



HOURS OF SERVICE: THE DISPATCHER'S POINT OF VIEW

INTRODUCTION

Few areas of regulation in the motor carrier industry are as confusing or as intimidating as hours of service and the record of duty status, commonly known as the "log." Year after year, the hours-of-service requirements in Part 395 of the Federal Motor Carrier Safety Regulations (FMCSRs) are consistently among the most-violated regulations in the industry.

One of the biggest reasons for these violations is the different ways that these regulations are viewed by dispatchers, drivers, management, and others.

This best practice is designed to provide a better understanding of the hours-of-service regulations from the dispatcher's point of view. This is oftentimes different than the driver's point of view. Dispatchers have different goals and expectations than drivers and therefore see the hours-of-service rules in a very different way.

References to the actual hours-of-service rules within this discussion are to those that apply to property-carrying commercial motor vehicles only. Even though the dispatch concepts and methodologies may be similar, the actual regulations are different for passenger-carrying motor vehicles.

BACKGROUND

The FMCSA issued major revisions to the hours-of-service rules on April 28, 2003, applicable only to property-carrying vehicles. The 2003 rules represented the first substantial revision to the hours-of-service rules since the original 1939 ICC regulations.

Due to court challenges and Congressional directives, the FMCSA revised the rules again in 2005, 2011, and 2013. In December 2015, the agency adopted a final rule to require the use of electronic logging devices (ELDs) in place of paper logs. This rule went into effect in early 2016, and compliance with the ELD mandate was required in December 2017 and, ultimately allowing grandfathered Automatic Onboard Recording Devices until December 16, 2019 after which only ELDs could be used when required.

The most recent of hours-of-service regulation changes were effective September 29, 2020. Below is a summary of the four changes:

1. Short-haul CDL-vehicle drivers will be able to drive 11 hours in a 14-consecutive-hour driving window. They must operate within a 150 air-mile radius of and must return to their start location each day. (affects both property-carrying and passenger-carrying vehicle drivers)
The current 100 air-mile exception allows a 12-consecutive hour driving window.
2. The 30-minute break provision will require drivers to stop driving once they have accumulated eight hours of driving without at least a 30-minute interruption from driving. On-duty (not driving) time, sleeper-berth time, off-duty time, or a combination of the three, will satisfy the break-from-driving requirement. If the driver does not drive more than eight total hours on a duty day, no break will be required.
The current rule requires a minimum 30-minute off-duty break within eight-consecutive hours of the last break of 30 minutes or more to continue driving. (property-carrying vehicle drivers only)
3. The adverse-driving conditions exception will add two hours to the duty window in addition to the current two additional hours of driving for both passenger-carrying and property-carrying vehicle drivers. Property-carrying vehicle drivers will be able to drive up to 13-hours within a 16-consecutive hour window, and passenger-carrying vehicle drivers will be able to drive up to 12 hours out of up to 17 total on-duty hours.
4. The split-sleeper exception will allow a ten-hour break to be split into a minimum seven-hour sleeper-berth period and a minimum two-hour period with both pausing the 14-hour clock. The total break time of the two qualifying periods must be a minimum of ten hours. A co-driver can be in the passenger seat of a moving CMV for up to three hours of off-duty time immediately before or immediately after the minimum seven-hour sleeper-berth period. (property-carrying vehicle drivers only)

SUMMARY OF KEY POINTS

The following summarizes some of the key provisions of the hours-of-service rules and also reflects the four changes that were effective on and after September 29, 2020:

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11-hour driving rule

After 11 hours behind the wheel of a commercial motor vehicle (CMV), you must obtain at least 10 hours off duty before driving again (you can continue to work, but you may not drive a CMV on a highway which is any area open to public travel per the definition in §390.5).

There is an exception for when *unforeseeable*, adverse driving conditions are encountered. Drivers will be allowed an extra two hours of driving to finish the run or reach a safe stopping place and are allowed an additional two hours to the driving or duty window. The driver of a property-carrying vehicle who encounters adverse conditions may not drive:

- More than 13 hours following 10 consecutive hours off duty; or
- After reaching the end of the 16th-consecutive hour after coming on duty, following 10 consecutive hours off duty (see 14-Hour On-Duty Rule, below).

Drivers using this exception must continue to comply with the 30-minute break from 8 total hours of driving requirement described below.

