

# ALERT TRANSPORTATION SAFETY



## Update: U.S. DOT Agencies and TSA Extend COVID-19 HazMat Relief

*Babst Calland has updated this alert to capture new HazMat background check relief extended by the Transportation Security Administration (TSA).*

In response to the COVID-19 pandemic, U.S. Department of Transportation (DOT) agencies that regulate the surface transportation of hazardous materials (HazMat) have extended several forms of relief. The Pipeline and Hazardous Materials Safety Administration (PHMSA) has waived some HazMat training requirements and delayed some equipment recertifications. The Federal Motor Carrier Safety Administration (FMCSA) and the Federal Railroad Administration (FRA) are implementing PHMSA's waiver in their modes. FMCSA has also allowed states to extend the effective dates for commercial driver's licenses (CDL) and commercial learner's permits (CLP). Additionally, FRA has activated its emergency docket. FRA has not extended any hazardous materials-specific relief. Finally, the Transportation Security Administration (TSA) is allowing states to extend HazMat endorsements (HME).

### *Hazardous Materials Shippers, Carriers, and Package Manufacturers*

- On March 25th, PHMSA issued an [updated policy](#) declining to enforce recurrent training requirements under 49 C.F.R. § 172.704(c)(2) against HazMat employers unable to train employees due to COVID-19. Employers are still required to provide initial training to a new hazardous materials employee before the employee may perform regulated functions.
- On April 1st, PHMSA issued two surface transportation-related [emergency special permits](#) authorizing the filling and transportation of certain DOT specification cylinders up to 12 months after they are due for a periodic requalification during the COVID-19 emergency. PHMSA also authorized the transportation of certain cylinders overdue for retesting due to COVID-19 disruptions.

### *Truck Transportation*

- On March 18th, FMCSA issued an [expanded emergency declaration](#) waiving certain provisions of Parts 390 through 399—most notably the hours of service requirements—for drivers providing direct assistance in support of relief efforts. Direct assistance includes transporting medical supplies, food, paper, and grocery products; precursors for those products; fuel; and equipment for constructing

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facilities to treat or house COVID-affected individuals. Direct assistance does not include routine commercial deliveries, including mixed loads with a nominal quantity of emergency relief items. The waiver doesn't provide relief from the Hazardous Materials Regulations.

- On April 2nd, PHMSA provided relief to shippers of alcohol-based sanitizer by issuing a [temporary enforcement policy](#) for the highway mode. The temporary policy provides liberalized minimum requirements for transporting sanitizer products composed of up to 80 percent alcohol in packages up to 119 gallons. The policy adopts sliding requirements that increase with the size of the package. Sanitizer product shipments normally exempt from the HMRs will remain exempt.
- On March 24th, [FMCSA issued a waiver that permitted States to extend the validity](#) of CDLs and CLPs expiring on or after March 1st. FMCSA's waiver confirms that federal highway funds will not be withheld if states decide to extend licenses. The FMCSA waiver does not require states to extend CDL and CLPs, so each state may adopt its own policies. This could create a potentially confusing patchwork of different state license extensions that could affect interstate transportation.
  - So far, states haven't extended CDLs and CLPs uniformly and [some states have extended CDLs beyond the June 30, 2020](#).
  - A HazMat endorsement (HME) is an extra certification issued with a CDL or CLP that allows the driver to transport placarded loads of HazMat. The Federal Motor Carrier Safety Laws require an HME applicant to pass a Transportation Security Administration (TSA) background check. These background checks must be renewed every five years. TSA has not extended the validity of background checks required to obtain or renew an HME, so it appears that the FMCSA waiver may not extend to expiring HMEs.
  - **Update:** On April 3, 2020, TSA issued a notice allowing states to extend the validity of a HazMat endorsement (HME) issued on or after March 1st up to 180 days. An HME is an extra certification issued with a CDL or CLP that allows the driver to transport placarded loads of HazMat. The Federal Motor Carrier Safety Laws require an HME applicant to pass a TSA background check. These background checks must be renewed every 5 years. Like the CDL and CLP extensions, this relief is permissive and states may not implement it uniformly.

### *Rail Transportation*

- On March 23rd, [FRA activated the Emergency Relief Docket \(FRA-2020-0002\)](#) retroactive to March 13th, and placed the emergency relief provisions in 49 C.F.R. § 211.45 into effect. This allows railroads to submit a petition for emergency waiver of safety rules that FRA determines are directly related to an emergency event. FRA may grant a petition for waiver without prior public notice and comment if petitioners show that the request is in the public interest, not inconsistent with railroad safety and necessary to address an emergency. The Association of American Railroads and the American Short Line Regional Railroad Association submitted a joint petition for relief from regulations, including a request to relax timeframes for track inspections and mechanical and pre-departure inspections, but none related to hazardous materials transportation. FRA granted the petition and it is effective until May 24, 2020.

For more information on the various forms of COVID-19 HazMat relief contact, Boyd A. Stephenson at [bstephenson@babstcalland.com](mailto:bstephenson@babstcalland.com) or 202.853.3452, Varun Shekhar at [vshekhar@babstcalland.com](mailto:vshekhar@babstcalland.com) or 202.975.1390, and James Curry at [jcurry@babstcalland.com](mailto:jcurry@babstcalland.com) or 202.853.3455.

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