

UPCOMING TRAININGS & CONFERENCES

- **NDAA is making its National Courses available virtually in light of health and safety concerns over COVID-19. Check out a full list of NDAA's virtual learning sessions at <http://ndaa.org/wp-content/uploads/NDAA-Offerings-Covid19.pdf>.**
- **NDAA's Prosecuting DUI Cases Online Course On Demand Training**
<https://ndaa.org/training/prosecuting-dui-cases/>
- **NDAA's The Executive Course Learning Series**
June 8–9, 2020 @ 11:30 am to 3:30 pm EDT
- **NDAA's Best Practices in DV, Sexual Assault & Human Trafficking**
June 23, 2020 @ 2:00 to 3:00 pm EDT
- **NDAA's Deconstructing Death—Trial Techniques and Strategies in Homicide Cases Learning Series**
June 29–July 1, 2020 @ 11:00 am to 3:30 pm EDT
- **NDAA's The Murder of Tyshawn Lee — A Case Study in Complex and High-Tech Evidence**
July 2, 2020 @ 11:30 am to 1:30 pm EDT



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CDL Enforcement and Adjudication Post-COVID-19

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On March 11, 2020, the World Health Organization classified the COVID-19 (Coronavirus) outbreak as a global pandemic. As part of the federal government's response to the Coronavirus pandemic, on March 13, 2020, the President of the United States declared a [nationwide emergency under the Stafford Act](#). In addition, the White House Coronavirus Task Force developed and

issued a document entitled, [30 days to slow the spread](#), identifying those in the [Transportation sector](#), including the commercial motor vehicle (CMV) industry, as “critical,” directing these workers to maintain their normal work schedules.

The transportation industry, and others related to it (shipping, manufacturing, etc.), has always been the backbone of the American economy. According to research conducted by the American Trucking Association (ATA), “[o]ur economy depends on trucks to deliver ten billion tons of virtually every commodity consumed—over 80 percent of all freight transported annually in the U.S.”¹ Although the federal government immediately identified trucking and

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truckers to be essential to the safe and efficient transportation of goods throughout the country, American consumers quickly realized just how essential the trucking industry and truck drivers truly are, as they eagerly wait for weekly commercial deliveries of toilet paper, hand sanitizer, anti-bacterial wipes and sprays. The food supply chain, the healthcare and retail sectors, are just a few of the industries that would be crippled by the halt of truck traffic.²

The Federal Motor Carrier Safety Administration (FMCSA) is the federal agency responsible for promulgating rules and issuing regulatory guidance for the trucking industry, as well as setting the minimum standards required to obtain commercial driver’s licenses that are issued by the states. To facilitate the delivery of essential supplies and equipment by commercial vehicles, and the drivers who operate them, FMCSA responded by issuing its own [Emergency Declaration](#) on March 13, 2020, as well as notices of relaxed enforcement policies that pertain to this group of drivers, many of whom are Commercial Driver’s License (CDL) holders.

Since the issuance of FMCSA’s first Emergency Declaration, FMCSA has extended this declaration and expanded guidance for the states. For a list of FMCSA’s and state specific Emergency Declarations, Waivers, Exemptions and Permits affecting CDL holders and the trucking industry, click [here](#). Additionally, NTLC’s partner organizations (who are also FMCSA grantees) have their own Coronavirus resources pages. For links to our partners’ pages, click [here](#).

While this time of crisis seems interminable, we will eventually move from crisis, to recovery. Courts will reopen, prosecutors’ offices will return to full staff, and dockets will return to a new, but socially distant normal. As states ease into recovery, many court proceedings may

be handled virtually or, for many traffic courts, almost entirely by mail. As more vehicles retake the roads, dockets will be flooded with both backlogged cases and new traffic citations. No doubt, judges and prosecutors will face pressure to “clear up the backlog” of all cases but particularly traffic cases, since these cases tend to lag unnecessarily and accumulate quickly. Moreover, once FMCSA’s and state’s emergency declarations, waivers, and exemptions expire, courts may notice

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CDL holders and/or motor carriers claiming protection under these declarations with increased frequency. This may result in requests for more deals or hasty dismissal of cases to ease crowded dockets.

As prosecutors and courts deal with CDL holders and drivers of CMVs who claim to have provided “direct assistance”³ in support of relief efforts related to the COVID-19 Pandemic by transporting essential supplies, equipment, or people, prosecutors and courts are encouraged to examine those claims thoughtfully and thoroughly. Undoubtedly, there will be drivers who, when cited, were in fact operating well within an FMCSA or state declaration, waiver, exemption, etc. Generally, CDL holders are a law-abiding group of individuals. However, there are always those who will use times of crisis to impose upon the goodwill of judges and prosecutors by using these waivers to justify prohibited behavior or claiming these exemptions after their expiration.