10-hour off-duty rule

The rules require a 10-hour break for drivers of property-carrying vehicles. This off-duty time must be consecutive. After 10 consecutive hours off duty, the driver will have a full 11 hours of driving time available within a 14-hour window. A sleeper berth can be used for all or any part of the 10-hour break.

14-hour on-duty rule

Once again, fatigue is the target, and the FMCSA believes that a driver should not get behind the wheel of a property-carrying CMV after having been on the job for 14 consecutive hours. This rule states that you may not drive a CMV beyond the 14th consecutive hour after coming on duty, following 10 consecutive hours off duty.

The important thing to note about this rule is that the 14 hours are consecutive, so they include all driving, on-duty, sleeper-berth (except the two qualifying breaks used in the split-sleeper exception to be discussed on a following page), and off-duty time accrued after coming on duty after a 10-hour break. Of those 14 hours, 11 may be spent driving.

30-minute interruption from driving

Drivers may not begin or continue driving a CMV if more than 8 total hours of driving have accumulated since the end of the last break from driving of at least 30 consecutive minutes. The break can be spent “off duty”, in a sleeper berth, any on-duty (not driving) activity such as fueling, or any combinations of these. The break from driving counts against the 14-hour limit unless the break is one of two qualifying breaks in the split-sleeper exception. In most cases, a meal break, time spent waiting (while free of all responsibilities), loading or unloading, fueling or any other half-hour rest period will satisfy the requirement as long as the driver is not operating a CMV on a highway (any area open to public travel). This break requirement does not apply to drivers who qualify for one of the short-haul exceptions in §395.1(e).

Drivers who are required to “attend” to Division 1.1, 1.2, or 1.3 explosives under §397.5 must also satisfy the break requirement but they can use attendance time for the break as long as they log it “on duty” and enter a Remark on the log to indicate the time that was used as the break. They may not perform any other duties during the break. FMCSA has not yet provided guidance if the remark is still required given that all property-carrying drivers can use any non-driving time to satisfy the break from driving requirement.

	MID-NIGHT	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	TOTAL HOURS
1. OFF DUTY																									
2. SLEEPER BERTH																									
3. DRIVING																									
4. ON DUTY (NOT DRIVING)																									
REMARKS																									

Other exceptions to the break from driving requirement exist for drivers transporting livestock, bees, ready-mixed concrete, and other types of transportation for which a special exemption has been granted.

60/70-hour rule

The FMCSA has not amended the 60/70-hour rule in many years. The basic rule is that a driver cannot drive a commercial motor vehicle (CMV) after having been on duty for 60 hours in any 7 consecutive days, or — for companies that operate CMVs every day of the week — 70 hours in any 8 consecutive days. In this case, "on duty" includes all driving time (Line 3 on the grid) and all on-duty/not-driving time (Line 4); off-duty and sleeper-berth time are not added into the total.

The 60-hours-in-7-days rule is the basic limit for all carriers. It allows for 60 hours of work in a 7-day period, after which a driver can no longer drive. The 70-hour rule is an option for carriers that operate CMVs every day of the week, and allows drivers to work for up to 70 hours in 8 days before they must stop driving. A motor carrier that operates CMVs every day of the week can assign some, none, or all of its drivers to operate under the 70-hour rule.

34-hour restart

The FMCSA recognizes that having a large amount of time away from work can fully restore a driver. Thus, the hours-of-service rules state that a driver may "restart" a 7/8-consecutive-day period after taking a qualifying 34 or more consecutive hours off duty. A driver can be over the 60/70-hour limit (whether there was a violation or not) and still use the restart option. Note that this is a voluntary provision.

For example, suppose a driver working under the 70-hours-in-8-days rule starts an 8-day period at 7 a.m. on Monday. He or she remains on duty for 14 hours each day (11 hours of which could be driving time). If the driver reaches the 70-hour limit at 9 p.m. on Friday (14 hours/day x 5 days = 70 hours), he or she normally would not be able to drive again until the following Tuesday (8 days after the start of the period). But if the driver immediately begins a qualifying off-duty period of 34 consecutive hours, he or she could begin driving again on Sunday, which would mark the start of a new 70-hour-in-8-day period.

A driver may use a sleeper berth for all or a portion of the 34 hours and still qualify for the 34-hour restart option, but all off-duty and sleeper berth time must be consecutive and not broken by any on-duty time. A driver who is on call for 34 hours but is not called into work also qualifies for this restart option.

