

## Publications

### FMSCA's National Emergency Declaration: Issues to Consider

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#### CLIENT ALERT | 3.25.2020

3PLs must exercise caution when considering FMSCA's National Emergency Declaration (Declaration) to provide hours-of-service (HOS) relief to commercial drivers transporting emergency relief in response to COVID-19. First, emergency relief is specific to certain kinds of freight. The full list can be found in yesterday's alert [here](#).

Second, the Declaration is not unlimited:

- It does not apply to routine commercial deliveries; and
- It does not apply to mixed loads with only a nominal quantity of qualifying goods.

Third, 3PLs should keep in mind that hours of service remains a safety issue. Accordingly, if you have a load that appears to qualify under the Declaration, a recommended practice is to have the shipper or customer provide a written statement that the load is an emergency shipment for one of the reasons enumerated in the Declaration. If the shipper is unwilling to do so, it is not recommended that you try to convince them otherwise.

In addition, FMSCA yesterday granted "until June 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)." In addition to issuing the waiver, the Agency also issued a separate Notice of Enforcement Policy stating that, through June 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. The waiver and notice can be found [here](#) and [here](#), respectively.

Also yesterday, Transport Canada issued an Essential Freight Transportation Exemption to allow for relief from its hours-of-service regulations. While similar to the FMSCA Declaration, the Canadian exemption has comparatively stricter requirements than its FMSCA counterpart. Covered freight includes medical supplies and equipment related to COVID-19, supplies for community safety, and goods for the

emergency restocking of stores and distribution centers. It does not apply to mixed loads. One important difference is that carriers must notify, in writing, their provincial hours of service director of its intention to operate under this exemption, and comply with certain record-keeping requirements. The declaration can be found [here](#).

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### Vorys COVID-19 Task Force

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive COVID-19 Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at [vorys.com/coronavirus](https://www.vorys.com/coronavirus).