

**COVID-19**  
**FMCSA Waiver on CDL/CLP/Med Cards;**  
**How do we deal with "essentiality"?**

March 24, 2020

Information Received From SC Trucking Association

**EMERGENCY DECLARATIONS, EXECUTIVE ORDERS & MORE**

Disclaimer: This communication is not legal advice, nor a legally binding document. It is simply to provide you with the most current and accurate information that we have access to. If you have any specific questions that are not addressed, please contact us at either ricktodd@sctrucking.org or taryn@sctrucking.org.

SC Emergency Management Division has provided all of the Counties/Local Governments and Law Enforcement Agencies across the state the Guidances from CISA (Memo on Essential Workers) and FMCSA extensions of CDL, CLP, etc. This should help with any local law enforcement challenges.

**FMCSA Notices, Waivers, and Guidance**

Waiver for States, CDL Holders, CLP Holders, and Interstate Drivers Operating Commercial Motor Vehicles

<https://www.fmcsa.dot.gov/emergency/fmcsa-cdl-waiver-32420>

This is not a blanket exemption from the CLP, CDL, and/or Medical Certificate requirements, and drivers and carriers should review the details of the waiver to ensure their operations qualify. Here are the details:

**FMCSA's Regulatory Provisions Waived:**

Extends until June 30, 2020, the maximum period of CDL validity by waiving 49 CFR 383.73(b)(9) and 383.73(d)(6) for CDLs due for renewal on or after March 1, 2020.

Extends until June 30, 2020, the maximum period of CLP validity by waiving 49 CFR 383.73(a)(2)(iii) and 383.25(c) for CLPs that are due for renewal on or after March 1, 2020, without requiring the CLP holders to retake the general and endorsement knowledge tests.

Waives the requirement under 49 CFR 383.25(e) that CLP holders wait 14 days to take the CDL skills test.

Waives the requirement under 49 CFR 391.45 that CDL holders, CLP holders, and non-CDL drivers have a medical examination and certification, provided that they have proof of a valid medical certification that was issued for a period of 90 days or longer and that expired on or after March 1, 2020.

Waives the requirement under 49 CFR 383.71(h)(3) that, in order to maintain the medical certification status of "certified," CDL or CLP holders provide the State Driver Licensing Agency with an original or copy of a subsequently issued medical examiner's certificate, provided that they have proof of a valid medical certification that expired on or after March 1, 2020.

Waives the requirement under 49 CFR 383.73(o)(2) that the State Driver Licensing Agency change the CDL or CLP holder's medical certification status to "not certified" upon the expiration of the medical examiner's certificate or medical variance, provided that the CDL or CLP holders have proof of a valid medical certification that expired on or after March 1, 2020.

Waives the requirements under 49 CFR 383.73(o)(4) that the State Driver Licensing Agency initiate a CDL or CLP downgrade upon the expiration of the medical examiner's certificate or medical variance, provided that the CDL or CLP holders have proof of a valid medical certification or medical variance that expired on or after March 1, 2020.

In accordance with 49 CFR 383.23(a)(1) and 391.41(a)(1)(i), FMCSA continues to recognize the validity of commercial driver's licenses issued by Canadian Provinces and Territories and Licencias Federales de Conductor issued by the United Mexican States, in accordance with 49 CFR part 383, when such jurisdictions issue a similar notice or declaration extending the validity date of the medical examination and certification and/or validity of the corresponding commercial driver's license due to interruption to government service resulting from COVID-19.

### **Enforcement Notice on Expiring CDLs**

<https://www.fmcsa.dot.gov/emergency/enforcement-notice-expiring-cdl-32420>

This Notice of Enforcement Policy, effective from March 24, 2020 to June 30, 2020, provides needed relief from specified FMCSRs for CLP holders, CDL holders, and non-CDL drivers and motor carriers using those drivers. This Notice of Enforcement Policy applies to all CLP holders, CDL holders, and non-CDL drivers whose license was issued for less than the maximum period established by 49 CFR 383.25 and 383.73 and was valid on February 29, 2020 and expired on or after March 1, 2020.

### **PHMSA Notice of Enforcement Policy Relating to HM Training**

<https://www.phmsa.dot.gov/news/phmsa-enforcement-policy-notice-regarding-hazardous-materials-training>

PHMSA has provided there will not take enforcement action taken against any HM employer and/or HM employee unable to provide the required "recurrent training" during the Covid-19 pandemic. This policy was coordinated across the Department and applies to FMCSA and all modes. It does not apply to initial training, or the need to have a new HM employee work under the supervision of a trained HM employee until they can get their initial training.

### **Drug Testing Guidance**

ODAPC has posted guidance relating to the Drug and Alcohol Program during this time of National Emergency. That document can found at <https://www.transportation.gov/odapc/compliance-with-dot-drug-and-alcohol-testing-regulations>. We will be adding that link to our Declaration page as well. Additional information specific to FMCSA operations is currently under discussion, but this initial guidance provides important information for employers and employees subject to drug and alcohol testing.

### **SCDEW: Employer Filed Claims**

SC Department of Employment & Workforce wants to adjudicate and process these claims as quickly as possible for those that are entitled to the benefits. Please note that an employer's tax rating will not be impacted due to COVID-19 related claims.

