

FMCSR Waivers and Exemptions - Game Plan When You Can't Strictly Comply

MARCH 21, 2024

Authors: [Jonathan R. Todd](#)

Public safety on the roadways is the chief objective of the Federal Motor Carrier Safety Regulations (FMCSRs). Some safety and operations teams will from time to time encounter unique circumstances where strict compliance can be challenging or may in fact yield lower relative efficiency (and even safety) compared to other operational practices. The Federal Motor Carrier Safety Administration (FMCSA) contemplates this possibility. As a result, the agency maintains waiver and exemption options that can be sought to help industry accommodate those circumstances. This article provides a high level summary of those options and how they work.

Waivers from FMCSR Compliance

The FMCSA will grant waivers as temporary relief from one or more of the FMCSRs. Waiver provides the person with relief from the precise regulation for up to three months. A waiver is intended for nonemergency and unique events where the regulated party cannot meet, subject to restrictions from the Administration, one or more of the requirements contained in the following Parts and Sections of Title 49:

- Part 380-Special Training Requirements
- Part 382-Controlled Substances and Alcohol Use and Testing
- Part 383-Commercial Driver's License Standards; Requirements and Penalties
- Part 384-State Compliance with Commercial Driver's License Program
- 390.19 Motor Carrier Identification Report
- 390.21 Marking of commercial motor vehicles
- Part 391-Qualifications of Drivers
- Part 392-Driving of Commercial Motor Vehicles
- Part 393-Parts and Accessories Necessary for Safe Operation
- Part 395-Hours of Service of Drivers
- Part 396-Inspection, Repair, and Maintenance (except 396.25)
- Part 399-Step, Handhold and Deck Requirements

A waiver may be requested if one or more of those FMCSRs would prevent the regulated party from using or operating Commercial Motor Vehicles (CMVs), or would make it unreasonably difficult to do so, in each case during a unique non-emergency event that will take no more than three months to complete. Practical alternatives must be considered in advance of filing a request for waiver, since, in many instances, waiver is not absolutely necessary from some or all of the impacted Parts and Sections.

Written requests for waiver are filed with the FMCSA Administration. The request must contain certain required elements, including, as appropriate, identifying the regulated party seeking waiver, that party's contact information, U.S. DOT No., the unique non-emergency circumstance, the precise regulations to be waived, the number of CMVs impacted, and how vehicle safety will be maintained despite the waiver. Waiver requests are typically resolved within 60 days, although it may take up to 120 days. Responses are delivered in writing to the regulated party seeking waiver.

Exemptions from FMCSR Compliance

The FMCSA will grant exemptions for relief from one or more of the FMCSRs. Exemptions are intended to be temporary, and carry a term, although terms may be renewed. Exemptions may only be granted from one or more of the requirements contained in the following parts and sections of the FMCSRs:

- Part 380-Special Training Requirements
- Part 382-Controlled Substances and Alcohol Use and Testing
- Part 383-Commercial Driver's License Standards; Requirements and Penalties
- Part 384-State Compliance with Commercial Driver's License Program
- Part 391-Qualifications of Drivers
- Part 392-Driving of Commercial Motor Vehicles
- Part 393-Parts and Accessories Necessary for Safe Operation
- Part 395-Hours of Service of Drivers
- Part 396-Inspection, Repair, and Maintenance (except for 396.25)
- Part 399-Step, Handhold and Deck Requirements

An exemption may be requested if one or more of the FMCSRs prevent a regulated party from implementing more efficient or effective operations. The level of safety achieved by those operations must remain equal to or greater than the safety effect that would result from the respective regulation as applied. As with waivers, practical alternatives should be considered in advance of seeking an exemption as well as clarity around precisely which Parts or Sections require exemption.

Written requests for exemption must be filed with the FMCSA Administrator. The required elements of an exemption request are similar to those for a waiver, although the rationale behind the two programs triggers additional requirements: justification for the exemption, including quantifiable

impacts if the exemption is not granted, as well as any written analysis or papers supporting the safety result from the proposed operation and exemption. Upon filing, the FMCSA will issue a Federal Register notice to publicize the request and to allow the opportunity for public comment. The FMCSA decision will also be published in the Federal Register. Resubmission is available in the event of denial. Most FMCSA decisions are rendered within 180 days of filing.

Jonathan R. Todd is a partner in Benesch's Transportation & Logistics Practice Group. He may be reached at (216) 363-4658 or jtodd@beneschlaw.com.