23 are not subject to the FMCSRs while providing the relief. However, these vehicles/drivers would be subject when operating at other times, provided they are used in interstate commerce and the vehicles meet the definition of a CMV.

Question 8: May a motor carrier require fingerprinting as a pre-employment condition?

Guidance: The FMCSRs do not require or prohibit fingerprinting as a condition of employment. §390.3(d) allows employers to enforce more stringent requirements.

Question 9: Are the FMCSRs applicable to drivers/vehicles operated by a State or local educational institution which is a political subdivision of the State?

Guidance: §390.3(f)(2) specifically exempts transportation performed by a State or a political subdivision including any agency of a State or locality from the FMCSRs. The drivers, however, may be subject to the CDL requirements and/or State laws that are similar to the FMCSRs.

Question 10: Are the FMCSRs applicable to drivers/vehicles operated by a transit authority owned and operated by a State or a political subdivision of the State?

Guidance: §390.3(f)(2) specifically exempts transportation performed by the Federal Government, a State, or any political subdivision of a State from the FMCSRs. However, this exemption does not apply to the CDL requirements in part 383. Also, if governmental entities engage in interstate charter transportation of passengers, they must comply with accident report retention requirements of part 390.

not used in furtherance of a transportation purpose. Occasionally driving such equipment on a public road to reach or leave a construction site does not amount to furtherance of a transportation purpose. Since construction equipment is not designed to operate in traffic, it should be accompanied by escort vehicles or in some other way separated from the public traffic. This equipment may also be subject to State or local permit requirements with regard to escort vehicles, special markings, time of day, day of the week, and/or the specific route.

Question 8: What types of equipment are included in the category of off-road motorized construction equipment?

Guidance: The definition of off-road motorized construction equipment is to be narrowly construed and limited to equipment which, by its design and function is obviously not intended for use, nor is it used on a public road in furtherance of a transportation purpose. Examples of such equipment include motor scrapers, backhoes, motor graders, compactors, tractors, trenchers, bulldozers and railroad track maintenance cranes.

Question 9: Are mobile cranes operating in interstate commerce considered CMVs, and are they subject to the FMCSRs?

Guidance: The definition of CMV encompasses mobile cranes. Unlike the off-road motorized construction equipment discussed in Guidance Questions 7 and 8 above, mobile cranes are readily capable of traveling at highway speeds, over extended distances, and in the mixed traffic of public highways. Although the functions a crane performs are distinct from the transportation provided by a truck, the ready mobility of the crane depends on its permanent integration with a truck chassis. The truck chassis is equipped with wheels, tires, brakes, a suspension system, and other components. The mobile crane itself, like an empty CMV (see Guidance Question 6), is considered property.

Question 10: Does the FHWA define for-hire transportation of passengers the same as the former ICC did?

Guidance: To the extent FHWA's authority stems from 49 U.S.C. 31502 or other sections of Title 49 which are rooted in the Interstate Commerce Act, the FHWA is bound by judicial precedent and legislative history in interpreting that Act, much of which relates to the operations of the former ICC. However, since the MCSA of 1984 re-established the FHWA's jurisdictional authority and resulted in a re-promulgation of the FMCSRs, the FHWA has been establishing its own precedents based on "safety" rather than "economics" as the overriding consideration. This has resulted in some deviation in the definition of terms by the two agencies, e.g., commercial zones, for-hire transportation, etc.

The term "for-hire motor carrier" as defined in part 390 means a person engaged in the transportation of goods or passengers for compensation. The FHWA has determined that any business entity that assesses a fee, monetary or otherwise, directly or indirectly for the transportation of passengers is operating as a for-hire carrier. Thus, the transportation for compensation in interstate commerce of passengers by motor vehicles (except in six-passenger taxicabs operating on fixed routes) in the following operations would typically be subject to all parts of the FMCSRs, including part 387: whitewater river rafters, hotel/motel shuttle transporters, rental car shuttle services, etc. These are examples of for-hire carriage because some fee is charged, usually indirectly in a total package charge or other assessment for transportation performed.

