



U.S. Department  
of Transportation

Federal Motor Carrier  
Safety Administration

Chief Counsel

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Washington, D.C. 20590

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Mr. Donald Booth  
Field Operations Program Specialist  
Urban Search and Rescue  
Federal Emergency Management Administration  
U. S. Department of Homeland Security  
500 C Street SW, Room 326  
Washington, DC 20472

Dear Mr. Booth:

This letter responds to your August 8 e-mail, which asks numerous questions regarding the applicability of the Federal Motor Carrier Safety Regulations (FMCSRs) to Urban Search and Rescue Teams overseen by the Federal Emergency Management Agency (FEMA). It also responds to additional questions posed by Bob Speakman, Acting Telecommunications Manager, MERS, of the Department of Homeland Security in his e-mail dated September 4.

FEMA oversees 28 Urban Search and Rescue (US&R) Teams located across the United States. These teams are comprised of local municipal fire departments and private firefighting companies. When a "no notice" event or a hurricane is heading toward the United States, FEMA mobilizes some or all of these US&R teams to respond to the anticipated emergency incident. FEMA also contracts with motor carriers to transport rescue personnel to the site of the incident in buses.

FEMA considers the US&R teams to be Federal assets following mobilization. FEMA pays their salaries and any support required to move equipment and personnel to the incident location. FEMA requires all drivers to have a current commercial driver's license (CDL). All drivers are required to take an annual physical as well as a medical screening prior to any mission and could be subject to random drug screening. The vehicles hauling the rescue equipment were purchased with Federal grant money from FEMA earmarked for this purpose.

You inquire about the applicability of the FMCSRs and State size and weight regulations to the operations of US&R teams during three distinct phases of search and rescue operations: (1) pre-positioning equipment and personnel at the incident site in anticipation of an emergency; (2) responding to the emergency incident; and (3) returning home following the emergency incident. There are significant differences in the applicability of the FMCSRs, depending on whether the transportation is provided by governmental or non-governmental (civilian) entities. Also, please bear in mind that the FMCSRs (except for CDL and drug and alcohol testing requirements) only apply to interstate transportation. Intrastate transportation is governed by State regulations which are generally compatible with the FMCSRs.

### Governmental Entities

Under 49 CFR 390.3(f)(2), governmental entities such as FEMA or municipal fire departments are exempt from compliance with the bulk of the FMCSRs, although not the CDL requirements in 49 CFR part 383 and the drug and alcohol testing requirements in 49 CFR part 382. This exemption applies to activities of governmental units and their employees during all three phases of search and rescue operations--pre-positioning, emergency response, and demobilization.

However, this exemption does not extend to compliance with vehicle size and weight restrictions. The States regulate this area and FMCSA does not have authority to waive State size and weight regulations, including the requirement to stop at weigh stations. Therefore, States have authority to stop vehicles and weigh them regardless of whether a state of emergency has been declared. For more information on this provision contact the Federal Highway Administration.

### Non-Governmental (Civilian) Entities

Trucks and buses operated by non-governmental entities (civilians), such as private contract fire companies, are not exempt from compliance with the FMCSRs during all three phases of search and rescue operations. Although you claim that FEMA "federalizes" rescue vehicles operated by private contractors during search and rescue operations, these vehicles are owned by the contractors, driven by non-Federal employees and are under civilian direction and control when not part of FEMA US&R operations. Because the transportation is being provided under contract with the Federal government and not by FEMA itself, the § 390.3(f)(2) exemption does not apply to such vehicles. This does not change even though FEMA may direct vehicle operations during a limited period of time.

At all phases of operation two requirements apply. First, civilians must comply with the CDL requirements in 49 CFR part 383 and the drug and alcohol testing requirements in 49 CFR part 382. Second, civilian carriers must never operate under an out-of-service order under 49 CFR 386.72(b) or 385.13.

There are two exemptions applicable to civilian operations in connection with emergency and related operations—49 CFR 390.3(f)(5) and 390.23. These exemptions, which are discussed in greater detail below, do not apply to the pre-positioning of personnel or equipment in anticipation of an emergency, unless a preemptive declaration has been issued. Therefore, all the applicable FMCSRs apply to civilian operations during pre-positioning.

Section 390.3(f)(5) exempts from the FMCSRs fire trucks and rescue vehicles involved in emergency and related operations. It provides a broad exemption to most of the applicable regulations in 49 CFR Parts 350-399, but not to parts 382, 383, or 387. It does not require declaration of an emergency, as is required under 49 CFR 390.23, and it provides relief from regulation for the duration of the emergency as well as for transportation back to the place of origin following the emergency. The definition of a "fire truck or rescue vehicle" includes pumper trucks and rescue trucks transporting crews and equipment, used primarily for fire and rescue operations. Buses that can transport 16 or more passengers do not fall under this exemption.

The other applicable exemption, codified in 49 CFR 390.23, applies to trucks and buses providing relief during a formally declared emergency. Under this provision, regional and local emergencies can be declared by the President, governors of a state or their authorized representatives, or an FMCSA field administrator. The exemption lasts only while the motor carrier or driver is engaged in “direct assistance” during an emergency, but no longer than 30 days from declaration of a regional emergency or 5 days from the declaration of a local emergency. Direct assistance, as defined in 49 CFR 390.5, means transportation and other relief services provided for the *immediate* restoration of essential services (such as electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as food and fuel).