Therefore, while FMCSA intended these emergency declarations, waivers, exemptions, and permits to be extended to drivers assisting with COVID-19 pandemic relief efforts, these measures do not relieve CMV drivers (or motor carriers) from their continued obligation to operate safely. Further, prosecutors, judges and law enforcement officers are not relieved from their obligations to refrain from Masking⁴ CDL offenses.

Because FMCSA was concerned that the use of its emergency declarations and waivers might be prone to abuse by bad actors, the agency specified, “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 this emergency declaration.”⁵

Further, FMCSA’s [expanded emergency declaration](#) (modified for easier reading

below) indicates that “[c]ommercial carriers and drivers providing direct assistance to the nationwide emergency *are not granted emergency relief from, and must continue to comply with, the following Federal Motor Carrier Safety Regulations and conditions* (emphasis added):”⁶

- A) State laws and regulations, including speed limits and traffic restrictions (49 C.F.R. § 392.2);
- B) Drivers may not be permitted to operate a CMV while a driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the motor vehicle (49 C.F.R. § 392.3);
- C) Motor carriers must not force or allow fatigued drivers to operate a CMV. A driver who informs a carrier that he/she needs immediate rest shall be given at least 10 consecutive hours before the driver is required to return to service;
- D) A motor carrier whose driver is involved in a crash while operating under the emergency declaration must report any recordable crash within 24 hours, to the FMCSA Division Office where the motor carrier is domiciled;
- E) Motor carriers must continue to abide by the controlled substance and alcohol uses and testing requirements (49 C.F.R. Part 382), the CDL requirements (49 C.F.R. Part 383), the insurance requirements (49 C.F.R. Part 387), the hazardous material regulations (49 C.F.R. Parts 100-180), applicable size and weight requirements, or any other portion of the regulations not specifically exempted under 49 C.F.R. § 390.23;
- F) Motor carriers or drivers who are currently “out-of-service” are ineligible for the relief under the emergency declaration *until* they have met the applicable conditions for its rescission and the order has been rescinded by FMCSA in writing (emphasis added).

Prosecutors, courts, and law enforcement officers should look to the state and federal declarations to verify whether any of the declarations, waivers, exemptions or permits applies to the CDL holder who is claiming its protection. Prosecutors should also look to other forms of documentation, such as receipts, bills of lading, or reports regarding dates and cargo from the

driver's trip(s). While FMCSA has messaged to the CMV industry that it wants to facilitate the smooth delivery of essential supplies, equipment, and people by motor carriers and its drivers, these waivers do not provide CDL holders or their employers a "green light" to commit traffic violations.

The National District Attorneys Association's (NDAA) National Traffic Law Center is available to assist prosecutors and other traffic safety professionals in navigating these declarations and exemptions and their impact on traffic adjudications. For help with specific questions about FMCSA's Emergency Declaration as it relates to CDL and/or CMV cases, contact Senior Attorney [Romana Lavalas](#). In addition, NDAA has compiled additional targeted resources to assist prosecutors and the courts about COVID-19 in other related matters. Those resources may be accessed here: [here](#).

¹ American Trucking Association, *Trucking Moves America Forward*, (last visited, May 12, 2020), <https://trucking.org/sites/default/files/2019-12/When%20Trucks%20Stop%20America%20Stops.pdf>.

² *Id.*

³ Direct Assistance means transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services, such as medical care, or essential supplies such as food, related to COVID-19 outbreaks during the emergency.

⁴ Prohibition on masking Convictions. The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CLP or CDL holder's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the CDLIS driver record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State. 49 C.F.R. § 384.226. See, Elizabeth, Earleywine, *MASTERING MASKING: Why & How to Avoid Masking CDL-Holder Convictions*, Vol. 27, Issue 6, *Between the Lines*, (Jul. 2019), <https://ndaa.org/wp-content/uploads/July-BTL-Masking-1.pdf>.

For additional resources on Masking, please visit the [National Traffic Law Center](#) or contact Senior Attorney [Romana Lavalas](#).

⁵ Expanded Emergency Declaration Under 49 C.F.R. § 390.23 No. 2020-002 (Relating to COVID-19), issued April 8, 2020.

⁶ *Id.*