Question 11: A company has a truck with a GVWR under 10,001 pounds towing a trailer with a GVWR under 10,001 pounds. However, the GVWR of the truck added to the GVWR

of the trailer is greater than 10,001 pounds. Would the company operating this vehicle in interstate commerce have to comply with the FMCSRs?

Guidance: §390.5 of the FMCSRs includes in the definition of CMV a vehicle with a GVWR or GCWR of 10,001 or more pounds. The section further defines GCWR as the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. Therefore, if the GVWR of the truck added to the GVWR of the trailer exceeds 10,001 pounds, the driver and vehicle are subject to the FMCSRs.

Question 12: A CMV becomes stuck in a median or on a shoulder, and has had no contact with another vehicle, a pedestrian, or a fixed object prior to becoming stuck. If a tow truck is used to pull the CMV back onto the traveled portion of the road, would this be considered an accident?

Guidance: No.

Question 13: To what extent would the wind shield and/or mirrors of a vehicle have to be damaged in order for it to be considered "disabling damage" as used in the definition of an accident in §390.5?

Guidance: The decision as to whether damage to a windshield and/or mirrors is disabling is left to the discretion of the investigating officer.

Question 14: Would a tillerman, a person exercising control over the steerable rear axle(s) on a commercial motor vehicle (CMV), be considered a driver as defined in §390.5, and thus subject to 49 CFR Parts 390 to 399?

Guidance: A person physically located on the rear of the CMV who controls a steerable rear axle while the CMV is moving at highway speeds would be considered a driver as defined in §390.5 and therefore would be subject to the regulations in 49 CFR parts 390-399.

A person walking beside a CMV or riding in an escort car while controlling a steerable rear axle at slow speeds would not be considered a driver as defined in §390.5 and would therefore not be subject to 49 CFR Parts 390 to 399.

Question 15: Does the definition of a "commercial motor vehicle" in §390.5 of the FMCSRs include parking lot and/or street sweeping vehicles?

Guidance: If the GVWR of a parking lot or street sweeping vehicle is 10,001 or more pounds, and it operates in interstate commerce, it is a CMV.

Question 16: Does a driver leasing company that hires, assigns, trains, and/or supervises drivers for a private or for-hire motor carrier become a motor carrier as defined by 49 CFR 390.5?

Guidance: No.

Question 17: May a motor carrier that employs owner-operators who have their own operating authority issued by the ICC or the Surface Transportation Board transfer the responsibility for compliance with the FMCSRs to the owner-operators?

Guidance: No. The term "employee," as defined in §390.5, specifically includes an independent contractor employed by a motor carrier. The existence of operating authority has no bearing upon the issue. The motor carrier is, therefore, responsible for compliance with the FMCSRs by its driver employees, including those who are owner-operators.

Question 18: Must a person who is injured in an accident and immediately receives treatment away from the scene of the accident be transported in an ambulance?

Guidance: No. Any type of vehicle may be used to transport an injured person from the accident scene to the treatment site.

Question 19: What is the meaning of "immediate" as used in the definition of "accident?"

§390.11 Motor carrier to require observance of driver regulations.

Whenever in Part 325 of Subchapter A or in this subchapter a duty is prescribed for a driver or a prohibition is imposed upon the driver, it shall be the duty of the motor carrier to require observance of such duty or prohibition. If the motor carrier is a driver, the driver shall likewise be bound.

§390.13 Aiding or abetting violations.

No person shall aid, abet, encourage, or require a motor carrier or its employees to violate the rules of this chapter.

§390.15 Assistance in investigations and special studies.

(a) Each motor carrier and intermodal equipment provider must do the following:

(1) Make all records and information pertaining to an accident available to an authorized representative or special agent of the Federal Motor Carrier Safety Administration, an authorized State or local enforcement agency representative, or authorized third party representative within such time as the request or investigation may specify.

