

**Department of Transportation  
Federal Motor Carrier Safety Administration**

**SUPPORTING STATEMENT  
Emergency Exemptions Under 49 CFR 390.25**

**SUMMARY**

- This is a request for approval of a new collection of information covering changes included in a final rule affecting the regulations surrounding emergency exemptions, and specifically the changes proposed for 49 CFR 390.25.
- IC-1 consists of tasks an individual, motor carrier, or State must perform to request an extension or modification of an emergency exemption application as required by § 390.25(a).
- The annual information collection burden for IC-1 is 12.5 hours with an associated cost of \$1,011.
- IC-2 consists of reporting requirements an individual or motor carrier may be required to perform when operating under an extended or modified emergency exemption, issued under § 390.25(a) or (b).
- The annual information collection burden for IC-2 is 1,431 hours with an associated cost of \$115,739.28 .

**INTRODUCTION**

The Federal Motor Carrier Safety Administration (FMCSA) submits this new information collection request (ICR) titled “Emergency Declaration Exemption Reporting under 49 CFR 390.25,” OMB Control Number 2126-0077, to the Office of Management Budget (OMB) for approval. The ICR estimates the burden an individual, motor carrier, or State incur to request an extension or modification of an exemption issued in response to an emergency declaration (IC-1). It also estimates the burden for individuals or motor carriers to comply with any reporting tasks included within the extended or modified exemption, pursuant to 49 CFR 390.25 (IC-2). FMCSA has not previously accounted for the burden of requesting modifications or extensions; the reporting requirements were proposed in an NPRM titled “Clarification to the Applicability of Emergency Exemptions” published on December 8, 2022 (87 FR 75206) (Attachment A) and are included in a final rule with the same title, published on October 13, 2023, (88 FR 70897) (Attachment B).

**Part A. Justification**

**1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY**

Section 390.23 of title 49, Code of Federal Regulations (CFR), automatically creates a 30-day exemption from 49 CFR parts 390 through 399 when the President, a Governor, or FMCSA

issues a declaration of an emergency, as defined in §§ 390.5 and 390.5T, and a motor carrier or driver provides direct assistance to supplement State and local emergency relief efforts in response to that emergency, as those terms are defined in §§ 390.5 and 390.5T.

Based on Agency subject matter expertise and input from States, affected localities, industry groups and others, FMCSA believes that most emergencies justify allowing carriers and drivers providing direct assistance in responding to the emergency relief from the normal hours of service (HOS) limits to deliver critical supplies and services to the communities in need. However, other safety regulations often have no direct bearing on the motor carrier's ability to provide assistance to the emergency relief efforts.

Safety regulations ensure that companies, vehicles, and drivers meet the minimum requirements to operate safely. While the temporary relief from some regulations may be necessary during an emergency, waiving every regulation in parts 390-399 could negatively impact the safety of commercial motor vehicles (CMVs) operating on the roadways. However, the Agency has no information that suggests that past or existing emergency exemptions have in fact negatively impacted road safety.

In order to provide clarity on which emergency exemptions are necessary during an emergency, FMCSA narrows the automatic applicability of § 390.23 to the HOS limits in §§ 395.3 and 395.5. This change clarifies that carriers and drivers are not authorized to overlook other important safety requirements while performing direct assistance to emergency relief efforts. By limiting the scope of the current rule on emergency regulatory relief, the final rule clarifies that the Federal Motor Carrier Safety Regulations (FMCSRs) not relevant to most emergency situations remain in effect while retaining the Agency's flexibility to tailor emergency regulatory relief to the specific circumstances of an emergency.

This ICR supports the DOT strategic goal of safety and organizational excellence by ensuring that the exemptions from the regulations are limited to those that are necessary to support immediate direct assistance in the wake of an emergency declaration.

## **2. HOW, BY WHOM, AND FOR WHAT PURPOSE IS THE INFORMATION USED**

As included in this final rule, § 390.25(a) requires an individual, motor carrier, or State seeking an extension or modification of an emergency exemption to make that request in writing to an identified email address. Additionally, § 390.25(b) would allow FMCSA to place reporting requirements on any individual or motor carrier operating under the terms of an extended or modified emergency exemption. In both cases, the information is used by FMCSA to determine whether the emergency exemption is still needed, or if it can be modified to limit its scope.

## **3. EXTENT OF AUTOMATED INFORMATION COLLECTION**

Requests for extension or modification of emergency regulatory relief exemptions will be required to be made via email. This aligns with how the Agency currently receives requests for modification or extension. The NPRM would centralize the requests to one email address, as opposed to requiring the requester to determine the appropriate local or regional office.

Reporting requirements will, to the extent possible, be developed to maximize digital collection,

at a minimum through use of email. When possible, they may include the use of digital reporting tools on the Agency's website.

#### **4. EFFORTS TO IDENTIFY DUPLICATION**

FMCSA is the only Federal agency given the authority to regulate CMVs operating in interstate commerce.

