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FMCSA Extends Waiver for CDL Permit Renewal

Effective July 1, 2020, the Federal Motor Carrier Safety Administration (FMCSA) has extended, through September 30, [its waiver](#) to renew expired commercial driver's licenses (CDLs), medical cards, and commercial learner's permits (CLP). The waiver is in response to closures of state motor vehicle departments due to the COVID-19 pandemic. The extension grants CDL holders, CLP holders, and non-CDL drivers relief from the same motor carrier regulations as the initial March 24 waiver. Also, like the initial waiver, the extension does not allow CDL or CLP holders to extend their licenses if their license credentials or medical cards expired before March 1, 2020, or if their driver's privileges have been suspended or withdrawn for traffic offenses. It also does not waive knowledge and skills testing requirements. FMCSA also reissued a separate [Notice of Enforcement Policy](#),

affirming it will not take action against a driver for operating a commercial vehicle if the driver held a valid CDL on February 29, 2020, or against carriers employing those drivers.

FMCSA Extends HOS Exemption to July 14

On June 8, 2020, the Federal Motor Carrier Safety Administration (FMCSA) extended its national emergency exemption for hours of service (HOS) to July 14. However effective June 15, 2020 [the extension](#) is limited to three categories of freight to support emergency response related to COVID-19—(1) Livestock and livestock feed; (2) Medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19; and (3) 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. The extension excludes grocery restocking, fuel



and precursor raw materials, and other categories FMCSA deems non-emergency. The exemption does not apply to routine commercial deliveries, “including mixed loads with a nominal quantity of qualifying emergency relief” that has been added solely to get the benefits of the exemption.

FMCSA Temporarily Waives Pre-Employment Testing Requirements

On June 5, 2020, the Federal Motor Carrier Safety Administration FMCSA [granted a 3-month waiver](#) for certain pre-employment testing conditions for recently furloughed drivers in light of the COVID-19 pandemic. Current regulations mandate a driver to undergo pre-employment testing for controlled substances, and the employer must receive a verified negative controlled substances test result before the driver can perform safety-sensitive functions. However, there is an exception for drivers who have participated in a controlled substances testing program within the last 30 days and were either tested for controlled substances within the past six months or participated in the random controlled substances testing program for the previous 12 months. The waiver extends this exception period from 30 days to 90 days. FMCSA reserves the right to revoke the waiver due to drivers’ involvement in accidents or employers’ failure to comply with the terms.

OOIDA Petitions DOT To Facilitate Greater Broker Transparency

On May 19, 2020, the Owner-Operator Independent Drivers Association (OOIDA) [petitioned](#) the U.S. Department of Transportation (DOT) and DOT’s Federal Motor Carrier Safety Administration to initiate a rulemaking to improve broker transparency regulations. Noting transparency is required by 49 CFR §371.3, the petition proposes the following measures: first, requiring brokers to

provide automatically an electronic copy of each transaction record within 48 hours after completion of contractual service; second, explicitly prohibiting brokers from including any contract provision requiring a carrier to waive its access rights (as ensured by 49 CFR §371.3) to the transaction records; and finally, levying and enforcing a structured fine system for noncompliance and suspending or revoking the authority of unscrupulous brokers that show a pattern of noncompliance.

FMCSA Issues Final Rule on Changes to HOS Regulations

On May 14, 2020, the Federal Motor Carrier Safety Administration (FMCSA) [issued its final rule](#) on changes to driver hours-of-service (HOS) regulations, effective September 29, 2020. The main revisions include the following: First, the rule gives more flexibility to the 30-minute break rule by requiring a break after 8 hours of consecutive driving. Also, “on-duty, not driving” status, rather than “off-duty” status may be used for breaks. Second, the rule modifies the sleeper-berth rule by allowing drivers to split their required 10 hours off duty (per 24 hours) into two periods. The split could be either 8/2 or 7/3, with neither period counting against the driver’s 14-hour driving window. The maximum adverse driving conditions window is extended by 2 hours. Third, the rule increases short-haul drivers’ maximum on-duty period from 12 hours to 14 hours. Further, the rule extends the distance limit the short-haul driver may operate from 100 air miles (115.08 miles) to 150 air miles (172.6 miles). FMCSA expects the rule to produce \$274 million in annualized cost savings for the U.S. economy.