(2) Give an authorized representative all reasonable assistance in the investigation of any accident, including providing a full, true, and correct response to any question of the inquiry.

(b) For accidents that occur after April 29, 2003, motor carriers must maintain an accident register for three years after the date of each accident. For accidents that occurred on or prior to April 29, 2003, motor carriers must maintain an accident register for a period of one year after the date of each accident. Information placed in the accident register must contain at least the following:

(1) A list of accidents as defined at §390.5 of this chapter containing for each accident:

- (i) Date of accident.
- (ii) City or town, or most near, where the accident occurred and the State where the accident occurred.
- (iii) Driver Name.
- (iv) Number of injuries.
- (v) Number of fatalities.
- (vi) Whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicle involved in the accident, were released.

(2) Copies of all accident reports required by State or other governmental entities or insurers.

(Approved by the Office of Management and Budget under control number 2126-0009)

[58 FR 6729, February 2, 1993, as amended at 60 FR 38744, July 28, 1995; 60 FR 44441, Aug. 28, 1995; 66 FR 49873, Oct. 1, 2001; 69 FR 16684 March 30, 2004; 73 FR 76821, Dec. 17, 2008]

DOT Interpretations—§390.15

Question 1: May a motor carrier create an accident register of its own, or is there a specified form that must be used?

Guidance: There is no specified form. A motor carrier may create or use any accident register as long as it includes the elements required by §390.15.

Question 2: Would the accident report retention requirement in §390.15(b)(2) include an "Adjuster's Report" that is normally considered to be an internal document of an insurance company?

Guidance: No. The intent of §390.15(b)(2) is that motor carriers maintain copies of all documents which the motor carrier is required by the insurance company to complete and/or maintain. §390.15(b)(2) does not require motor carriers to maintain documents, such as "Adjuster's Reports," that are typically internal documents of the insurance company.

Question 3: What types of documents must a motor carrier retain to support its accident register and be in compliance with §390.15(b)?

Guidance: The documents required by §390.15(b)(2) include all information about a particular accident generated by a motor carrier or driver to fulfill its accident reporting obligations to State or other governmental entities or that motor carrier's insurer. The language of paragraph (b)(2) does not require a motor carrier to seek out, obtain, and retain copies of accident reports prepared by State investigators or insurers.

***Question 4:** Does a foreign-based motor carrier's accident register have to include accidents that occur in Canada or Mexico?

Guidance: Motor carriers must record accidents occurring within the U.S. and on segments of interstate movements into Canada between the U.S.-Canadian border and the first physical delivery location of a Canadian consignee. The FHWA further believes its regulations require the documentation of accidents for segments of interstate movements out of Canada between the last physical pick-up location in Canada and the U.S.-Canadian border. The same would be true for movements between the U.S.-Mexican border and a point in Mexico. However, the FHWA does not have authority over Canadian and Mexican motor carriers that operate within their own countries where the transportation does not involve movements into or out of the United States.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§390.16 [Reserved]

§390.17 Additional equipment and accessories.

Nothing in this subchapter shall be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by this subchapter, provided such equipment and accessories do not decrease the safety of operation of the commercial motor vehicles on which they are used.

[53 FR 18052, May 19, 1988, as amended at 60 FR 38744, July 28, 1995; 65 FR 35296, June 2, 2000]

DOT Interpretations—§390.17

Question 1: Do the Federal Motor Carrier Safety Regulations prohibit "texting" while driving a commercial motor vehicle in interstate commerce?

Guidance: Yes. Although the current safety regulations do not include an explicit prohibition against texting while driving by truck and bus drivers, the general restriction against the use of additional equipment and accessories that decrease the safety of operation of commercial motor vehicles applies to the use of electronic devices for texting. Handheld or other wireless electronic devices that are brought into a CMV are considered "additional equipment and accessories" within the context of §390.17. "Texting" is the review of, or preparation and transmission of, typed messages through any such device or the engagement in any form of electronic data retrieval or

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effort, or when the motor carrier dispatches such driver or commercial motor vehicle to another location to begin operations in commerce.