Split-sleeper option

As explained above, the driver of a property-carrying vehicle cannot drive for more than 11 hours following 10 consecutive hours off, and cannot drive beyond the 14th hour after coming on duty. A driver using the sleeper-berth option may accumulate the equivalent of those 10 consecutive hours off duty by taking 2 separate periods of rest, provided that one of the rest breaks consists of at least 7 consecutive hours in a sleeper berth. This break will not count against the 14-hour limit, i.e., it will extend the day when taken in conjunction with the other qualifying break of at least two consecutive hours when using the split-sleeper exception.

The other break must be at least 2 consecutive hours either in a sleeper berth, off duty, or any combination of the two. This break will not count against the 14-hour limit, and can be taken either before or after the 7-hour sleeper period.

DRIVER AND CARRIER RESPONSIBILITIES

Who must comply

The hours-of-service rules are applicable to all employers, employees, and commercial motor vehicles that transport property or passengers in interstate commerce.

Note that while the hours-service regulations refer to "property-carrying" and "passenger-carrying" vehicles, the vehicles do not actually have to be carrying property or passengers at the time to be subject to the rules. An empty CMV is still a CMV.

Who must know the rules

The federal DOT places responsibility for compliance with the regulations on both the driver and carrier. As the dispatcher oftentimes is the "front-line" contact for the driver, understanding and compliance by the company falls directly on the dispatcher.

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Results of non-compliance

Drivers or carriers (which includes dispatchers) who violate the hours-of-service rules face serious penalties:

- Drivers may be placed out of service (shut down) at roadside until the driver has accumulated enough off-duty time to be back in compliance.
- State and local enforcement officials may assess fines.
- The Federal Motor Carrier Safety Administration may levy civil penalties on the driver or carrier, ranging from as much as over \$3,800 for drivers and as much as over \$15,000 per violation for carriers depending on severity (drivers who drive for more than 14 hours per day (more than 3 hours over the 11-hour limit) are more likely to face the maximum penalties for an egregious violation).
- The carrier's safety rating can be downgraded for a pattern of violations.
- Points can be assessed against the carrier's CSA scores.
- Federal criminal penalties can be brought against carriers who knowingly and willfully allow or require hours-of-service violations.

The following examples of common violations and the penalties resulting from enforcement activities graphically illustrate the high degree of importance placed on compliance with the hours-of-service regulations:

- A motor carrier was charged with 13 counts of false reports of records of duty status and one count of failing to require driver to forward records of duty status within 13 days of completion. **Fine — \$5,700.**
- A motor carrier was charged with three counts of requiring or permitting driver to drive more than the daily limit, eight counts of requiring or permitting driver to drive after having been on duty more than 70 hours in 8 consecutive days, and 21 counts of false reports of records of duty status. **Fine — \$14,475.**
- Average fines for drivers charged with hours-of-service violations range from \$250 to \$450.

Hours-of-service violations are consistently in the "Top 10" violations found during roadside inspections and compliance reviews. Enforcement cases often result in settlements in the many thousands of dollars.

Although many violations may be willful violations, many others are the result of a lack of knowledge and/or understanding of the rules. The latter are violations just as certainly as willful violations since the regulations clearly state both the carrier and driver responsibilities to know the regulations.

THE DISPATCHER'S JOB

Even though this has been a lengthy introduction toward what will be a brief discussion of the dispatcher's point of view, it is important to understand what the hours of service are, and how they relate to the driver and company from a regulations standpoint.

A dispatcher has a daunting task. A trucking company makes its revenue based on the movement of freight. It is the dispatcher's job to make sure this happens without delay and with minimal cost. Every day the dispatcher walks a fine line between what is legal, what is acceptable, and what is expected, pertaining to the hours worked by his or her drivers, all the time trying to satisfy the expectations and requests of management and the company as a whole. The dispatcher is the quintessential "middle man" when it comes to freight movement, the drivers, and office politics.

Years ago, the dispatcher had one simple task; move the freight from point A to point B, whatever it takes. The driver's job was to take the load, and also, do whatever it took to get it there on time, without damage. Some dispatchers were seen as "task masters" with little regard to driver health and well-being. Their only motivation was the "bottom line." Others were seen as heroes, providing all the freight that a driver could handle (and more), thereby dramatically increasing the driver's paycheck.

A good dispatcher will understand these regulations and incorporate them into everything they do relating to the freight movement needs of their company.

