



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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April 1, 2020

**NOTICE OF COMMISSION ADOPTION OF FEDERAL GUIDELINES RELATED TO
DELEGATED STATE ENFORCEMENT AUTHORITY**

TO ALL INTERESTED PERSONS:

The Washington Utilities and Transportation Commission (Commission) is addressing proactively actual and potential disruptions to regulated public service company operations caused by the COVID-19 pandemic, and has received enforcement guidance from the U.S. Department of Transportation (USDOT) related to the Commission's delegated authority to regulate gas and hazardous liquid pipeline safety, railroad safety, and motor carrier safety. The Commission will continue to enforce its safety regulations, including those federal regulations adopted by reference, consistent with the guidance received from the USDOT's Pipeline and Hazardous Materials Safety Administration (PHMSA), Federal Railroad Administration (FRA), and Federal Motor Carrier Safety Administration (FMCSA), as summarized below.

- **PHMSA:** On March 20, 2020, PHMSA issued a Notice to Gas and Hazardous Liquid Pipeline, Underground Natural Gas Storage and Liquefied Natural Gas Facility Operators and PHMSA State Partners Regarding the National Emergency Relating to the Novel Coronavirus Disease (COVID-19) Outbreak (Notice of Stay). The Notice of Stay applies to state pipeline safety program managers, pipeline operators, and operators of gas storage and liquefied natural gas facilities. Under the stay, PHMSA will temporarily cease its enforcement of compliance with operator qualification and control room management, and will exercise its enforcement discretion with respect to employment drug testing requirements, but will not relieve operators of their safety responsibility to use trained, non-impaired workers to perform operation and maintenance tasks. The Commission will continue to enforce all state regulations consistent with this guidance for the period of time during which the stay remains in effect. The stay will remain in effect until further notice or until it is modified by PHMSA's Associate Administrator for Pipeline Safety. The full text of the Notice of Stay is available [here](#).

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- **FRA:** On March 25, 2020, the FRA issued an Emergency Waiver activated under emergency relief Docket No. FRA-2020-0002 (Waiver). The Waiver grants relief from compliance with certain FRA safety requirements if workforce shortages occur due to the COVID-19 pandemic. At the FRA's direction, the Commission will take into consideration workforce shortages related to COVID-19 when exercising its delegated enforcement authority. The Waiver expires 60 days from March 25, 2020, unless amended or revoked. The full text of the Waiver is available [here](#).
- **FMCSA:** On March 18, 2020, the FMCSA issued an expanded Emergency Declaration (Declaration) that exempts commercial vehicle operators from Code of Federal Regulations (C.F.R.) Parts 390-399, except where restricted, to provide direct assistance in support of emergency relief efforts related to the COVID-19 pandemic. Compliance with C.F.R. Part 382 related to drug and alcohol testing, Part 383 related to commercial driver's licenses, Part 387 related to insurance requirements, and Parts 100-180 related to hazardous materials, is still required. Consistent with this guidance, the Commission will refrain from taking enforcement action against intrastate transportation companies providing emergency relief efforts for violations of the regulations that are the subject of the Declaration. The Declaration is effective until April 12, 2020, and the full text is available [here](#).
- **FMCSA:** FMCSA also issued a document entitled "Disruptions to Drug and Alcohol Testing due to the Coronavirus Disease 2019 (COVID-19) Presidentially Declared National Emergency," which states that regulated carriers must still comply with drug and alcohol testing requirements, and that employers should use mobile collection services when possible. If a test cannot be completed, carriers must still document why the test was not completed (*e.g.*, supply shortages, facility closures, state or locally imposed quarantine requirements, or other impediments resulting from COVID-19.) If a carrier cannot perform a return to duty or pre-employment drug and alcohol test, it cannot allow a prospective employee or returning employee to perform a USDOT safety-sensitive function. The Commission will support FMCSA's guidance and encourage companies to use mobile collection options and document when a drug and alcohol test cannot be completed. Intrastate transportation carriers will still be required to follow C.F.R. Part 382 even when providing emergency relief. This guidance is effective until June 30, 2020, and the full text is available [here](#).
- **FMCSA:** On March 24, 2020, the FMCSA issued a Waiver in Response to the COVID-19 Emergency for States, CDL Holders, CLP Holders, and Interstate Drivers Operating Commercial Motor Vehicles (Waiver), which waives 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). The waiver is intended to allow intrastate and interstate CDL, CLP, and interstate non-CDL drivers to transport goods in response to the COVID-19 emergency. Consistent with these guidelines, the Commission will refrain from taking enforcement action against intrastate transportation companies whose drivers are

transporting goods in response to the COVID-19 pandemic with an expired or downgraded CDL. The Waiver is effective until June 30, 2020, and the full text is available [here](#).

- **FMCSA:** On March 24, 2020, the FMCSA issued a Notice of Enforcement Policy Regarding Expiring Driver's Licenses and Medical Examiner's Certificates During COVID-19 National Emergency (Notice). The Notice provides relief from specific regulations adopted by the Commission related to CLPs, CDL holders, and non-CDL drivers and motor carriers using those drivers. Specifically, the Notice provides that those CMV drivers may continue to operate without a valid CDL or CLP or non-CDL license, but only if the driver's license was valid on February 29, 2020, but expired on or after March 1, 2020, and the driver is otherwise qualified as required. The same exemption applies for medical examiner's certificates that were valid on February 29, 2020, but expired on or after March 1, 2020. The Commission will refrain from taking enforcement against intrastate transportation companies consistent with the Notice. The Notice is effective until June 30, 2020, and the full text is available [here](#).

Questions regarding the PHMSA Notice of Stay may be addressed to Sean Mayo, Director, Pipeline Safety, at (360) 664-1219 or sean.mayo@utc.wa.gov.

Questions regarding the FRA Waiver may be addressed to Evan Enright, Rail Safety Supervisor, at (360) 701-1615 or evan.enright@utc.wa.gov.

Questions regarding the FMCSA's guidance may be addressed to Mathew Perkinson, Assistant Director, Transportation Safety, at (360) 701-1601 or mathew.perkinson@utc.wa.gov.

/s/ Mark L. Johnson

MARK L. JOHNSON

Executive Director and Secretary