



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**

September 18, 2020

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

ACTION: Grant of waiver.

SUMMARY: FMCSA grants 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 October 1, 2020 and expires on December 31, 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, and, again, on June 15, 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 September 30, 2020. Due to the COVID-19 public health emergency, several States have experienced greater than normal employee absences or closed offices of their State Driver Licensing Agencies (SDLAs) 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. As part of their phased reopening, States have reopened their SDLAs and most have only resumed limited operations. The pace of return to normal operations has varied across the country.

As a result, many CDL and CLP holders may be unable to renew their CDLs and CLPs or provide medical certificates to their SDLA. In addition, due to limited operations or backlogs, drivers may be 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 continued 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 and June 15 waivers.

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.

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 December 31, 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 December 31, 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 until December 31, 2020, the requirement under 49 CFR 383.25(e) that CLP holders wait 14 days to take the CDL skills test.
- Waives, in accordance with the following periods of eligibility, 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:
 - For CDL holders, CLP holders, and non- CDL drivers whose medical certification was valid on February 29, 2020 and expired on or after March 1, 2020 but before June 1, 2020, the requirement under 49 CFR 391.45 is waived until October 31, 2020.
 - For CDL holders, CLP holders, and non-CDL drivers whose medical certification expired on or after June 1, 2020, the requirement under 49 CFR 391.45 is waived until December 31, 2020.
- Waives, in accordance with the following periods of eligibility, 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 SDLA with an original or copy of a subsequently issued medical examiner’s certificate and any required medical variance:
 - For CDL or CLP holders who have proof of a valid medical certification or medical variance that expired on or after March 1, 2020 but before June 1, 2020, the requirement under 49 CFR 383.71(h)(3) is waived until October 31, 2020.
 - For CDL or CLP holders who have proof of a valid medical certification or medical variance that expired on or after June 1, 2020, the requirement under 49 CFR 383.71(h)(3) is waived until December 31, 2020.
- Waives, in accordance with the following periods of eligibility, the requirement under 49 CFR 383.73(o)(2) that the SDLA 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:
 - For CDL or CLP holders who have proof of a valid medical certification or medical variance that expired on or after March 1, 2020 but before June 1, 2020, the requirement under 49 CFR 383. 73(o)(2) is waived until October 31, 2020.
 - For CDL or CLP holders who have proof of a valid medical certification or medical variance that expired on or after June 1, 2020, the requirement under 49 CFR 383. 73(o)(2) is waived until December 31, 2020.

- Waives, in accordance with the following periods of eligibility, 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:
 - For CDL or CLP holders who have proof of a valid medical certification or medical variance that expired on or after March 1, 2020 but before June 1, 2020, the requirement under 49 CFR 383.73(o)(4) is waived until October 31, 2020.
 - For CDL or CLP holders who have proof of a valid medical certification or medical variance that expired on or after June 1, 2020, the requirement under 49 CFR 383.73(o)(4) is waived until December 31, 2020.
- In accordance with 49 CFR 383.23(a)(1) and 391.41(a)(1)(i), until December 31, 2020, 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 December 31, 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.

FMCSA notes that this waiver is also applicable to non-domiciled CLPs and CDLs to the extent the waived requirements are applicable to the driver. The waiver, however, does not authorize States to extend the validity of a non-domiciled CLP or CDL beyond the non-domiciled driver's approved legal presence. States that issue non-domiciled CDLs for a period of validity of less than 8 years currently have the discretion to extend the validity of the license without the need for regulatory relief, provided the non-domiciled driver's legal presence is valid.

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 disregard CDC recommendations on social distancing or Federal or State guidance on phased reopening.

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 States to extend the license of a CDL or CLP holder whose credential 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 authorize States to extend the validity of a non-domiciled CLP or CDL beyond the non-domiciled driver's approved legal presence.

For regulatory provisions concerning driver medical certification, FMCSA is limiting the period of eligibility for drivers whose medical certification or medical variance expired before June 1, 2020. While FMCSA recognizes that drivers continue to experience difficulty in obtaining a medical certification or variance and providing it to the SLDA, the Agency must also ensure safety by limiting how long a driver may operate a CMV with an expired medical certificate or variance. To balance these needs, this waiver covers drivers whose medical certification or variance expired before June 1, 2020 until *October 31, 2020*. FMCSA does not anticipate waiving the medical certification requirements beyond October 31, 2020 for drivers whose medical certification or variance expired before June 1, 2020, and the Agency urges these drivers to obtain a new medical certificate or variance as soon as practicable. The Agency also encourages SDLAs and medical examiners, to the extent administratively practicable, to prioritize for appointments drivers in this category. Drivers whose medical certification or variance expired after June 1, 2020 are covered under this waiver until December 31, 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 period of the waiver will likely 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.

Unique Circumstances

The COVID-19 public health emergency led to widespread closures of State and Federal government offices, reduction of government and medical services, and disruption of transportation systems, including driver shortages and related interruption of supply chains, which are heavily dependent on continued CMV operations. FMCSA finds that the circumstances surrounding this waiver are unique because such government and medical operations are not providing their usual level of service.

For the reasons above, FMCSA grants a waiver as provided above, subject to the terms, conditions and restrictions below. Upon expiration of this waiver, FMCSA does not anticipate issuing another national waiver from the ordinarily applicable licensing and medical certificate requirements. The Agency encourages drivers to obtain their renewed licenses and medical certificates and encourages SDLAs to bring their operations back to normal as soon as practicable, consistent with all applicable Federal, State, and local laws and guidance, as this waiver expires on December 31, 2020.

Terms, Conditions, and Restrictions of the Waiver

This waiver covers States, CDL holders, CLP holders and interstate non-CDL CMV drivers for the period beginning at 12:00 a.m. on October 1, 2020, through 11:59 p.m. on December 31, 2020.

- (1) This waiver does not apply to a CDL or CLP holder if the driver’s license or permit expired before March 1, 2020.
- (2) This waiver does not apply to a non-domiciled CLP or CDL holder if the non-domiciled driver’s legal presence is not valid.
- (3) This waiver does not apply to a CDL or CLP holder if the driver’s privileges have been suspended or withdrawn for traffic offenses.
- (4) Drivers claiming relief under this waiver from the requirement for a valid medical certificate must have proof of a valid medical certificate and any required medical variance in accordance with the periods of eligibility set forth above, and carry a paper copy of their expired medical certificates.
- (5) Drivers who cannot produce evidence of a prior medical certification and any required medical variance in accordance with the periods of eligibility set forth above, are not covered under this waiver, including new drivers who have never obtained a medical certification.

- (6) Drivers who, since their last medical certificate was issued, have been diagnosed with a medical condition that would disqualify the driver from operating in interstate commerce, or who, since their last medical certificate was issued, have developed a condition that requires an exemption or Skill Performance Evaluation from FMCSA are not covered under this waiver.
- (7) This waiver does not apply to medical examiner's certificates originally issued for less than 90 days.
- (8) Notification to FMCSA of Accidents. Each motor carrier must notify FMCSA within 5 business days of an accident (as defined in 49 CFR 390.5), involving any CDL holder, CLP holder, or non-CDL driver operating under the terms of this waiver. See 49 CFR 390.15(b) (requiring maintenance of accident registry.) Notification shall be by email to 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.
- (9) 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.

Issued: September 18, 2020

James Wiley Deck
Deputy Administrator