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Hours of Service Waiver: Federal Motor Carrier Safety Administration Announces Extension of COVID-19 Waiver

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The Energy Marketers of America ("EMA") announced in a November 29th publication that the Federal Motor Carrier Safety Administration ("FMCSA") has extended the nationwide hours of service ("HOS") COVID-19 waiver through February 28, 2022.

The Arkansas Oil Marketers Association is a State Chapter of EMA.

The HOS waiver is applicable to CDL drivers hauling the following petroleum products:

- Gasoline
- Diesel fuel
- Jet fuel
- Ethyl alcohol

EMA notes in the publication that it has been asked 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."

EMA asked FMCSA to clarify the delivery scenarios which qualify as "providing direct assistance" to COVID-19 relief efforts.

The trade association states:

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 marketer 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. 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.

Note the seven points raised in the EMA publication such as:

- The HOS waiver only applies to 40 CFR § 395.3, maximum driving time for property-carrying vehicles.
- The extension runs through February 28, 2022.

- Drivers hauling gasoline, diesel fuel, jet fuel and ethyl alcohol qualify for the HOS wavier if they are providing direct assistance to COVID-19 emergency relief (which 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 are prohibited from allowing fatigued drivers to operate a commercial vehicle (a driver informing a carrier that rest is needed must be given 10 consecutive hours before being required to return to service)
- Motor carriers voluntarily operating under the terms of the wavier must report within five days after the end of each month their reliance on the Emergency Declaration.
- 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. However, the 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.

A copy of the EMA publication can be downloaded [here](#) and the Emergency Declaration [here](#).