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IMPORTANT UPDATES ON FEDERAL TRUCKING ISSUES

Note to Members: RIPA interprets the following federal regulatory relief guidance statements broadly to include all businesses that are included in the Department of Homeland Security's "Guidance on the Essential Critical Infrastructure Workforce...." The Guidance includes industrial packaging reconditioners, manufacturers, distributors and suppliers of essential materials to these companies. Go [here](#) for a copy of this document.

FMCSA REVISES, EXPANDS EMERGENCY HOS EXEMPTION

The Federal Motor Carrier Safety Administration has expanded and revised its [Emergency Declaration](#) to provide hours-of-service and other regulatory relief to commercial vehicle drivers transporting emergency relief in response to the nationwide coronavirus (COVID-19) outbreak.

FMCSA's expanded declaration provides for regulatory relief for commercial motor vehicle operations providing direct assistance supporting emergency relief efforts intended to meet immediate needs for:

- 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.

The expanded declaration stipulates that direct assistance does not include routine commercial deliveries, including mixed loads with a nominal quantity of qualifying emergency relief added to obtain the benefits of the emergency declaration.

The emergency declaration stipulates that once a driver has completed his or her delivery, the drive must receive a minimum of 10 hours off duty if transporting property, and 8 hours if transporting passengers

In addition, the FMCSA has published [Frequently Asked Questions](#) on the Emergency Declaration. These FAQs clarify that a driver does not need to carry any documentation in the vehicle to verify using the exemption and discusses various other scenarios.

DOT Issues Update on Drug and Alcohol Testing

The U.S. Department of Transportation has issued guidance on compliance with drug and alcohol testing regulations for employers, employees, and service agents during the COVID-19 emergency.

The guidance states:

- 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 modal regulations. Links to the modal regulations and their respective web pages can be found at <https://www.transportation.gov/odapc/agencies>
- If employers are unable to conduct DOT drug and alcohol testing due to the unavailability of testing resources, the underlying modal regulations continue to apply. For example, 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 an employee expresses concern about potential public health risks associated with the collection and testing process in the current environment, employers should review the applicable DOT Agency requirements for testing to determine whether flexibilities allow for 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). However, as the COVID-19 outbreak poses a novel public health risk, 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.

FMCSA Issues Notice to States on CDL Licensing During COVID-19 Emergency

The Federal Motor Carrier Safety Administration has issued a notice to State Driver Licensing Agencies on the States' compliance with the federal commercial driver licensing program. The notice says the States will not be considered to be in non-compliance with the federal CDL program, and will not jeopardize the availability of federal highway funds, if the State extends a Commercial learner's permit (CLP) or Commercial Driver's License (CDL) that would otherwise expire during the COVID-19 emergency as long as the State returns to its normal practices when the emergency is over.

The notice also clarifies that a State may renew a CLP/CDL online, and further provides that a State will not jeopardize federal funds if it does not change the medical certification status to "not certified" or

downgrade a CDL or CLP driver whose Medical Examiner's Certificate has expired during the national emergency related to COVID-19.

This notice leaves these actions up to the State Driver Licensing Agency, however, so employers and drivers must check with their States to determine how their policies implement this federal guidance.

CALIFORNIA, ILLINOIS, NEW YORK, PENNSYLVANIA ISSUE BUSINESS SHUTDOWN ORDERS

Due to the COVID-19 crisis, at least 15 states have issued statewide shutdown or "shelter in place" orders, with varying exceptions for essential businesses. This is exactly the scenario the DHS Guidance was intended to avoid. Following are a few examples.

California. Governor Gavin Newsom has issued a [shutdown order](#) for the entire State of California until further notice. The order directs all residents living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined in the U.S. Department of Homeland Security's Guidance, above.

Illinois. Governor J.B. Pritzker has issued a stay at home [order](#) in effect until at least April 7, 2020. It has a long list of exempted activities and businesses that is different from the guidance produced by the U.S. Department of Homeland Security. The Illinois list does exempt transportation and logistics providers necessary for Exempted Activities and for other purposes expressly authorized in the Executive Order.

New York. Governor Andrew Cuomo has ordered the shutdown of all non-essential businesses until further notice. The order contains a list of [Essential Businesses](#) that are exempted. The New York list of exemptions is also different from the guidance produced by the U.S. Department of Homeland Security.

Pennsylvania. Governor Tom Wolf has imposed an order shutting down all businesses except those on its list of "[Life Sustaining Businesses](#)." The Pennsylvania exemption list is much narrower and less specific than the DHS Guidance list.

Maryland. Governor Larry Hogan has ordered all non-essential businesses to close. His order references the DHS Guidance list, which includes the packaging industry.

U.S. BORDERS WITH MEXICO, CANADA REMAIN OPEN FOR FREIGHT TRAFFIC

President Trump has closed the [U.S. borders](#) with Canada and Mexico to non-essential travel, but the borders remain open for trade and business travel "with additional screening." Thus, trucks should be able to cross the borders in both directions.