



# Commercial Vehicle Safety Alliance

Improving uniformity in commercial motor vehicle safety and enforcement

---

September 1, 2020

Mr. Jim Mullen  
Deputy Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, SE  
6th Floor, West Building  
Washington, DC 20590-9898

**RE: Petition for Rulemaking – Revise Emergency Declaration Requirements in Title 49 CFR § 390.23 and § 390.25**

Dear Deputy Administrator Mullen,

Pursuant to Title 49 Code of Federal Regulations (CFR) § 389.31, the Commercial Vehicle Safety Alliance (CVSA) petitions the Federal Motor Carrier Safety Administration (FMCSA) to revise Title 49 CFR § 390.23 and § 390.25 to allow the issuer of an emergency declaration to select which regulations are waived and to clarify that the FMCSA Administrator has the authority to issue emergency declarations.

CVSA is a nonprofit association comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives. The Alliance aims to achieve uniformity, compatibility and reciprocity of commercial motor vehicle inspections and enforcement by certified inspectors dedicated to driver and vehicle safety. Our mission is to improve commercial motor vehicle safety and uniformity throughout Canada, Mexico and the United States, by providing guidance and education to enforcement, industry and policy makers.

§ 390.23 provides select federal and state representatives the authority, under certain conditions, to issue 30-day regional and 5-day local emergency declarations waiving all of Parts 390 through 399 when a driver is providing direct relief during an emergency. However, § 390.23 does not provide the authority allowing the authorized representative to select specific regulations to waive in an emergency declaration. Instead, it requires that all regulations included in Parts 390 through 399 be waived for qualifying drivers. After the initial emergency declaration, § 390.25 gives the FMCSA Field Administrator the authority to extend a declaration for up to 30 days. CVSA is petitioning the agency to issue a rulemaking updating § 390.23 and § 390.25 to provide federal and state representatives with the authority to select which regulations are waived as a part of an emergency declaration pursuant to § 390.23 and clarify that the FMCSA Administrator has the authority to issue a national emergency declaration.

Safety regulations are put into place to ensure vehicles and drivers meet the minimum requirements to operate safely. However, under emergency circumstances, it may be appropriate to waive portions of the regulations to expedite the delivery of emergency supplies and services. While the temporary waiving of regulations may be necessary during an emergency, every regulation waived negatively impacts the safety of commercial motor vehicles operating on the roadways.

To limit the impact of emergency declarations on safety, the issuing authority should be provided the discretion to select which regulations are waived. FMCSA and the states should not be forced to waive all of Parts 390 through 399, particularly when waiving most of the regulations will have no measurable impact on getting relief supplies to their destination any faster. For example, while it may be appropriate that during an emergency, all, or portions of, the hours-of-service regulations be waived to expedite the delivery of emergency supplies, there are many other critical safety components and driver requirements that are necessary to safely operate a commercial motor vehicle. Waiving Part 392, for example, which contains drug and alcohol requirements, as well as safe driving practices for a commercial motor vehicle, does nothing to expedite the delivery of emergency products or services, but may have a serious negative impact on highway safety. Providing FMCSA and the states with the authority to select which regulations are waived during emergencies helps tailor relief efforts to the specific situation, while limiting negative safety implications.

Additionally, § 390.23(a)(1)(i)(B) and § 390.25 specifically state that when certain conditions are met the FMCSA Field Administrator has the authority to issue regional emergency declarations or extensions. The ongoing COVID-19 pandemic has brought to light that there may, at times, be a need for a national emergency declaration. Both § 390.23(a)(1)(i)(B) and § 390.25 should be amended to clarify that the FMCSA Administrator has the authority to issue emergency declarations, not just the FMCSA Field Administrators. One way this could be accomplished is by replacing “FMCSA Field Administrator” with “FMCSA Administrator or their authorized representative” in § 390.23 and § 390.25. This change would clearly establish that the FMCSA Administrator has the authority to issue emergency declarations.

CVSA works to closely monitor, evaluate and identify potentially unsafe transportation processes and procedures as well as to help facilitate and implement best practices for enhancing safety on our highways. Commercial motor vehicle safety continues to be a challenge and we need the involvement of all affected parties to help us better understand these issues and put into place practical solutions. We appreciate the agency’s commitment to safety and stakeholder involvement.

If you have further questions or comments, please do not hesitate to contact me by phone at 301-830-6149 or by email at [collinm@cvsa.org](mailto:collinm@cvsa.org).

Respectfully,



Collin B. Mooney, MPA, CAE  
Executive Director  
Commercial Vehicle Safety Alliance