#### **5. EFFORTS TO MINIMIZE THE BURDEN ON SMALL BUSINESSES**

Exemptions are especially beneficial to small businesses since these entities are often more in need of regulatory relief than larger businesses. The Agency believes that all small businesses have access to email, and that using a centralized email address for requests for extensions or modifications of emergency exemptions will make it easier for small businesses to communicate those requests to FMCSA.

#### **6. IMPACT OF LESS FREQUENT COLLECTION OF INFORMATION**

The information specified in § 390.25 is collected only when the Agency receives a request for an extension or modification of an emergency exemptions. The information required from an individual, motor carrier, or State requesting an extension or modification enables the FMCSA to determine whether to grant or deny such a request. Similarly, the imposition of reporting requirements as part of an extension or modification allows for the collection of information that enables FMCSA to determine whether to continue to extend emergency regulatory relief from Federal regulations. Without the information, the FMCSA would not know if an emergency exemption is still needed. The Agency sees no practical manner of making these requirements less frequent.

#### **7. SPECIAL CIRCUMSTANCES**

There are no special circumstances related to this information collection.

#### **8. COMPLIANCE WITH 5 CFR 1320.8:**

On December 8, 2022, FMCSA published a notice of proposed rulemaking (NPRM) in the *Federal Register* that discussed the collection requirements outlined in this supporting statement (87 FR 75206). FMCSA received two comments on the proposed information collection requirements. The Advocates for Highway and Auto Safety (AHAS) requested that FMCSA include reporting requirements in future emergency exemptions and that the Agency commit to sharing data as quickly as possible. Once the final rule takes effect, FMCSA will determine on a case-by-case basis whether or not to include a reporting requirement in any modified and/or extended emergency exemptions. The Agency will follow all current information sharing requirements in regard to the reports, and the data included.

The America Association of State Highway and Transportation Officials (AASHTO) questioned FMCSA's estimates of the administrative burden associated with requesting extensions of emergency exemptions and with the potential reporting requirements on extended/modified emergency exemptions. They commented that they found FMCSA's estimates to be

“unrealistically low,” but provided no alternate estimates for the Agency to use. In the absence of an alternative, FMCSA believes that relying upon the estimates developed by Agency experts, which built upon estimates developed when reporting requirements were added to the COVID-19 emergency declaration, is reasonable.

On October 13, 2023, FMCSA published a final rule in the Federal Register that included the collection requirements outlined in this supporting statement (88 FR 70897).

## **9. PAYMENTS OR GIFTS TO RESPONDENTS**

FMCSA does not provide respondents with any payment or gift for providing this information.

## **10. ASSURANCE OF CONFIDENTIALITY**

FMCSA ensures that the personally identifiable information it collects pursuant to this collection is protected by reasonable security safeguards. Electronic records are stored on a network drive available to appropriate staff approved to access such records.

## **11. JUSTIFICATION FOR COLLECTION OF SENSITIVE INFORMATION**

Any personally identifiable information that the Agency collects is necessary to ensure that the requests for extension or modification, or the information being collected pursuant to an extended or modified emergency exemption come from a regulated entity. Information collected, such as a person’s address, phone number, and driver’s license number, is not available to the public.

## **12. ESTIMATE OF BURDEN HOURS FOR INFORMATION REQUESTED**

This estimate covers the reporting requirements associated with extensions or modifications of emergency exemptions, issued in accordance with § 390.25. IC-1 consists of tasks an individual, motor carrier, or State must perform to request an extension or modification of an emergency exemption application as required by § 390.25(a). IC-2 consists of reporting requirements an individual or motor carrier may be required to perform when operating under an extended or modified emergency exemption, issued under § 390.25(a) or (b).

## Burden Hours and Costs for IC-1 and IC-2

To estimate the total burden hours, FMCSA multiplies the applicable responses by the hourly burden per response for each information collection. To estimate costs, FMCSA assumes the equivalent of a motor carrier employee at the General and Operations Manager level with an hourly loaded wage of \$80.88 will complete the information required for IC-1 and IC-2. Wage data for industry occupations have been obtained from the Bureau of Labor Statistics (BLS).<sup>1</sup>

### IC-1

The Agency estimates that 50 individuals<sup>2</sup> would submit requests for extensions or modifications per year. These requests would take 15 minutes to complete and total to 12.5 hours of labor (50 respondents × 15 minutes). As noted above, the Agency assumes a motor carrier employee equivalent to General and Operations Managers with a loaded hourly wage of \$80.88 would submit the request. As such, there would be a total annual cost of \$1,011 ( $\$80.88 \times 12.5$  hours) to submit extension or modification requests.

