



GAWDA COVID-19 Response Seminar—March 25, 2020

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Two Questions

- May I operate my truck fleet?
- If I may operate my truck fleet, what regulations apply?

May I Operate?

- DHS/CISA Guidance on Essential Critical Infrastructure Workforce—national guidelines for state and local governments to follow when ordering businesses to close: who is exempt?
- Response efforts to the COVID-19 pandemic are locally executed, state managed, and federally supported
- State response—shelter in place orders. Did they adopt the CISA list of exempt businesses/workers or not? If not, what are the differences between the state list and the CISA list?
- How does a company operating nationally or regionally comply with this patchwork quilt of state restrictions and exemptions?

DHS/CISA List of Exempt Industries

- Includes Manufacturers and Distributors of Medical and Industrial Gases and Equipment
- This list is advisory only; federal government is offering it to state and local governments as a template to use in developing responses to COVID-19
- Federal government has rejected idea of nationwide shutdown or the use of National Guard nationally to enforce order
- Left up to state governments to develop their own plans for shutdown, shelter-in-place orders
- States may also develop their own list of essential businesses/workers that are exempt from their orders

State Responses

- California issued shutdown order but exempted businesses on CISA list
- Pennsylvania, New York Connecticut, New Jersey and Illinois followed with shelter-in-place orders that each adopted its own list of exempted essential businesses/workers
- Texas, Massachusetts have resisted statewide shelter-in-place orders shutting down businesses so far; Texas has closed restaurants and bars; Mass. local governments imposing own restrictions
- Virtually every state has some response to COVID-19 pandemic and limiting human contact; devastating effect on commerce
- State governments do not understand supply chains; OK for groceries to remain open, but how do they get food and supplies?

So How to Make Sense of This?

- Must go state-by-state to determine what businesses may operate, what other restrictions may apply
- We are in uncharted territory; encourage you to read these exemption lists expansively
- Permission is not available; there is no certainty; better to ask for forgiveness later than to limit operations unnecessarily
- You might be operating but customers are closed
- HR issues on employees refusing to show up for work, or to enter certain facilities; sick leave, vacation time for self-isolation; keeping drivers qualified and licensed to drive

FMCSA Emergency Declaration

- Exemption dated March 13, expanded March 18
- Exempts carriers and employees from Hours of Service rules and all of Parts 390-399 while providing direct assistance supporting emergency relief efforts related to the COVID-19 pandemic
- Exemption applies during the pandemic emergency (or April 12, whichever is earlier)—may be extended if needed
- Does not provide exemption from drug and alcohol testing (49 CFR Part 382), CDL requirements (Part 383), financial responsibility (insurance) requirements (Part 387), hazardous material regulations (Parts 100-180), and applicable vehicle size and weight requirements

Exempted Activities--FMCSA

- Medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19
- Supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19 such as masks, gloves, hand sanitizer, soap and disinfectants
- Food, paper products and other groceries for emergency restocking of distribution centers or stores
- Immediate precursor raw materials—such as paper, plastic or alcohol—that are required and to be used for the manufacture of essential items
- Fuel
- Equipment, supplies and persons necessary to establish and manage temporary housing, quarantine.

Direct Assistance

- Includes transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services, such as medical care, or essential supplies such as food, related to COVID-19 outbreaks during the emergency
- Does not include routine commercial deliveries, including mixed loads with a nominal quantity of qualifying emergency relief added to obtain the benefits for the emergency declaration
- Terminates when driver or CMV used in interstate commerce to transport cargo or provide services not in support of emergency relief efforts related to the COVID-19 outbreaks or when the motor carrier dispatches a driver or CMV to another location to begin operations in commerce; upon termination of direct assistance to emergency relief efforts, carrier and driver are subject to Parts 390 through 399, except that a driver may return empty to the motor carrier's terminal or driver's normal work reporting location without complying with Parts 390 through 399

FAQs on FMCSA Exemption

- Driver not required to take 30-minute break after 8 hours on duty
- Hours worked do not count towards 60/70 rule
- Driver not required to take 34-hour restart after completing direct assistance; must take 10 hours off duty and comply with 60/70 rule before driving
- No documentation is needed in truck to operate under exemption
- No requirement for paper logbook or ELD while providing direct assistance
- If ELD is in the truck, during direct assistance:
 - Use authorized personal use mode (personal conveyance)
 - Use in normal mode and annotate to indicate direct assistance in COVID-19 emergency, or
 - Turn off the ELD

Expired CDL and Medical Exam Waiver

- Yesterday, FMCSA issued a limited waiver for CDL/CLP renewals and medical exams
- Extends CDL validity to June 30, 2020 for CDLs due for renewal on or after March 1, 2020 (presumably includes Hazmat Endorsements)
- Extends CLP validity to June 30, 2020 for CLPs due for renewal on or after March 1, 2020 without having to retake general knowledge and endorsement tests
- Also waives requirement for CLP holder to wait 14 days to take skills tests
- Waives requirement that CDL/CLP holders and non-CDL drivers have medical exam and certification, provided they have proof of a valid medical cert issued for a period of 90 days or more and that expired on or after March 1, 2020

CDL and Medical Card Waiver

- Waives requirement that SDLAs change CDL/CLP holder's medical certificate to "not certified" upon expiration, provided CDL/CLP had valid medial cert or medical variance that expired on or after March 1
- Waives requirement that SDLAs downgrade CDL or CLP upon expiration, provided CDL/CLP had valid medial cert or medical variance that expired on or after March 1
- States (and drivers) are covered by this waiver without further action
- States may renew CDL/CLP online

DOT Drug and Alcohol Testing Guidance

- DOT recognizes that compliance may not be possible in certain areas due to the unavailability of program resources, such as collection sites, Breath Alcohol Technicians (BAT), Medical Review Officers (MRO) and Substance Abuse Professionals (SAP)
- You should make a reasonable effort to locate the necessary resources; as a best practice at this time, employers should consider mobile collection services for required testing if the fixed-site collection facilities are not available
- If you are unable to conduct DOT drug or alcohol training or testing due to COVID-19-related supply shortages, facility closures, state or locally imposed quarantine requirements, or other impediments, you are to continue to comply with existing applicable DOT Agency requirements to document why a test was not completed
- If training or testing can be conducted later (e.g., supervisor reasonable suspicion training at the next available opportunity, random testing later in the selection period, follow-up testing later in the month), you are to do so in accordance with applicable FMCSA regulations

Drug and Alcohol Testing Guidance

- FMCSA continue to apply even if test facilities not available
- Without a “negative” pre-employment drug test result, an employer may not permit a prospective or current employee to perform any DOT safety-sensitive functions
- If employee expresses concern about potential health risks associated with collection and testing process, employers should decide if FMCSA rules allow collection and testing at a later date; but it is the employer’s responsibility to evaluate the circumstances of the employee’s refusal to test and determine whether or not the employee’s actions should be considered a refusal as per 49 CFR § 40.355(i)
- DOT asks employers to be sensitive to employees who indicate they are not comfortable or are afraid to go to clinics or collection sites; DOT asks employers to verify with the clinic or collection site that it has taken the necessary precautions to minimize the risk of exposure to COVID-19

PHMSA Recurrent Training

- PHMSA has temporarily halted enforcement actions against shippers and carriers that are unable to comply with training requirements included in the Hazardous Materials Regulations
- The Notice is limited to recurrent training requirements and does not apply to all other HMR obligations or applicable laws for hazardous materials offerors and carriers

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