FMCSA Adopts Crash Accountability Program

Effective May 1, 2020, the Federal Motor Carrier Safety Administration (FMCSA) has permanently installed a new pilot program, the



Crash Preventability Demonstration Program. The program allows crashes in [certain eligible categories](#) not to be counted in a motor carrier's safety measurement profile if the carrier was not at fault. Carriers with eligible crashes that occurred on or after August 1, 2019, can submit a request for data review with the required documentation through [the agency's DataQs website](#). FMCSA is in the process of expanding the type of crashes that will be considered.

TSA Temporarily Extends Expired TWIC Cards

The Transportation Security Administration (TSA) has [granted an extension](#) through July 31, 2020 for Transportation Worker Identification Credentials (TWIC) cards that expired March 1. Effective April 10, the extension is intended to limit the spread of COVID-19 and ensure maritime facilities and vessels operate at full capacity. TWIC cards allow truck drivers and other transportation workers unescorted access to secured areas of maritime facilities and vessels. To receive a new card (valid for 5 years), applicants must undergo security threat assessment and provide proof of identity and fingerprints at approved TSA enrollment sites.

FMC Published Interpretive Rule on Detention and Demurrage

On April 28, 2020, the Federal Maritime Commission (FMC) [published Docket No. 19-05, Interpretive Rule on Demurrage and Detention under the Shipping Act](#). The interpretive rule, effective May 18, 2020, provides guidance regarding what FMC "may consider in assessing whether a demurrage or detention practice is unjust or unreasonable." The rule followed years of complaints that unfair detention and

demurrage practices by ocean carriers and terminal operators unfairly penalized U.S. importers, exporters, transportation intermediaries, and drayage truckers for circumstances outside their control.

Agricultural Trade Organizations Call for Increased Truck Weight Limits and Harmonization

On March 30, 2020, 62 food and agricultural organizations sent a [letter](#) to governors and other State officials requesting States increase truck weight limits to a minimum of 88,000 pounds on U.S. Highways and Federal Interstate Highways for the rest of fiscal year 2020. The request aims to optimize capacity of the U.S. food supply chain if fewer truck drivers are available because of COVID-19. Section 22003 of the recently enacted stimulus bill clarifies the U.S. Department of Transportation's authority to allow States to increase truck weight limits on U.S. interstate highways during the COVID-19 emergency. The States already have the authority to raise truck weight limits on their State roads. The request also seeks to ensure minimum weights are "harmonized" across all States—i.e., all States adopt the same minimum—so drivers will have no impediments when crossing State lines.

DOT Announces \$1 Billion in Funding for Surface Transportation Investments

On February 19, 2020, the Department of Transportation (DOT) [announced](#) \$1 billion to be awarded for national infrastructure investments through its Better Utilizing Investments to Leverage Development (or "BUILD") transportation grants program. The fiscal year 2020 funds are competitively awarded for surface transportation infrastructure projects that will have a significant local or regional impact. Eligible



projects include road and bridge, rail, port, and intermodal investment. Fifty percent of BUILD grant funding will go to rural projects that deliver positive benefits for rural communities, consistent with a [DOT initiative](#) to prioritize rural economic opportunity. Under the FY 2020 Appropriations Act, awards must be made by DOT by September 15, 2020 and will be posted to the BUILD Grants website.

Extension of Compliance Date for Entry Level Driver Training

On January 29, 2020, the Federal Motor Carrier Safety Administration (FMCSA) [announced](#) its interim final rule on extending the compliance date of the Entry Level Driver Training Final Rule from February 7, 2020, to February 7, 2022. FMCSA [proposed](#) the extension on July 18, 2019. Comments can be viewed at docket number [FMCSA-2007-27748](#).

Preliminary Injunction on Enforcement of California Assembly Bill 5 on Truck Drivers

On January 16, 2020, a U.S. District Court Judge granted a [preliminary injunction](#), which prevents the enforcement of [Assembly Bill 5](#) (AB-5). AB-5 prohibits companies from using independent contractors unless their work is “outside the usual course of the hiring entity’s business.” Trucking is an important mode in the movement of agricultural products, especially in California. According to [U.S. Department of Transportation data](#), California truckers hauled nearly 49 million tons of agricultural products (SCTG03, which includes soybeans, fruits, vegetables, nuts, and other agricultural products) and over 4 million tons of cereal grain (SCTG02, which includes corn, wheat, and other small grains) within the State in 2018. California also distributed almost 8 million tons of agricultural products and cereal grains to other States by truck in the same year.