**Table 1. IC-1 Annual Burden Hours and Costs to Request Extensions or Modifications of Emergency Exemptions**

Year	Requests	Applicant Burden Hours	Cost to Applicant
	A	$B = A \times 0.25$ hours	$C = B \times \$80.88$
2023	50	12.5	\$1,011
2024	50	12.5	\$1,011
2025	50	12.5	\$1,011

### IC-2

FMCSA estimates that there could be 477 monthly respondents if the Agency adds a reporting requirement to an extension or modification of an exemption. This estimate is based on the average number of responses the Agency received from its COVID-19 emergency exemption data collection (OMB Approved Collection 2126-0074). This would represent an extreme upper-bound estimate for how many motor carriers the Agency expects would be required to report their use of an extension and thus be subject to an information collection. It is unlikely that future emergency exemptions will be issued nationwide, covering as many motor carriers as the COVID-19 emergency exemption covered. In reality, future emergency exemptions would likely be limited in geographic scope, as well as to those motor carriers transporting very specific commodities. However, the number of those smaller, more limited scope emergency exemptions

<sup>1</sup> U.S. Department of Labor, Bureau of Labor Statistics. (2021). "May 2021 National Industry-Specific Occupational Employment and Wage Estimates." (General and Operations Manager) <https://www.bls.gov/oes/current/oes111021.htm>; Accessed 11-4-2022. The loaded hourly wage is a product of the median hourly wage of a General and Operations Manager multiplied by the fringe benefits rate of 50 percent and overhead costs of 27 percent. The median hourly wage of a General and Operations Manager is \$47.10. A General Operations Manager falls under BLS Occupation Code 11-1021.

<sup>2</sup> The Agency is estimating 50 requests per year based on the expertise of the FMCSA Crisis Management Center.

is likely to be more than just one, which balances the upper-bound estimate.

Using the average monthly response rate from the COVID-19 emergency exemption data collection, FMCSA would expect to receive 5,724 reports per year (477 reports per month x 12 months). As noted above, the Agency assumes a motor carrier employee equivalent to General and Operations Managers with a loaded hourly wage of \$80.88 would submit the request. As such, there would be a total annual cost of \$115,739.28 ( $\$80.88 \times 1,431$  hours) to submit extension or modification requests.

**Table 2. IC-2 Annual Burden Hours and Costs for Reporting Requirements included in Revised or Modified Emergency Exemptions**

Year	Requests	Applicant Burden Hours	Cost to Applicant
	A	$B = A \times 0.25$ hours	$C = B \times \$83.79$
2023	5,724	1,431	\$115,739.28
2024	5,724	1,431	\$115,739.28
2025	5,724	1,431	\$115,739.28

**Table 3. Total Annual Burden Hours and Costs**

Information Collection	Number of Responses	Burden Hours	Costs
<b>IC-1:</b>			
	50	12.5	\$1,011
<b>IC-2:</b>			
	5,724	1,431	\$115,739.28
<b>TOTAL</b>	5,774	1,443.5	\$116,750.28

*Summary*

**Estimated total burden hours: 4,330.5 (annual burden hours (1,443.5) x 3 years)**

**Estimated total number of respondents: 17,322 (annual number of respondents (5,774) x 3 years)**

**Estimated total number of responses: 17,332 (annual number of responses (5,774) x 3 years)**

**Estimated total cost: \$350,250.84 (annual costs (\$116,750.28) x 3 years)**

**13. ESTIMATE OF TOTAL ANNUAL COSTS TO RESPONDENTS**

FMCSA does not estimate any additional costs to respondents. As noted above, requests for extension and modification would be made via email. Reporting requirements incorporated into extended or modified emergency exemptions will also be submitted electronically. There are no

costs associated with electronic filings.

#### **14. ESTIMATE OF COST TO THE FEDERAL GOVERNMENT**

The Agency estimates that requests for extensions would take 15 minutes each to review. The requests would be reviewed by a GS-13, step 5 in the Washington, DC area with a loaded hourly wage of \$127.13. The total annual cost to review these extension requests is \$1,589.18 (\$127.13 × 12.5 hours).<sup>3</sup>

#### **15. EXPLANATION OF PROGRAM CHANGES OR ADJUSTMENTS**

This is a new ICR request that will result in an increase in the Agency's overall information collection burden.

#### **16. PUBLICATION OF RESULTS OF DATA COLLECTION**

FMCSA does not plan on publishing the information collected pursuant to this ICR. While information contained in any reports (under IC-2) may form the basis of decisions by FMCSA, any discussion of that information would be at a summary level and not attributed to any particular individual or entity.

#### **17. APPROVAL FOR NOT DISPLAYING THE EXPIRATION DATE OF OMB APPROVAL**

FMCSA is not seeking this approval.

#### **18. EXCEPTIONS TO CERTIFICATION STATEMENT**

FMCSA is claiming no exception to any element of the certification statement identified in Item 19 of OMB Form 83-I.

#### **ATTACHMENTS:**

Attachment A: Clarification to the Applicability of Emergency Exemptions NPRM

Attachment B: Clarification to the Applicability of Emergency Exemptions Final Rule

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<sup>3</sup>The hourly wage for a GS-13 Step 5 in the Washington, DC region was multiplied by the federal government fringe benefits rate of 45 percent and the federal government overhead rate of 64 percent to arrive at the loaded hourly wage. The hourly wage denoted in the OPM schedule for a GS-15 step 5 is \$60.83.  
[https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/DCB\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/DCB_h.pdf)