Although § 390.23 is limited to direct assistance during declared emergencies and does not apply to pre-positioning of teams or equipment (unless a state official has declared an emergency in anticipation of an event like a hurricane), it does provide some exceptions to the hours-of-service regulations during the demobilization phase. Section 390.23(b) permits a driver to return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with parts 390 through 399. 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 being required to return. Having returned to the terminal or work location, the driver must be relieved of all duty and responsibilities.

The following chart summarizes the requirements applicable to interstate governmental and civilian transportation at different phases of search and rescue operations:

### Summary of Applicable Regulations by Phase

	<i>Pre-Positioning</i>	<i>Emergency (Undeclared)</i>	<i>Emergency (Declared)</i>	<i>Post-Emergency</i>
<i>Govt Team (trucks)</i>	Only parts 382 and 383	Only parts 382 and 383	Only parts 382 and 383	Only parts 382 and 383
<i>Civilian Team (fire trucks and rescue vehicles)</i>	All regulations	Only parts 382 and 383	Only parts 382 and 383	All regulations (but see limited HOS exceptions)
<i>Civilian Team (buses)</i>	All regulations	All regulations	Only parts 382, 383, and 387	All regulations

## Hours of Service

You also requested information on what hours-of-service rules apply with regard to non-exempt transportation. These requirements are summarized in the chart below. It should be noted that the 11-hour daily driving and 34-hour restart provisions for trucks were recently vacated by the U.S. Court of Appeals for the District of Columbia Circuit. On September 28, 2007, the Court issued an order staying its mandate until December 27, 2007. The ultimate status of these provisions is uncertain at this time.

### *Hours-of-Service Rule Summary*

	Trucks (49 CFR 395.3)	Buses (49 CFR 395.5)
Daily Driving Time	11 hours within 14 hour "driving duty window" non-extendable by off-duty periods following 10 hours off duty*	10 hours within 15 hour driving duty window (but 15-hr. period is extendable by off-duty periods)
Weekly Driving Time	60/70 hours in 7/8 consecutive days	60/70 hours in 7/8 consecutive days
Off duty	10 hours (daily); at least 34 hours off duty restarts the weekly 60/70 hour limit; restart does not have to be taken at end of 60/70 hours and usually is not	8 hours
Sleeper Berth (49 CFR 395.1)	8 consecutive hours in berth plus 2 consecutive hours either in berth, off duty, or any combination of the two	8 hours of off duty or berth time or by taking 2 rest periods in the berth if: no period is less than 2 hours, daily driving time requirements are met before/after berth period, no driving time after 15 <sup>th</sup> hour on duty (but 15-hr. period is extendable by off-duty periods), and driver takes 8 hours off duty or a combination of off duty and berth time before resuming driving

\* Limited exceptions exist under 49 CFR 395.1(o) and 395.1(e)(2).

A team driver who is riding in the cab of a truck seated next to the driver is considered to be on-duty (not driving) for purposes of complying with the hours-of-service regulations.

### Use of Recreational Vehicles

Mr. Speakman stated that many trucks used in search and rescue operations are not equipped with sleeper berths and asked whether drivers could obtain off-duty rest in recreational vehicles (RVs) accompanying search and rescue truck convoys. In essence, the RV would serve the same purpose as a sleeper berth in determining compliance with the hours-of-service regulations.

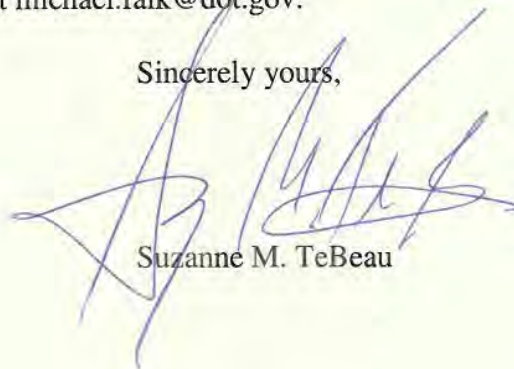
This issue is only relevant to search and rescue operations that are subject to the hours-of-service regulations, as indicated in the chart on page 3. A moving RV could not be used for drivers to obtain off-duty rest as an alternative to a sleeper berth since it does not qualify as a sleeper berth under 49 CFR 393.76. The rationale for not allowing a moving RV to be considered a sleeper berth is that a driver in a moving sleeper berth has little else to do other than rest, while a driver in the back of an RV with other drivers might be much less likely to actually be resting.

### Additional Questions

In response to additional questions raised in your inquiry, vehicles in search and rescue convoys are not required to have FEMA markings distinguishing them from commercial motor carriers. Government-owned trucks are not required to obtain and display USDOT numbers, but interstate civilian CMVs would be required to do so. Tow vehicles less than 26,000 lbs gross vehicle weight (GVW) and having no air brakes pulling a tandem axle equipment style trailer loaded with search and rescue support equipment would be regulated by DOT if the combined GVW of the tow vehicle and trailer exceeds 10,000 pounds. The hours-of-service rules would apply to such vehicles, as well as any CMV not requiring a CDL, unless the government or emergency exemptions discussed above apply.

I hope this information is helpful. If you have any further questions, please contact Michael Falk at (202) 366-9304 or e-mail him at [michael.falk@dot.gov](mailto:michael.falk@dot.gov).

Sincerely yours,



Suzanne M. TeBeau