

UNDERSTANDING “HOURS OF SERVICE”



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On August 2, 2013, the United States Court of Appeals for the District of Columbia finally resolved more than 10 years of contentious litigation concerning the Federal Motor Carrier Safety Administration’s (FMCSA) “Hours of Service” rule-making. [American Trucking Associations, Inc. v. Federal Motor Carrier Safety Administration and United States of America, 724 F.3d. 243 (DC Cir. Aug. 2, 2013).] The key issues in the case involve three new safety enhancing provisions.

- *30-Minute Off-Duty Break.* The 2011 Final Rule bars truckers from driving past eight hours unless they have an off-duty break of at least 30 minutes.
- *Once-Per-Week Restriction.* To prevent drivers from abusing the 34-hour restart, the 2011 Final Rule allows truckers to invoke the provision only once every 168 hours (or once every seven days)
- *Two-Night Requirement.* To ensure that drivers using the 34-hour restart provision have an opportunity to get two nights of rest, the 2011 Final Rule also mandates that the restart include two blocks of time from 1 a.m. to 5 a.m.

The American Trucking Associations (ATA) had argued that requiring an off-duty period of 34 hours (that must include two periods of time between 1 a.m. and 5 a.m.) was overly restrictive and costly. The ATA objected to this provision because they wanted drivers to be able to drive as much as 73.9 hours every seven days. Fortunately, the Court upheld the provision which requires two nights of rest. The Court relied heavily on a 2010 study which concluded: “the two-night provision works better than a one-night provision to mitigate driver fatigue in nighttime drivers”. The Court concluded that the new restart provision requiring the two “1 a.m. – 5 a.m.” time periods would promote driver health and highway safety.

The ATA also attacked the new rule, which required drivers to take a 30-minute break by the seventh hour after coming on duty. However, the Court upheld the requirement on the basis of a 2011 study which concluded that “off-duty breaks yield greater reductions in crash risk than on-duty non-driving breaks”. In evaluating the FMCSA’s “cost-benefit” analysis, the Court deferred to the FMCSA’s decision to employ a “7 percent to 18 percent” range for fatigue related crashes even though the ATA claimed that fatigue was a factor in crashes in only 2.2 percent of all truck accidents. Although the Court upheld the 30-minute break requirement for interstate truckers, the Court did make

an exemption for “short haul” drivers who typically work a normal five-day work schedule.

The following is a summary of the Rules as approved by the Court:

Eleven-Hour Driving Rule

All time spent behind the wheel of a commercial motor vehicle is considered driving time. After eleven hours of driving a commercial truck driver must have ten consecutive hours off duty before he can drive again. A driver can be fined up to \$2,750 for each violation and a trucking company can be fined up to \$11,000.

Fourteen-Consecutive-Hour Duty Rule

A driver cannot drive beyond the 14th consecutive hour after coming on duty. The driver cannot drive again until he has 10 consecutive hours of rest. The 14 hour rule does not prohibit a driver from performing other on duty tasks. Lunch breaks or other off duty time do not extend the 14 hour rule. The only time that would not count toward the 14 hours is a qualifying sleeper-berth period.

Mandatory Break Provision

Truckers cannot drive for more than eight straight hours unless they have an off duty break of at least 30 minutes. Note: This rule does not apply to “short-haul” drivers.

60 Hour/70 Hour Limits

Drivers working for a trucking company that operates seven days a

THE NEW REGULATIONS

week cannot drive after accumulating 70 hours on duty in any eight consecutive days. Drivers working for a trucking company that operates only six days a week cannot drive after accumulating 60 hours on duty during any seven consecutive days.

A driver can perform non driving duties after the “60/70” hour limits.

34-Hour Restart

The 34-Hour “restart” (of the 60/70 hour limit) must have an off duty period of 34 (or more) consecutive hours that includes two period of time between 1 a.m. and 5 a.m.

A driver can use the “restart” only once within a period of 168 consecutive hours (seven days).

See Hours of Service – Driver Handbook published by J.J. Keller & Associates, Inc. These handbooks should be provided to every interstate truck driver and the handbooks can be purchased in bulk for a minimal cost from J.J. Keller & Associates (jjkeller.com).

If the trucking companies and their drivers comply with the new regulations, there should be a reduction in fatigue related accidents. However, if the trucking companies try to force their drivers to drive the same routes and distances in shorter periods of time, we may see an increase in speed related accidents.

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SUMMARY OF HOURS OF SERVICE (HOS) REGULATIONS AS OF JULY 2013		
Changes Compared to Current Rule		
PROVISION	CURRENT RULE	FINAL RULE - COMPLIANCE DATE JULY 1, 2013
Limitations on minimum "34-hour restarts"	None.	(1) Must include two periods from 1 a.m. to 5 a.m., home terminal time. (2) May only be used once per week, 168 hours, measured from the beginning of the previous restart.
Rest breaks	None except as limited by other rule provisions.	May drive only if 8 hours or less have passed since end of driver's last off-duty or sleeper berth period of at least 30 minutes. (49 CFR 391.5 mandatory "in attendance" time for hazardous materials may be included in break if no other duties performed.)
PROVISION	CURRENT RULE	FINAL RULE - COMPLIANCE DATE FEBRUARY 27, 2012
On-duty time	Includes any time in CMV except sleeper berth.	Does not include any time resting in a parked vehicle (also applies to passenger-carrying drivers). In a moving property-carrying CMV, does not include up to 2 hours in passenger seat immediately before or after 8 consecutive hours in sleeper berth.
Penalties	"Egregious" hours of service violations not specifically defined.	Driving (or allowing a driver to drive) more than 3 hours beyond the driving time limit may be considered an "egregious" violation and subject to the maximum civil penalties. Also applies to passenger-carrying drivers.
Offfield exemption	"Waiting time" for certain drivers at offfields (which is off-duty but does extend 14-hour duty period) must be recorded and available to FMCSA, but no method or details are specified for the recordkeeping.	"Waiting time" for certain drivers at offfields must be shown on logbook or electronic equivalent as off duty and identified by annotations in "remarks" or a separate line added to "grid."