EPA Administrator Wheeler Requests Comments on the Cleaner Trucks Initiative

On January 6, 2020, Environmental Protection Agency (EPA) Administrator Andrew Wheeler [requested](#) input on the Cleaner Trucks Initiative (CTI), first announced November 13, 2018, to further decrease nitrogen oxide (NOx) emissions from on-highway heavy-duty trucks and engines. EPA seeks to improve engine certification procedures as well. Comments on the [Advanced Notice of Proposed Rulemaking](#) can be viewed at docket number EPA-HQ-OAR-2019-0055.

FMCSA Raises Random-Testing Rate for Controlled Substances to 50 Percent of Drivers in 2020

On December 27, 2019, the Federal Motor Carrier Safety Administration (FMCSA) [announced](#) the increase of the minimum annual percentage rate for random testing of controlled substances for drivers of commercial motor vehicles. Effective for calendar year 2020, the rate increased from 25 percent of the average number of driver positions to 50 percent. The FMCSA Administrator must increase the random-testing rate whenever the data for the previous calendar year show that 1.0 percent or more of drivers tested had positive test results.

DOT Requests Information for the National Freight Strategic Plan

On December 27, 2019, the U.S. Department of Transportation (DOT) requested answers to [10 questions](#) to aid in the development of the National Freight Strategic Plan (NFSP). The plan includes 11 components to address multimodal freight transportation.



Answers to the questions can be viewed at docket number [DOT-OST-2019-0184](#). The draft NFSP and comments can be viewed at docket number [DOT-OST-2015-0248](#).

DOT Requests Feedback on Rural Transportation Needs and Opportunities

On December 19, 2019, the U.S. Department of Transportation (DOT) [announced](#) a request for information (RFI) from the public and stakeholders regarding the safety, condition, and use of rural infrastructure, as well as stakeholders' experiences using DOT discretionary grant and finance programs. The RFI is part of the Rural Opportunities to Use Transportation for Economic Success Initiative ([ROUTES](#)), and the public feedback will be reviewed and used by the ROUTES Council to aid evaluation of rural projects and improve funding options. Comments can be viewed at docket number [DOT-OST-2019-0167](#).

DOT Extends the Date for States To Check a Driver's Record in the Drug and Alcohol Clearinghouse

On December 13, 2019, the Federal Motor Carrier Safety Administration (FMCSA) [announced](#) a delay in States' requirements to check a driver's record for violations in the Commercial Driver's License Drug and Alcohol Clearinghouse, moving the deadline from January 6, 2020, to January 6, 2023. FMCSA will use the additional time to issue a rulemaking to address the concerns of the American Association of Motor Vehicle Administrators. States may voluntarily use the Clearinghouse prior to issuing, renewing, upgrading, or transferring a CDL. Comments can be viewed at docket number [FMCSA-2019-0120](#).

DOT Requests Input for the Non-Traditional and Emerging Transportation Technology Council

On November 26, 2019, the U.S. Department of Transportation (DOT) [requested](#) comments on "projects, issues, or topics" that the agency should consider through its Non-Traditional and Emerging Transportation Technology (NETT) Council, including "regulatory models and other alternative approaches for non-traditional and emerging transportation technologies." The NETT Council, established in April 2019, is tasked with identifying and resolving "jurisdictional and regulatory gaps associated with non-traditional and emerging transportation projects pending before DOT, including with respect to safety oversight, environmental review, and funding issues." Comments can be viewed at docket number [DOT-OST-2019-0165](#).

Definition of "Agricultural Commodity" Is Under Long-Term Development by FMCSA

On November 20, 2019, the Federal Motor Carrier Safety Administration (FMCSA) announced that it did not expect to be able to redefine within 12 months the term "agricultural commodity." Currently listed as a "long-term action," the [redefinition](#) process would clarify an exemption to hours of service (HOS) of drivers who transport agricultural commodities. Currently, during harvesting and planting seasons as determined by each State, drivers transporting agricultural commodities, including livestock, are exempt from the HOS requirements from the origin of the commodities to a destination within a 150-air-mile radius from the origin.



However, FMCSA has received indications that these terms may be misunderstood or inconsistently enforced when determining whether the HOS exemption applies. Comments on the proposed rulemaking ended on September 27 and can be viewed at docket number [FMCSA-2018-0348](#).

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