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Issue 8

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Clarification of Hours-of-Service

On Monday, the Federal Motor Carrier Safety Administration (FMCSA) extended the [nationwide hours of service waiver \(HOS\)](#) through **November 30, 2021** and added petroleum products to the list of covered products deemed essential for COVID-19 emergency relief. This means that CDL drivers hauling **certain** petroleum products are now covered by the national HOS waiver.

Specifically, the HOS waiver covers drivers hauling gasoline, diesel fuel, jet fuel and ethyl alcohol. The Energy Marketers of America (EMA) has also been working closely with the FMCSA to have drivers hauling heating oil, kerosene and propane added to the list of qualifying petroleum products subject to the HOS waiver, but as of now, they are not covered.

The EMA and SCCPMA have received many inquiries about the full meaning of qualifying language in the FMCSA emergency declaration that extends the waiver to drivers “providing direct assistance in support of relief efforts related to the COVID-19.”

Today, the FMCSA clarified which delivery scenarios qualify as “providing direct assistance” to COVID 19 relief efforts. They stated that ensuring that gasoline stations do not run out of supply qualifies as “providing direct assistance.” However, drivers on their **regular supply deliveries** do not qualify for the HOS waiver. Instead, only unscheduled emergency deliveries such as a delivery required to keep a station from running out of supply qualifies for the waiver.

Also, in the event a company is short of drivers due to COVID and can no longer keep up with regular scheduled deliveries, such that gasoline stations are in danger of running out of supply, then his/her remaining drivers qualify for the HOS waiver to make those deliveries.

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In short, the HOS waiver can **only** be used in extraordinary situations requiring the immediate restoration of essential services, including the supply and sale of gasoline, diesel fuel, jet fuel and ethyl alcohol. In summary:

- The HOS waiver in the FMCSA Emergency Declaration No.2020-02 only applies to 40 CFR § 395.3, maximum driving time for property-carrying vehicles.
- The FMCSA National Emergency Declaration is extended through 11:59 p.m. on **November 30, 2021.**
- Drivers hauling gasoline, diesel fuel, jet fuel and ethyl alcohol qualify for the HOS waiver provided they are providing *direct assistance* to COVID 19 emergency relief. Direct assistance includes *unscheduled deliveries* necessary to keep a gasoline station from running out of supply or regularly scheduled deliveries that cannot be made due to loss of drivers needed to keep gasoline stations from running out of product.
- Marketers must continue to comply with all other FMCSA regulations including CDL driver drug and alcohol regulations, vehicle maintenance and inspection requirements, etc.
- Motor carriers shall not require or allow fatigued drivers to operate a commercial motor vehicle. A driver who informs a carrier that he/she needs immediate rest shall be given at least ten consecutive hours before the driver is required to return to service.
- Motor carriers that voluntarily operate under the terms of the HOS waiver must report within 5 days after the end of each month their reliance on the Emergency Declaration. To report, motor carriers will access their portal account at <https://portal.fmcsa.dot.gov/login>, log-in with their FMCSA portal credentials and access the Emergency Declaration Reporting under the Available FMCSA Systems section of the page.
- Upon termination of direct assistance to emergency relief efforts related to COVID-19, the motor carrier and driver are subject to all requirements of the FMCSRs, except that a driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with 49 CFR §§ 395.3. When a driver is moving from emergency relief efforts to normal operations a 10-hour break is required when the total time a driver operates conducting emergency relief efforts, or a combination of emergency relief and normal operations, equals 14 hours.

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