

## **FMCSA Hours of Service: Times They Are A-Changing**

In the past two months, we have seen three major modifications to the Federal Carrier Safety Administration (“FMCSA”) Hours of Service Rules – two temporary and one permanent.

On May 14, 2020, the FMCSA published a final rule to update the hours of service rules. The updates seek to improve safety and increase flexibility. Key changes include:

1. A modification such that a 30-minute break must be taken after 8 hours of consecutive driving, but it can be satisfied by a driver using on-duty, not driving status, rather than off-duty status
2. A modification to the sleeper-berth exception to allow drivers to split the required 10 hours off duty time into an 8/2 split or a 7/3 split, with neither period counting against the driver’s 14-hour driving window.
3. A modification such that the adverse driving conditions exception maximum is extended by two hours.
4. A modification which changes the short-haul exception available to certain commercial drivers by lengthening maximum on-duty periods from 12 to 14 hours and extending the distance limit from 100 air miles to 150 air miles.

The FMCSA seeks to emphasize the final, modified rule does not increase overall driving time and will be implemented 120 days after publication in the Federal Register. That specific date is currently unknown. The final rule can be accessed here: <https://www.fmcsa.dot.gov/regulations/hours-service/hours-service-drivers-final-rule>.

The existing hours of service rules can be found at 49 C.F.R. §395 et seq, or here: <https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&ty=HTML&h=L&mc=true&=PART&n=pt49.5.395>. The existing rules were additionally modified by the FMCSA Hours of Service National Emergency Declaration, which was then expanded as recently as May 13, 2020 because of COVID-19. The extension, which is effective through June 14, 2020, provides emergency relief from certain provisions of Parts 390 through 399 of the FMCSRs (which includes the Part 395 hours of service) to motor carriers and drivers “providing direct assistance in support of relief efforts related to the COVID-19 national emergency.”

It is important to recognize that the extension only applies to those providing direct assistance in support of emergency relief efforts related to the transport of 1) medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19; (2) supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19 such as masks, gloves, hand sanitizer, soap and disinfectants; (3) food, paper products and other groceries for emergency restocking of distribution centers or

stores; (4) immediate precursor raw materials -- such as paper, plastic or alcohol -- that are required and to be used for the manufacture of items in categories (1), (2) or (3); (5) fuel; (6) liquefied gases to be used in refrigeration or cooling systems; (7) equipment, supplies and persons necessary to establish and manage temporary housing, quarantine, and isolation facilities related to COVID-19; (8) persons designated by Federal, State or local authorities for medical, isolation, or quarantine purposes; and (9) persons necessary to provide other medical or emergency services, the supply of which may be affected by the COVID-19 response. *See* <https://www.fmcsa.dot.gov/emergency/extension-expanded-emergency-declaration-no-2020-002-under-49-cfr-ss-39025>. The extension reads the same as the initial Emergency Declaration such that the hour of service rules do not apply to those engaged in the direct emergency relief efforts. This creates some practical, logistical questions regarding how logs should be kept, what breaks are required, how the ELD should be handled, etc. Essentially, when engaged in the very specific duties detailed above, any obligations by the FMCSRs typically required are suspended, except for some notable requirements specifically delineated in the extended Declaration. Upon return to normal operations, the Declaration states a commercial vehicle driver must take 10 hours off. If a carrier or driver is involved in the direct relief efforts, precautions should be taken to ensure proper compliance, particular in the event of any motor vehicle accident.

For questions or comments regarding FMCSA compliance, including the new hours of service modifications, please feel free to contact Amy Tracy ([atracy@setlifflaw.com](mailto:atracy@setlifflaw.com)) at 804-377-1264 or Steve Setliff ([ssetliff@setlifflaw.com](mailto:ssetliff@setlifflaw.com)) at 804-377-1261.