

TABLE 19.—APPLICABILITY OF FMCSA HOURS OF SERVICE (HOS) OF DRIVERS RULEMAKING—Continued

If you operate a:	In interstate commerce	In intrastate commerce
4. Is used to transport hazardous materials in quantities requiring the vehicle to be marked or placarded under the Hazardous Materials Regulations (49 CFR part 172, subparts D & F).		

²Most motor carriers engaged in interstate commerce are exempt from the overtime requirements of the FLSA. The FLSA exemption from the overtime pay requirement applies only to certain employees of interstate motor carrier employers subject to the Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, August 9, 1935), but not to those subject only to the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, October 30, 1984) (98 Stat. 2829). The only substantial group of interstate carrier employers subject to the 1984 Act that are not also subject to the 1935 MCA are private motor carriers of passengers (e.g., churches, musicians, civil and charitable organizations, scouts, companies transporting their own employees, etc.). See 29 CFR 782.2(b)(1).

Appendix B to Part 385 Explanation of Safety Rating Process

Section VII of appendix B to part 385 lists acute and critical regulations, which play an important role in assigning a safety rating. The descriptions of some of the HOS regulations listed there are being updated to conform to the requirements of this final rule. For example, § 395.3(a)(1), a critical rule, is now summarized as “requiring or permitting a driver to drive more than 10 hours.” While § 395.3(a)(1) remains critical, the new summary will say: “requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours.” Updating and adding appropriate citations allows the agency to accurately update the safety rating process on the compliance date of the rule. The citations being updated and added include §§ 395.1(h)(1)(i), 395.1(h)(1)(ii), 395.1(h)(1)(iii), 395.1(h)(1)(iv), 395.1(h)(2)(i), 395.1(h)(2)(ii), 395.1(h)(2)(iii), 395.1(h)(2)(iv), 395.1(o), 395.3(a)(1), 395.3(a)(2), 395.3(a)(2), 395.3(b)(1), 395.3(b)(2), 395.3(c)(1), 395.3(c)(2), 395.5(a)(1), 395.5(a)(1), 395.5(a)(2), 395.5(b)(1), and 395.5(b)(2).

Section 390.23 Relief From Regulations

Paragraphs (b) and (c) of § 390.23 address the restart provisions the agency provided in the emergency relief exemption of July 30, 1992 (57 FR 33638, at 33647). This rule amends the daily and weekly restart provisions for normal duty in interstate commerce and the agency believes it must conform the emergency relief exemption to the standard being adopted today. This amendment requires that drivers who provide direct assistance, as defined by § 390.5, to emergency relief efforts must, before returning to normal duty in interstate commerce, (1) take at least 10 consecutive hours off-duty, if they have driven more than 11 hours or have been on duty more than 14 hours, and (2) take at least 34 consecutive hours off

duty, if they have been on duty more than 60 hours in 7 days or 70 hours in 8 days.

Section 395.0 Compliance Date for Certain Requirements for Hours of Service of Drivers.

The agency is adding § 395.0 to specify when motor carriers and drivers must comply with this final rule. The effective date cited in the **DATES:** heading at the top of this document is the date that this final rule’s amendments affect the current Code of Federal Regulations published by the Government Printing Office. Motor carriers of property and drivers of property-carrying commercial motor vehicles may not begin to comply with this final rule on that date.

The compliance date is the date that motor carriers of property and drivers must begin to comply with this final rule. Motor carriers of property, drivers of property-carrying commercial motor vehicles, Federal, State, and local law enforcement officers, and the FMCSA must do many necessary things before the rules can be enforced. The FMCSA must update motor carrier information, compliance, and enforcement computer systems and manuals. The FMCSA has eight computer software packages where it must find the correct code, write new code, test the new software, and distribute it to its division offices and State and local partners.

The agency must develop training, distribute training materials, and ensure training materials are read, taught, and understood by approximately 8,000 Federal, State, and local law enforcement officers. The agency also plans to provide training and presentations to the public about the new rules.

Motor carriers must develop training or use FMCSA’s training materials, distribute training materials, and ensure training materials are read, taught, and understood by the millions of drivers engaged in interstate commerce who transport freight and other types of property. The FMCSA must also ensure

the CVSA updates its Out-Of-Service criteria. The FMCSA cannot do its part, and cannot expect motor carriers to do their part, within 60 days after today.

The agency believes a compliance date on a Sunday will be the least burdensome to all carriers and enforcement officials. Most affected carriers subject to this final rule operate on a Sunday to Saturday basis and most affected carriers would suffer less disruption to their operations if the rule took effect at the beginning of a new week. Therefore, the agency is providing a compliance date when all carriers, drivers, and enforcement officials will switch from the current rule to the new rule: Sunday, January 4, 2004.

Finally, this section is only necessary for a few months until all affected motor carriers learn about the new rule and begin complying with it. Therefore, the FMCSA has added language to the **DATES** section that will only make this section effective in the Code of Federal Regulations temporarily from June 27, 2003, through June 30, 2004. After June 30, 2004, the Government Printing Office will remove this section from the Code of Federal Regulations. Thus, the October, 1, 2004, edition and all subsequent editions of the Code of Federal Regulations will not contain § 395.0.

Section 395.1 Scope of Rules in This Part

Section 395.1 is amended by revising paragraphs (b), (e)(3), (e)(4), (g), (h), and (j) to use the new off-duty, on-duty, and driving limits for drivers of property-carrying vehicles, while maintaining the current off-duty, on-duty, and driving limits for drivers of passenger-carrying vehicles.

Paragraph (b) is the adverse driving condition exception. It is being revised to update the daily limits. The adverse driving condition exception applies only to the driving time limitation of 11 hours for property-carrying vehicles or 10 hours for passenger-carrying vehicles. The adverse driving condition exception cannot be used if the driver