Back then, hours of service were what a driver dealt with, not a dispatcher. If a driver had to “get creative” with their logs, that was seen as acceptable because the end result was more money for the driver, and positive results for the dispatcher and the company. “I don’t want to know how you did it, just that it got done,” was a common phrase between dispatchers and drivers.

Today, dispatching is dramatically different. As mention earlier, the DOT expects all drivers AND company employees to know, understand, and adhere to the current hours-of-service regulations, whether using paper or electronic logs. The dispatcher still has to react to the needs and desires of the company (management) but now has to also take into consideration the availability and fatigue level of the driver and his or her “available hours,” and explore other possible options if a driver doesn’t have the hours to complete a run successfully, legally and safely. The idea that every driver is “always” available no longer exists, especially given the electronic paper trail generated by electronic logging systems.

Because of the new approach to the hours-of-service regulations, a dispatcher has to be a master at time management, not only his or her time but his or her drivers’ time as well.

To help with this, some companies have developed computerized dispatch programs that track each driver’s availability based on what they have previously logged or direct links to the electronic logging device. The system alerts the dispatcher when there is a possible scheduling conflict or hours-of-service violation. Although this type of program is very helpful, the dispatcher must still know the rules and must always “see the big picture”, including the driver’s ability to drive safely.

Because of this new “enlightenment” toward the hours-of-service rules by dispatchers, the dispatcher has also had to become much more in tune with the driver from a human relations standpoint. Drivers are no longer viewed as “machines” that just do whatever a dispatcher tells them to. Yes, they are employees and must abide by company rules and regulations, but the overlying governance as to what a driver will and will not do is the current hours-of-service regulations and whether the driver feels safe to drive. Today’s dispatcher must be cognizant of this every time they plan a load and contact a driver for dispatch.

Coercion and Harassment

Dispatchers must also be cognizant of the need to avoid coercing or harassing drivers, both of which have a direct relation to hours of service.

Harassment is addressed in §390.36 and involves a carrier’s employees — especially dispatchers — using information from an electronic logging device (ELD) or related system in a way that causes a driver to violate a regulation or that the employee should have known would result in a violation. This rule prohibits dispatchers from requiring drivers to drive when their ability or alertness is impaired due to fatigue, illness, or other causes that compromise safety.

The FMCSA explicitly prohibits motor carriers from harassing drivers. Driver who are harassed may file a written complaint under §386.12(b), which could lead to enforcement action taken against the carrier.

To avoid harassment, drivers must be allowed to mute their ELDs while resting. Furthermore, only limited edits of an ELD record are allowed and the original ELD record cannot be changed. As a result, motor carriers are limited in forcing drivers to violate the hours-of-service rules without leaving an electronic trail.

The **coercion** rule in §390.6 simply states that no one (the carrier, shipper, receiver, broker, or their agents) may threaten a driver with future employment or business action in an attempt to get the driver to violate the safety regulations, once the driver states that he/she cannot operate the vehicle without violating the safety regulations. The rule defines and prohibits “coercion,” provides procedures for drivers to report incidents of coercion, and establishes “rules of practice” the FMCSA must follow in response to allegations of coercion.

The key is the “threat.” A dispatcher can ask that a driver make on-time delivery, but cannot threaten the driver if the driver says he/she can’t do so without violating the safety regulations. However, the carrier taking a load away from a driver who states he/she cannot make the delivery is NOT coercion. This is “standard business practice.” What would make it coercion is if, rather than reassigning the load to another driver, the dispatcher threatened the driver after the driver said he/she could not deliver the shipment without violating the regulations.

Common areas where this could be an issue for carriers, if not handled correctly, include a driver stating that he/she is ill or fatigued and cannot drive; is, or will be, out of hours; or cannot operate the vehicle due to a mechanical defect. As with harassment, coercion complaints filed by drivers may lead to enforcement actions from the FMCSA.

CONCLUSION

A dispatcher often serves two masters: the driver and the company — all the time being cognizant of, and adhering to, the hours-of-service regulations, the personal needs and desires of the driver, and the revenue expectations of the company. Few people in today's trucking industry feel themselves being pulled in so many directions as a dispatcher does.

The current hours-of-service regulations are in place to allow for safe and consistent movement of freight across the country by truck drivers. A good dispatcher will understand these regulations and incorporate them into everything they do relating to the freight movement needs of their company.

Hours-of-service regulations should not be viewed by a dispatcher (or anyone) as a “roadblock” to performance but more as a handbook that outlines the maximum efficiencies every dispatcher can expect from their drivers on a daily basis.

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