



U.S. Department
of Transportation

**Federal Motor Carrier
Safety Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

**Waiver in Response to the COVID-19 National Emergency –
For States, CDL Holders, CLP Holders, and Interstate Drivers
Operating Commercial Motor Vehicles**

July 1, 2020

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Grant of waiver.

SUMMARY: FMCSA grants, until September 30, 2020, a waiver from certain regulations applicable to interstate and intrastate commercial driver's license (CDL) and commercial learner's permit (CLP) holders and to other interstate drivers operating commercial motor vehicles (CMVs). FMCSA has initiated this action in response to the President's declaration of a national emergency under 42 U.S.C. § 5191(b) and the public health emergency declared by the Health and Human Services Secretary related to Coronavirus Disease 2019 (COVID-19) and section 4 of Executive Order No. 13924, Regulatory Relief to Support Economic Recovery, 85 FR 31353 (June 9, 2020).

DATES: This waiver is effective July 1, 2020 and expires on September 30, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Nikki McDavid, Chief of the Commercial Driver's License Division, Office of Safety Programs, 202-366-0831, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590- 0001.

Legal Basis

The Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107, June 9, 1998) provides the Secretary of Transportation (the Secretary) authority to grant waivers from any of the Federal Motor Carrier Safety Regulations issued under either 49 U.S.C. § 31136 or Chapter 313 of Title 49 of the United States Code, to a person(s) seeking regulatory relief (49 U.S.C. §§ 31136(e), 31315(a)). The Secretary must make a determination that the waiver is in the public interest and that it is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver. Individual waivers may be granted only for a specific unique event for a period up to three months. TEA-21 authorizes the Secretary to grant waivers without requesting public comment and without providing public notice.

The Administrator of FMCSA has been delegated authority under 49 CFR 1.87(e) and (f) to carry

out the functions vested in the Secretary by 49 U.S.C. chapter 313, relating to commercial motor vehicle operators, and 49 U.S.C. chapter 311, subchapter I and III, relating to commercial motor vehicle programs and safety regulations.

Background

On March 13, 2020, the President declared a national emergency under 42 U.S.C. § 5191(b) related to Coronavirus Disease 2019 (COVID-19) and on May 19, 2020, issued Executive Order No. 13924, Regulatory Relief to Support Economic Recovery, 85 FR 31353 (June 9, 2020). This waiver is in response to the COVID-19 public health emergency and the effects on people and the immediate risk to public health, safety, and welfare in the fifty States and the District of Columbia. On March 24, 2020, FMCSA granted a waiver covering various regulatory provisions affecting CDL holders, CLP holders, and drivers operating CMVs (non-CDL drivers) that will expire on June 30, 2020. Several States continue to experience greater than normal employee absences or have closed offices of their State Driver Licensing Agencies in response to the guidance from the U.S. Centers for Disease Control and Prevention (CDC) to use social distancing to reduce the spread of COVID-19. Under the Federal guidance for reopening America these conditions are likely to continue at this time.

As a result, many CDL and CLP holders are unable to renew their CDLs and CLPs and are unable to provide medical certificates to their State Driver Licensing Agencies. In addition, many medical providers nationwide have canceled regularly scheduled appointments to dedicate resources to the COVID-19 response. Consequently, drivers are unable to obtain appointments for physical examinations with medical examiners to comply with the Federal Motor Carrier Safety Regulations (FMCSRs). Given the national emergency, there is a public need for transportation of essential supplies, equipment, and persons, which requires an adequate and sustained supply of CDL holders, CLP holders, and drivers operating CMVs (non-CDL drivers). This waiver is granted to provide the same needed relief from specified FMCSRs for CDL holders, CLP holders, and non-CDL drivers that was provided by the March 24 waiver.

FMCSA's Determination and Regulatory Provisions Waived

Consistent with the statutory requirements for waivers, FMCSA has determined that it is in the public interest to grant a waiver, limited in scope and circumstances, that is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver, until September 30, 2020.

To respond to this unique event and to continue the ability of intrastate and interstate CDL and CLP holders and interstate non-CDL drivers to transport goods in response to the COVID-19 public health emergency, this waiver:

- Extends until September 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 September 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 and any required medical variance (as defined in 49 CFR 390.5T such as an exemption letter or a skill performance evaluation certificate) that were 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 and any required medical variance, provided that they have proof of a valid medical certification or medical variance 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 or medical variance 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.

