

DRIVERS' HOURS OF SERVICE

STATUS

(Editor's note: This analysis is for small businesses with commercial motor vehicles but not intended to describe the impact on small long haul carriers, that is beyond our technical skills.)

The U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) has issued a final rule revising the hours-of-service (HOS) requirements for commercial truck drivers.

The department was under a court supervised settlement agreement to issue a final rule by July 26, 2011. They missed that date.

Information on the final rule is available on FMCSA's Web site at <http://www.fmcsa.dot.gov/rules-regulations/topics/hos-final/hos-final-rule.aspx>.

The effective date for most of the changes is July 1, 2013. The definition of "on duty" is effective 60 days from publication in the Federal Register.

While the HOS rule is often associated with long-haul drivers in the media, aspects apply to short-haul drivers and smaller trucks as well. It gets a bit convoluted with some special provisions based on the size of the truck and distance traveled.

There may be retailers, service providers, and distributors who do not even know their drivers are covered by the rules. They are not in violation but just are not aware the rule applies. The vehicles are above the HOS weight threshold, but below the weight that would require a CDL driver, and the drives are within the 150-mile "exception" and the 11-hour driving time is the exception rather than the daily occurrence.

ANALYSIS

Compared to the proposed rule, the *direct* impact on those of us not in the long haul carrier business could be modest. What we will not know for some time is the *indirect* impact as it translates to the cost of transporting goods for long distances. The 34-hour restart rule adopted by the FMCSA will reduce a driver's "work week" and that will surely require more drivers and more trips.

The 34-hour restart rule, which includes some nighttime down time, while modified, still may have some operational impact on delivery schedules to retailers, distributors and others taking on inventory from long haulers in the business-to-business chain.

THE RULE

The principal changes are to establish a 34-hour restart rule for a driver's "work week" and requiring a 30-minute break after eight hours of driving in a given "workday." The FMCSA did not opt to change the amount of driving time from 11 hours and it also opted not to change the length of the driver's workday. The following describes the existing rule with the modifications of the final rule

In general, the hours of service (HOS) rules apply to drivers of commercial motor vehicles (CMV). There are various specific vehicle and industry exceptions to this general rule that are outside the scope of this summary. In addition, the rules apply to some drivers of property carrying vehicles for which a Commercial Driver's License (CDL) is not required. Further, this summary does not include passenger-carrying vehicles.

For those of us who are not full time members of the trucking industry, the Department of Transportation uses different Commercial Motor Vehicle (CMV) definitions for different rules. It can get confusing because the same acronym (CMV) is used. For example, for Commercial Driver License purposes, the vehicles are larger but the Commercial Motor Vehicle for the purposes of the HOS rule is generally a truck, or truck-tractor with a trailer, that:

- Is involved in interstate commerce and weighs (including any load) 10,001 pounds (4,536 kg) or more or
- Is involved in interstate commerce and has a gross vehicle weight rating or gross combination weight rating of 10,001 pounds (4,536 kg) or more, or
- Is involved in interstate or intrastate commerce and is transporting hazardous materials in a quantity requiring placards.

(Note: the interstate versus intrastate distinction is minor since most states adopt the Federal rules in order to receive federal funds.)

The hours-of-service regulations focus on when and how long drivers are allowed to drive by placing specific limits on the amount of time drivers drive their truck and how many total hours they can work before they are no longer permitted to drive a commercial motor vehicle. They must follow three maximum duty limits at all times. They are the 14-hour duty limit, 11-hour driving limit, and the 70-hour "average" duty limit.

14-Hour Duty Limit

This limit is usually thought of as a "daily" limit even though it is not based on a 24-hour period. Drivers are allowed a period of 14 consecutive hours of duty time after being off duty for 10 or more consecutive hours. The 14-consecutive-hour duty period begins when the driver starts any kind of work. Once the driver has reached the end of this 14-consecutive-hour period, the driver cannot drive again until the driver has been off duty for another 10 consecutive hours.

The driver's driving is limited to the 14-consecutive-hour duty period even if the driver takes some off-duty time, such as a lunch break or a nap, during those 14 hours.

The 30-minute break discussed below is considered part of the 14 hours.

On Duty

The final rule includes a new definition of "on duty." Unlike most of the changes made by the new final rule, this definition is effective 60 days after publication in the Federal Register.

On-duty time means all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. On-duty time shall include:

- (1) All time at a plant, terminal, facility, or other property of a motor carrier or shipper, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier;
- (2) All time inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- (3) All driving time as defined in the term driving time;
- (4) All time in or on a commercial motor vehicle, other than:
 - (i) Time spent resting in or on a parked vehicle, except as otherwise provided in § 397.5 of the regulations
 - (ii) Time spent resting in a sleeper berth; or
 - (iii) Up to 2 hours riding in the passenger seat of a property-carrying vehicle moving on the highway immediately before or after a period of at least 8 consecutive hours in the sleeper berth;
- (5) All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a commercial motor vehicle being loaded or unloaded, remaining in readiness to operate the commercial motor vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
- (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle;
- (7) All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, to comply with the random, reasonable suspicion, post-crash, or follow-up testing required by part 382 of this subchapter when directed by a motor carrier;
- (8) Performing any other work in the capacity, employ, or service of, a motor carrier; and
- (9) Performing any compensated work for a person who is not a motor carrier

11-Hour Driving Limit

During the 14-consecutive-hour duty period, the driver is only allowed to drive the truck for up to 11 total hours. Once the driver has driven a total of 11 hours, the driver have reached the driving limit and must be off duty for another 10 consecutive hours before driving the truck again. There is now one change to this rule. The final rule requires that if more than eight consecutive hours on duty have passed since the last off-duty (or sleeper-berth) period of at least half an hour, a driver must take a break of at least 30 minutes before driving. For example, if the driver started driving immediately after coming on duty, he or she could drive for 8 consecutive hours, take a half-hour break, and then drive another 3 hours, for a total of 11 hours.

