

# Consultants Update

## *COVID-19*

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# Discussion Topics

- Driver Hours of Service Final Rule; Petition for Reconsideration
- Extension and Limitation of FMCSA Emergency Declaration
- CDL and Medical Card Extension of Validity
- Waiver of Pre-Employment Drug Test
- FMCSA Guidance on Random Drug and Alcohol Testing Rates

# Driver Hours Final Rule

- Published in the June 1 Federal Register
- Goes into effect September 29, 2020
- Provides additional flexibility for drivers and their employers
- Makes revisions to HOS rules in four areas
- Will need to reprogram ELDs, retrain drivers and dispatchers

# HOS Rules Changes

- 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 status, rather than off-duty status
- Amends the sleeper-berth exception to allow drivers to split their required 10 hours off duty into two periods: an 8/2 split or a 7/3 split—with neither period counting against the driver's 14-hour driving window

# HOS Changes

- Modifies the adverse driving conditions exception by extending by 2 hours the maximum window during which driving is permitted (13 hours driving in 16-hour window)
- Changes the short-haul exception available to 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 are exempt from the requirements for driver logs and Electronic Logging Devices and the 30-minute break requirement

# Petition for Reconsideration

- Teamsters Union, Advocates for Highway and Auto Safety, the Truck Safety Coalition, Citizens for Reliable and Safe Highways and Parents Against Tired Truckers filed a petition with the FMCSA to reconsider the agency's driver hours of service final rule
- The petitioners are concerned that the changes that FMCSA made to the hours-of service rules in this final rule will increase fatigue at a time when truck crashes continue to rise
- They ask the agency to delay implementing the rule, which is scheduled to go into effect on September 29, 2020, until the FMCSA has fully investigated the potential effect of the changes on the safety of operations

# FMCSA Emergency Declaration

- FMCSA extended emergency declaration through August 14, 2020
- Exempts drivers and carriers from Parts 390-399 when transporting emergency relief in response to COVID-19 crisis
- Applies to:
  - (1) livestock and livestock feed;
  - (2) medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19; and
  - (3) 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

# CDLs, CLPs, Medical Certificates

- FMCSA also issued waiver extending validity for CDLs, CLPs and medical certificates that expired on or after March 1, 2020
- These documents are valid through September 30, 2020 (every state recognizes this)—no action necessary for drivers or states
- Many states have closed driver licensing agencies for testing; reopening states require appointments, have limited testing capacity
- States may administer a driving skills test to any out-of-state applicant
- Extension not applicable if driving privileges suspended for traffic offense, driver diagnosed with disqualifying medical condition, or medical card issued for less than 90 days



# Pre-Employment Drug Test

- FMCSA issued a waiver to allow employers to forego pre-employment testing for drivers who have participated in a controlled substances testing program that meets the requirements of 49 CFR part 382 within the previous 90 days of hire or rehire (previously 30 days)
- The driver either: (i) must have been tested for controlled substances within the past 6 months or (ii) participated in the random controlled substances testing program for the previous 12 months
- This waiver is to facilitate getting furloughed drivers back into CMV operations
- Employer must complete pre-employment query of Clearinghouse and other investigations required by 49 CFR §§ 40.25, 382.413, and 391.23
- Waiver is effective through September 30, 2020

# DOT Random Drug and Alcohol Testing Guidance

- FMCSA issued guidance granting flexibility on random testing rates for 2020—might give enforcement discretion
- Guidance does not change requirements to test 50% of CDL drivers for controlled substances or 10% for alcohol, or that tests must be spread out throughout the year (at least quarterly)
- Many clinics and collection sites have closed; those that are reopening have limited capacity and hours
- If driver cannot get to clinic to take a test, document why, and indicate how you tried to find an alternate collection site
- Also document how furloughs or other issues kept you from spreading random test out throughout the year

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