In that regard, SCDEW are really encouraging impacted employers to consider filing on behalf of their employees. Individuals can always file on their own, but the employer filed route can streamline it for all parties involved. I have attached a one pager explaining this process and would ask you to please consider sharing this with the trade organization(s) or businesses you represent.

### **How Do I Deal with Curfews or "Essentiality" Questions?**

SC's Governor McMaster has taken an "open for business" approach in terms of keeping the supply chain operating. That's great, but it might pose challenges between employees and employers, and with local law enforcement when they are sorting through traffic during curfews or other restricted times/situations. And, particularly, when deciding to take advantage of the relaxation of the HOS rules. Are you "essential?" Are your operations "essential?"

The CISA guidelines are specific, but also open for interpretation.

The best advice we can provide is this: Most states will look at it as two parts – (1) are you an essential business and then (2) are you providing an essential service.

So while trucking, in general, and truck drivers in general fit most considerations, it really depends on what you are hauling and for whom. So some common sense if in order.

You will need to be prepared to justify why what you are hauling is considered "essential." If you are confident enough, you might want to copy and paste this letter, putting it on your letterhead and have drivers carry it in the truck.

Again, read the Executive Orders, Emergency Declarations, and FMCSA and other Notices. And if you operate outside the safe and comfy confines of your home state of South Carolina, Good luck!

AS INFO:

### **GUIDANCE ON THE ESSENTIAL CRITICAL INFRASTRUCTURE WORKFORCE - REVISED TO SPECIFICALLY ADDRESS TRUCK DRIVERS, ETC.**

Cybersecurity and Infrastructure Security Agency

### **MEMORANDUM ON IDENTIFICATION OF ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS DURING COVID-19 RESPONSE - Includes 11 page CISA Brochure**

If You're an INTERstate Carrier; ATA's COVID-19 Update Hub May be Useful  
ATA COVID-19 Update Hub

Trucking operations may operate under the SC Emergency Declaration 2020-08 or the Presidential Emergency Declaration 2020-02 while servicing "emergencies" and providing "essential products and services" in SC.

Each state's declaration is without conflict with another state. The federal declaration is a national blanket and only covers certain items (see the list below for specifics). Each state can set their own needs or parameters that may go beyond that of the Federal Declaration. Drivers can

use the Presidential Emergency Declaration to act in direct relief for a state OR use that state's ED/EO. We will keep you abreast of other state's Emergency Declarations and Executive Orders as they are made available.

All drivers are still subject to HazMat regulations, CDL compliance, and Drug & Alcohol testing; those acting in RELIEF EFFORT are not subject to FMCSRs pursuant to 49 C.F.R. § 390.23 (parts 390-399 are waived) unless the state's waiver says otherwise. That being said, FMCSA and CVSA are discussing health concerns relating to labs and other facilities that drug & alcohol and medical qualification testing are done. We will keep you posted on any decisions pertaining to changes.

SC can have carriers operating in direct relief under SC ED 2020-08 that begin in any other state and continue to operate under the same ED until they return to their point of dispatch, where they then must then take a break – to be in compliance with HOS rules again. If at any time the driver is fatigued and needs a break, the employer must allow them to do so. Citation: (c) When the driver has been relieved of all duty and responsibilities upon termination of direct assistance to a regional or local emergency relief effort, no motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive in commerce until the driver has met the requirements of §§395.3(a) and (c) and 395.5(a) of this chapter.

If you have questions, please do not hesitate to contact us (SC Trucking Association).

## **CURRENT FMCSA EMERGENCY DECLARATION**

Please see the FAQs relating to the Emergency Declaration and Hours of Service.

Here are some details of commodities/operations included in the FMCSA Declaration:

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.

Persons designated by federal, state or local authorities for medical, isolation, or quarantine purposes.

Persons necessary to provide other medical or emergency services.

We urge all members (and others) to review the actual declaration before making a determination if your operations apply.

## **South Carolina Executive Order**

Any direct assistance to the state: EXECUTIVE ORDER NO. 2020-08 - Declaring State of Emergency in Response to COVID-19

**TAKE NOTE OF:**

Section 8. I hereby modify and amend Executive Order No. 2020-07, pursuant to 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, to extend the provisions thereof to commercial vehicles and operators of commercial vehicles responding to the declared emergency in the State of South Carolina or otherwise assisting with the public health threat posed by COVID-19, as well as to commercial vehicles and operators of commercial vehicles transporting essential goods and products, such as food, water, medicine, medical supplies and equipment, fuels and petroleum products (to include fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum), livestock, poultry, feed for livestock and poultry, and crops and other agricultural products ready to be harvested (to include timber and wood chips).

**WEIGHTS**

SC DOT Allows 5-Axle Units Up To 90,000 – including SC's Interstates - Per Governor's Executive Orders (Other states may allow, require permits, see their websites) If on Interstates, carry copy of this Permit in unit.

DOWNLOAD/PRINT the SC DOT's OS/OW Permit that should be carried in the vehicle, while operating on the Interstate, to show enforcement officers – when in excess of 80,000, but only up to 90,000 lbs. GVWR. Legal width, height, length may operate 24 hours a day/7 days a week. Signs, banners and flags are not required for loads that are less than 12' wide."

Anything OVER 90K in or out of relief efforts must still be permitted.

This Order is effective immediately and shall remain in effect until March 28, 2020 unless otherwise modified, amended, or rescinded by subsequent Order. It is more liberal in terms of activities and products than the federal order.