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## SPECIAL BULLETIN 2020 – 18

June 4, 2020

### **FMCSA Publishes Revisions to Driver Hours of Service Rule -OSHA Updates Enforcement Response Plan**

The Federal Motor Carrier Safety Administration has published its final rule revising the driver hours of service regulations. [85 Fed. Reg. 33396](#) (June 1, 2020).

#### ***The new regulations will go into effect on September 29, 2020***

The final rule makes changes in four areas:

- It revises the 30-minute break rule by requiring a break after 8 hours of driving rather than 8 hours on duty and allowing the break to be satisfied by a driver using on-duty, not driving or sleeper berth status, rather than off-duty status.
- The rule modifies the sleeper-berth exception to allow drivers to split their required 10 hours off duty into two periods: an 8/2 split and a 7/3 split—with neither period counting against the driver's 14-hour driving window.
- The rule modifies the adverse driving conditions exception by extending by 2 hours the maximum window during which driving is permitted.
- It changes the short-haul exception available to certain commercial drivers by lengthening the drivers' maximum on-duty period from 12 to 14 hours and extending the distance limit within which the driver may operate from 100 air miles to 150 air miles. These drivers will be exempt from the requirements for driver logs and Electronic Logging Devices and the 30-minute break requirement.

The FMCSA did not adopt in the final rule its proposal to allow a single off-duty period of up to 3 hours to be excluded from the 14-hour driving window. The agency noted commenters' concerns about the potential for unintended consequences associated with actions by employers, shippers and receivers that might be contrary to drivers' interests, and said the issue deserves further study.

**FMCSA to Conduct Remote Compliance Reviews During COVID-19 Emergency.** The Federal Motor Carrier Safety Administration has [announced](#) in a guidance document that it will conduct compliance reviews during the COVID-19 emergency “by leveraging all available technology to access information and records and thus limit exposure risk for the regulated community and safety investigators.” The agency said it will also assign safety ratings following a compliance review even if no on-site review activities have taken place, using the procedures in 49 CFR Part 385.

Because of travel restrictions, social distancing, and other advisories associated with the COVID-19 public health emergency, and the desire to limit exposure risk to the regulated community and safety investigators, the FMCSA will conduct compliance reviews of motor carriers and assign safety ratings even if those compliance reviews do not include an “on-site” component. This means that FMCSA enforcement officials will request documents and related regulatory compliance information remotely through electronic mail and videoconferencing. The agency said that carriers may access and transmit their information through a portal directly with FMCSA and upload documents in a secure environment.

This guidance document will remain in effect until the revocation of the COVID-19 national emergency as declared by the White House.

**OSHA Updates Enforcement Response Plan for COVID-19.** The Occupational Safety and Health Administration has issued an [Updated Interim Enforcement Response Plan](#) for COVID-19), providing new guidance to all OSHA Regional Administrators and State Plan Designees on how to investigate COVID-19-related hazards as workplaces continue to reopen. The new guidance took effect Tuesday, May 26, 2020, and supersedes OSHA’s prior Interim Enforcement Response Plan dated April 13, 2020.

As states lift COVID-19 restrictions and workplaces reopen, OSHA will continue to evaluate COVID-19 cases under one of two general frameworks:

In geographic areas where community spread of COVID-19 has significantly decreased, OSHA will return to adhering to its typical inspection planning procedures, as outlined in its Field Operations Manual (FOM), when prioritizing reported events for inspections, except that:

- OSHA will continue to prioritize COVID-19 cases;
- OSHA will utilize non-formal phone/fax investigation or Rapid Response Investigation (RRI) by employers in circumstances where OSHA has historically performed such inspections (e.g., to address formal complaints) when necessary to assure effective and efficient use of resources to address COVID-19 related events.

In geographic areas experiencing sustained elevated community transmission or a resurgence in community transmission of COVID-19, OSHA will exercise discretion, considering available resources, to:

- Continue prioritizing COVID-19 fatalities and imminent danger exposures for inspection. OSHA will be particularly attentive to on-site investigations for high-risk workplaces (i.e., workplaces in the medical community where there is greater risk for exposure to known or suspected cases of COVID-19 due to “aerosol-generating procedures”) and workplaces with high numbers of complaints or known COVID-19 cases.

Where resources are insufficient to allow for on-site inspections, OSHA will initiate remote inspections for these types of reported events, with the expectation that it will complete an on-site investigation if/when resources become available. Where limitations on resources do not allow for an on-site or remote inspection, OSHA will investigate through RRI, identifying any hazards, providing abatement assistance, and confirming abatement.