States, CDL holders, CLP holders, and interstate non-CDL CMV drivers are covered under this waiver without further action.

FMCSA will not issue a finding of noncompliance under 49 CFR part 384 against States for action or inaction consistent with this waiver.

FMCSA’s legal authorities extend to waiver of the maximum period under the FMCSRs for State issuance of CDLs (8 years). While many States have adopted the maximum 8-year renewal period, other States have adopted shorter periods, and waiving the 8-year limit would provide no relief to drivers with CDLs issued by those States. In the interest of effectively providing automatic CDL renewal relief for as many drivers with recently expired CDLs as possible,

FMCSA is therefore issuing a separate Notice of Enforcement Policy stating that, through September 30, 2020, the Agency will not take enforcement against drivers for operation of a CMV if the driver held a valid CDL on February 29, 2020, or against motor carriers for use of such a driver. Most States have adopted the full 1-year maximum period of CLP validity, but FMCSA is similarly including its Enforcement Policy a comparable provision on non-enforcement of recently expired CLPs.

Public Interest

FMCSA finds that the granting of this waiver is in the public interest, given interstate and intrastate CDL and CLP holders' and interstate non-CDL drivers' critical role in delivering necessary property and passengers, including, but not limited to, shipments of essential supplies and persons to respond to the COVID-19 public health emergency. This waiver is in the public interest because it would allow drivers covered under this waiver to deliver essential supplies and persons across State lines to address the national emergency and would aid in the economic recovery. This waiver will also reduce the administrative burden on State Driver Licensing Agencies and CDL, CLP, and interstate non-CDL drivers during this national emergency.

Safety Equivalence Due to the limited scope of this waiver, the short duration, and the ample precautions that remain in place, FMCSA has determined that the waiver is likely to achieve a level of safety that is equivalent to the level of safety that would be obtained absent the waiver.

The waiver of a particular regulation should not be looked at in isolation but rather as part of the whole of all regulations governing the safety of drivers. Waiver determinations are made holistically, taking all relevant factors into account. *See International Bhd of Teamsters v. DOT*, 724 F.3d 206 (D.C. Cir. 2013). Notably, although the maximum period of CDL and CLP validity is set by regulation, it is not one of the core of regulations that FMCSA evaluates to determine whether a State program is in "substantial compliance." See 49 CFR 384.301. This waiver also enhances safety by not requiring or incentivizing State offices to remain open during the COVID-19 public health emergency or to disregard CDC recommendations on social distancing.

The waiver does not alter any of the knowledge and skills testing requirements for obtaining either a CDL, a CLP, or a necessary endorsement. It does not allow CDL or CLP holders to extend their licenses if the credentials expired prior to March 1, 2020. It does not apply to a CDL or CLP holder if the driver's privileges have been suspended or withdrawn for traffic offenses. And this waiver does not apply to CDL holders, CLP holders, or non-CDL drivers whose medical certifications expired prior to March 1, 2020.

In this case, FMCSA believes that the measures listed below under Terms, Conditions, and Restrictions of the Waiver, including proof of a recently expired valid CDL, CLP or medical certificate, the inapplicability of the waiver to expired medical certificates issued for less than 90 days, and the requirement to notify FMCSA in the event of accidents involving drivers operating under the waiver, taken collectively, provide the assurance needed to meet the legal standard that granting the waiver is likely to achieve an "equivalent level of safety."

As such, FMCSA has determined that a waiver from the regulations noted above during the

MCPSD@DOT.GOV. The notification must include the following information:

- i. Date of the accident;
 - ii. City or town, and State in which the accident occurred, or closest to the accident scene;
 - iii. Driver's name and license number;
 - iv. Vehicle number and State license number;
 - v. Number of individuals suffering physical injury;
 - vi. Number of fatalities;
 - vii. The police-reported cause of the accident (if available at time of the report); and
 - viii. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations.
- (8) FMCSA reserves the right to revoke this waiver for drivers' involvement in accidents, motor carriers' failure to report accidents, and drivers' failure to comply with the restrictions of this waiver.

Jim Mullen
Deputy Administrator