(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 the driver has met the requirements of §§395.3(a) and (c) and 395.5(a) of this chapter.

[57 FR 33647, July 30, 1992, as amended at 60 FR 38744, July 28, 1995; 68 FR 22514, April 28, 2003; 70 FR 50070, Aug. 25, 2005; 76 FR 81186, Dec. 27, 2011]

DOT Interpretations—§390.23

Question 1: Does §390.23 create an exemption from the FMCSRs each and every time the delivery of electricity is interrupted, no matter how isolated or minor the occurrence?

Guidance: The rule creates an exemption from the FMCSRs when interruptions of electricity are severe enough to trigger a declaration of an emergency by a public official authorized to do so.

An interruption of electricity that does not produce a declaration by a public official is not an emergency for purposes of the regulation and does not exempt a motor carrier or driver from the FMCSRs. A call reporting a downed power line, whether directed to the State police or a public utility company, does not create a declared emergency.

The authority to declare emergencies has been delegated to different officials in the various States. The FHWA has not attempted to list these officials. In order to utilize the exemption provided by §390.23, drivers and motor carriers must therefore ascertain that a declaration of an emergency was made by a State or local official authorized to do so.

Question 2: §390.23(a) provides that parts 390 through 399 do not apply to any motor carrier or driver operating a CMV to provide direct assistance in an emergency. Is a motor carrier or driver required to keep a record of the driver's on-duty or driving time while providing relief?

Guidance: No.

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?

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

***Question 4:** Upon termination of direct assistance to a regional or local emergency relief effort, as specified in §390.23(a), may utility company line crews return directly to the motor carrier's terminal or the driver's normal work reporting location without complying with Parts 390-399?

Guidance: Yes, provided drivers who ask for immediate rest are given 8 consecutive hours off-duty before returning to the terminal or other work reporting location. Because the returning vehicles are transporting only crew members, tools, equipment, or materials not used in the emergency relief effort, they are considered to be "return(ing) empty" for purposes of §390.23(b).

***Question 5:** When an interstate tow truck operator responds to a request for assistance from a Federal, State or local police officer to move wrecked or disabled motor vehicles, what should the Record of Duty Status (RODS) required by Section 395.8 reflect for the time spent in the exempt status?

Guidance: The time spent responding to the police call is exempt under Section 390.23(a)(3). The entry on the RODS for the time spent in this activity should be entered as "exempt,"

or "exempt under Section 390.23(a)(3)." Any time logged by the driver while engaged in activities that are NOT exempt must be accounted for on the RODS, but exempt time is not included in the computation of maximum driving time under Section 395.3. Please note that this exemption is only operative during the time that the tow truck operator is providing direct assistance to the emergency, or twenty-four hours from the time of the request, whichever is less. The driver and the motor carrier are also at all times subject to the prohibitions of Section 392.3 pertaining to ill or fatigued drivers. Section 390.23(c) applies to local and regional emergencies, not tow truck emergency operations.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§390.25 Extension of relief from regulations—emergencies.

The FMCSA Field Administrator may extend the 30-day time period of the exemption contained in §390.23(a)(1), but not the 5-day time period contained in §390.23(a)(2) or the 24-hour period contained in §390.23(a)(3). Any motor carrier or driver seeking to extend the 30-day limit shall obtain approval from the FMCSA Field Administrator in the region in which the motor carrier's principal place of business is located before the expiration of the 30-day period. The motor carrier or driver shall give full details of the additional relief requested. The FMCSA Field Administrator shall determine if such relief is necessary taking into account both the severity of the ongoing emergency and the nature of the relief services to be provided by the carrier or driver. If the FMCSA Field Administrator approves an extension of the exemption, he or she shall establish a new time limit and place on the motor carrier or driver any other restrictions deemed necessary.

[57 FR 33647, July 30, 1992]