

Keep on Trucking: Emergency Declarations Relax FMCSA Regulations During COVID-19

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The COVID-19 virus has had a devastating effect on our nation's economy and everyday life for most Americans. Travel has been largely constrained and many businesses have closed. But while much of the nation is under some form of "stay at home" order, medical supplies need to be replenished and people continue to need food, hand sanitizer, disinfectants, and apparently lots and lots of toilet paper. Consequently, our truck drivers are still on the road, keeping the supply chains moving. In an effort to address issues that have arisen under this national emergency, the FMCSA has issued an Emergency Declaration relaxing the hours of service regulations and CDL renewal requirements under specific circumstances. Here is a summary of what you need to know:

Hours of Service:

Essentially all hours of service requirements (30 minute breaks, mandatory resets, and 11/14/60/70 hour rules) have been suspended or significantly modified while the driver is transporting supplies and providing Direct Assistance under the FMCSA Emergency Declaration. The acting administrator for the FMCSA, Jim Mullen, has said that Direct Assistance means transportation and other relief services provided by a motor carrier or its drivers 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.

He has further defined Direct Assistance to include:

- (1) medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19;
- (2) 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;
- (3) food for emergency restocking of stores;
- (4) equipment, supplies and persons necessary to establish and manage temporary housing, quarantine, and isolation facilities related to COVID-19;
- (5) persons designated by Federal, State or local authorities for medical, isolation, or quarantine purposes;
- (6) persons necessary to provide other medical or emergency services, the supply of which may be affected by the COVID-19 response; and
- (7) liquefied gases to be used in refrigeration or cooling systems.

However, the Administrator has specifically noted that Direct Assistance does not include routine commercial deliveries, or transportation of mixed loads that include essential supplies, equipment and persons, along with supplies, equipment and persons that are not being transported in support of emergency relief efforts related to COVID-19.

Under these relaxed hours of service regulations, motor carriers and their drivers that are moving loads that fit the definition of Direct Assistance are not limited to the typical 11-hour and 14-hour rules, meaning that a driver could theoretically drive for 20 hours straight without violating the FMCSRs so long as the load fits within the definition of "Direct Assistance." However, the "Direct Assistance" (and therefore the relaxed rules) ends when the driver or commercial motor vehicle is used in interstate commerce to transport cargo or provide services that are not in support of COVID-19 emergency relief efforts. And, once the Direct Assistance concludes, the driver and motor carrier are once again subject to the full FMCSA requirements, except that a driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with the typical hours of service regulations. These relaxed rules are scheduled to remain in effect until May 15th or until the Declaration of National Emergency is revoked, whichever comes sooner.

Despite the FMCSA's attempts to minimize confusion, the general definition as to what constitutes "Direct Assistance" remains a bit murky. The plaintiffs' bar will be looking to capitalize on this ambiguity in order to attack every divergence from the ordinary hours of service regulations and question, as always, whether a carrier's actions were reasonable and safe. Though the Emergency Declaration will provide defenses to some of the typical allegations made by plaintiffs' attorneys, it does not go so far as to provide immunity to the motor carriers or drivers for accidents that occur while driving in Direct Assistance in support of relief efforts related to COVID-19. [Click here for FMCSA's guidance on current requirements.](#)

Drug and Alcohol Issues:

All FMCSA Regulations pertaining to drug and alcohol testing and limitation remains business as usual under the Emergency Declaration. The FMCSA Emergency Declaration specifically states, "Nothing in this Emergency Declaration shall be construed as an exemption from the controlled substance and alcohol uses and testing requirement (49CFR Part 382)." Prior to COVID-19, there was a requirement that failure to administer a post-accident test within the specified guidelines be documented in writing. The current guidance expands COVID-19 as a viable explanation if a test was not administered within guidelines. But, any failure to do controlled substance/alcohol testing will be questioned and scrutinized. Consequently, it remains important to make sincere efforts to accomplish the required testing and, in the event the testing cannot be done in a timely manner, thorough and proper documentation needs to be made to explain the situation and the efforts made.

Waiver Concerning CDL Renewal:

Many states have closed their Driver Licensing Agencies in response to the guidance from the U.S. Center for Disease Control to use social distancing to reduce the spread of COVID-19. This has made it impossible for many drivers to renew their Commercial Driver's Licenses and Learning Permits. In response, the Department of Transportation has granted a waiver which extends the "expiration date" on a CDL or CLP that is set to expire in March, April, May, or June of 2020 until June 30, 2020, allowing our truckers to stay on the road and keep our supply chains moving.

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