Alternatively, this driver could drive for 3 hours, take a half-hour break, and then drive another 8 hours, for a total of 11 hours. In other words, this driver could take the required break anywhere between the 3rd and 8th hour after coming on duty. A driver who plans to drive until the end of the 14th hour and wants to take only one break will need to take a break between the 6th and 8th hour after coming on duty.

60/70-Hour Average Duty Limit

The final rule makes changes to what most of us would think of as a driver's "work week." The changes are effective July 1, 2013.

The basic rule is and remains that no motor carrier shall permit or require a driver of a property-carrying commercial motor vehicle to drive, nor shall any driver drive a property-carrying commercial motor vehicle, regardless of the number of motor carriers using the driver's services, for any period after having been on duty 60 hours in any period of 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week; or having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

After June 30, 2013, any period of 7 consecutive days may end with the beginning of an off-duty period of 34 or more consecutive hours that includes two periods from 1:00 a.m. to 5:00 a.m.

After June 30, 2013, any period of 8 consecutive days may end with the beginning of an off-duty period of 34 or more consecutive hours that includes two periods from 1:00 a.m. to 5:00 a.m.

After June 30, 2013, a driver may not take an off-duty period allowed to restart the calculation of 60 hours in 7 consecutive days or 70 hours in 8 consecutive days until 168 or more consecutive hours have passed since the beginning of the last such off-duty period. When a driver takes more than one off-duty period of 34 or more consecutive hours within a period of 168 consecutive hours, he or she must indicate in the Remarks section of the record of duty status which such off-duty period is being used to restart the calculation of 60 hours in 7 consecutive days or 70 hours in 8 consecutive days.

Log

Any person who is subject to the safety regulations and drives a commercial motor vehicle (CMV) must complete a logbook page for any day that includes CMV driving and for the prior seven days (unless under an exception on some of those days). There are some exceptions.

One is the 100 Air-Mile Radius exception. The driver is not required to fill out a log with a graph grid if the driver comes under the 100 air-mile radius exception. The 100 air-mile radius exception applies for any day in which the driver:

- Drive within a 100 air-mile radius of the driver's normal work reporting location,
- Return to the driver's work reporting location and are released within 12 consecutive hours, and

- Follow the 10-hour off-duty and 11-hour driving requirements.

The driver's motor carrier must keep time records of the times the driver reports for and is released from work each day, and the total hours on duty each day. The driver does not have to have these records in the driver's truck.

Non-CDL Short-Haul Exception

If the driver drives short distances in a truck that does not require a commercial driver's license (CDL), the driver might be able to use the non-CDL short-haul exception. This short-haul exception allows the driver to extend the 14-consecutive-hour duty period two days in a 7-consecutive-day period or after any 34-hour restart.

The driver can only use this exception if the driver:

- Drive a truck that does not require a CDL, and
- Work within a 150 air-mile radius of the driver's normal work reporting location and return there each day.

If the driver meets the criteria for using the non-CDL short-haul exception:

- The driver must not drive for more than 11 hours following 10 consecutive hours off duty;
- The driver must not drive past the 14th hour after coming on duty five days in any period of seven consecutive days; and
- The driver must not drive past the 16th hour after coming on duty two days in any period of seven consecutive days.

The driver must not drive after being on duty 60 hours in any seven consecutive days or 70 hours in any eight consecutive days (unless the driver took 34 consecutive hours off to restart a 7/8-day period).

Under this exception the driver are not required to keep a log book, but the driver's company must keep a time record for 6 months showing the times the driver's duty period began and ended and the driver's total hours on duty for the day.

If the driver come under this exception the driver are not eligible for the 100 air-mile radius exception, 16-hour short-haul exception, or the split sleeper berth provision.

The 16-Hour Short-Haul Exception

If the driver usually come back to the driver's work-reporting location and go home at the end of the driver's workday, the driver might be able to use the 16-hour short-haul exception. This

exception allows the driver to extend the 14-consecutive-hour duty period once every seven consecutive days. In order to use this exception, the driver must do the following:

- The driver must return to the driver's work reporting location that day, as well as for the driver's last five duty tours. A duty tour is the period of time from when the driver comes to work to when the driver leave work. It is the driver's "workday," the time between the driver's off-duty periods of at least 10 consecutive hours.
- The driver must be released from duty within 16 hours after coming on duty.
- The driver must only use this exception once every seven consecutive days (unless the driver took 34 consecutive hours off to restart a 7/8-day period).
- The driver may not use this exception if the driver qualify for the "Non-CDL Short Haul Exception"