

V. Hours of Service Regulations

A. Changes to Hours of Service Regulations

On April 28, 2003, the FMCSA issued the first significant revision to the Hours of Service regulations in more than 60 years. The new regulations took effect on January 4, 2004. On July 16, 2004, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the new regulations were unconstitutional because the agency had not taken appropriate steps to determine the effect of the regulations on the health of commercial drivers.¹ Congress subsequently provided through the Surface Transportation Extension Act of 2004 that the new regulations would remain in effect until a final rule could be instituted addressing the District of Columbia Court's concerns.² In adherence with the court's ruling, the FMCSA conducted extensive research concerning the new hours of service regulations and adopted a final rule identical to the 2003 regulations. The regulations passed in April of 2003 are still currently in effect.³

B. Maximum Hours of Service

Based on the new regulations, a driver carrying property cannot drive more than 11 hours following 10 consecutive hours off-duty.⁴ A driver cannot operate a commercial vehicle for any period after having been on duty 14 hours following 10 consecutive hours off-duty.⁵ A driver carrying passengers cannot drive more than 10 hours following 8 consecutive hours off-duty or operate a commercial vehicle for any period after having been on duty 15 hours following 8 consecutive hours off-duty.⁶ A driver cannot operate a commercial vehicle after having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week and cannot operate a commercial vehicle after having been on duty 70 hours in any consecutive 8 days if the employing motor carrier operates commercial vehicles every day.⁷

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 driver is relieved from work including: (1) all time at a plant, terminal, facility or other property waiting to be dispatched, unless the driver has been relieved of duty by the carrier; (2) all time inspecting, servicing, or conditioning any commercial vehicle; (3) all time spent at the driving controls of a commercial vehicle in operation; (4) all time in or upon a commercial vehicle, except in the sleeper berth; (5) all time loading or unloading a commercial vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the commercial vehicle or in giving or receiving receipts for shipments loaded or unloaded; (6) all time repairing, obtaining assistance or remaining in attendance upon a

¹ Public Citizens v. FMCSA, 374 F.3d 1209 (D.C. 2004).

² Pub. L. 108-310, 118 Stat. 1144.

³ Pub. L. 109-59, August 10, 2005, 119 Stat. 1144.

⁴ 49 C.F.R. § 395.3(a).

⁵ 49 C.F.R. § 395.3(a).

⁶ 49 C.F.R. § 395.5(a).

⁷ 49 C.F.R. § 395.3(b) & 395.5(b).

disabled vehicle; (7) all time spent providing a breath or urine sample, including travel time, to perform a test required by federal regulations; (8) all time performing any work on behalf of the motor carrier and (9) all time performing compensated work for any person or entity.⁸ When a driver at the direction of the motor carrier is traveling, but not driving or assuming any other responsibility to the carrier, such time shall be counted as on duty time unless the driver is afforded at least 10 consecutive hours off duty when arriving at his destination, in which case he shall be considered off duty for the entire period.⁹ A motor carrier may not permit a driver to operate a commercial vehicle in violation of the maximum hours of service.¹⁰

****Practice Pointer:** Retain a qualified expert to examine the steps taken by the trucking company to monitor a driver's hours of service.

C. Exceptions to Hours of Service Requirements

A driver who encounters adverse driving conditions and cannot safely complete his run within the required maximum driving time may drive an additional 2 hours to complete the run or reach a place of safety.¹¹ In case of an emergency, a driver may also complete his run without being in violation of the maximum hours of service if the driver could have reasonably completed the run absent the emergency.¹² The maximum hours of service requirements do not apply to a driver-salesperson who drives less than 40 hours in any period of 7 consecutive days.¹³ The regulations also do not apply to drivers of commercial vehicles engaged solely in making local deliveries to the ultimate consumer during the Christmas holidays from December 10th to 25th,¹⁴ and the transportation of agricultural commodities within a 100 mile radius during planting or harvesting seasons.¹⁵

****Practice Pointer:** Exempt employees are required to keep information about their hours of service although they do not have to keep driver's logs.

D. Driver's Logs

A driver must record his duty status on a daily log grid for each 24-hour period.¹⁶ (Driver's Log, Appendix of Forms, X-5) The driver's duty status must be recorded as (1) "Off duty" or "Off", (2) "Sleeper Berth" or "SB", (3) "Driving" or "D", (4) "On-duty not driving" or "On."¹⁷ The driver must identify the city, town or place where any change of

⁸ 49 C.F.R. § 395.2.

⁹ 49 C.F.R. § 395.1(j).

¹⁰ 49 C.F.R. § 395.3.

¹¹ 49 C.F.R. § 395.1(b)(1).

¹² 49 C.F.R. § 395.1(b)(2).

¹³ 49 C.F.R. § 395.1(c).

¹⁴ 49 C.F.R. § 395.1(f).

¹⁵ 49 C.F.R. § 395.1(k).

¹⁶ 49 C.F.R. § 395.8(a)(1).

¹⁷ 49 C.F.R. § 395.8(b).

status occurs.¹⁸ In addition to completing the grid, the driver must identify the total miles driven per day and the total hours on duty.¹⁹ The driver must complete all entries legibly and in his own handwriting.²⁰ The daily log must be forwarded to the trucking company within 13 days following completion of the form.²¹ The requirement for keeping daily logs does not apply to drivers who operate within a 100-mile radius of the normal work reporting location if the driver is released from work within 12 consecutive hours, has at least 10 hours off-duty time, does not exceed 11 hours maximum driving time, and the trucking company maintains accurate and true time records of the driver's work for a period of six months.²²

A motor carrier, when using a driver for the first time, must obtain a signed statement from the driver giving the total time on duty during the immediately preceding 7 days.²³ When a driver works for more than one carrier, he must submit his daily logs to each carrier with entries indicating both his status and the carrier he served during that period.²⁴ A motor carrier must maintain records of duty status and all supporting documents for each driver it employs for a period of six months from the date of receipt.²⁵ A driver must retain a copy of each record of duty status for the previous 7 consecutive days which shall be in his possession and available for inspection while on duty.²⁶

A driver may use an automatic on-board recording device in lieu of handwritten logs provided the information is retrievable on demand.²⁷ A motor carrier must monitor its drivers to ensure compliance with the provisions regarding recording his duty status time.²⁸ A carrier's destruction of driver's logs or related documents may give rise to a presumption that the evidence was not preserved because it was unfavorable to the carrier and, therefore, that the driver must have violated the federal regulations.²⁹ A driver cannot be forced to testify about his violation of the hours of service regulations over a Fifth Amendment objection since he would be subject to prosecution for any violation.³⁰ However, driver's logs are not documents protected by the 5th Amendment privilege since the driver is required by law to maintain the logs.³¹

****Practice Pointer:** Request not only the eight days of driver's logs from before the accident but also any bills of lading, weight tickets, hotel receipts and other similar documents needed to verify the accuracy of the driver's logs.

¹⁸ 49 C.F.R. § 395.8(c).

¹⁹ 49 C.F.R. § 395.8(d).

²⁰ 49 C.F.R. § 395.8(e).

²¹ 49 C.F.R. § 395.8(i).

²² 49 C.F.R. § 395.1(e).

²³ 49 C.F.R. § 395.8(j)(2).

²⁴ 49 C.F.R. § 395.8(j)(1).

²⁵ 49 C.F.R. § 395.8(k)(1).

²⁶ 49 C.F.R. § 395.8(k)(2).

²⁷ 49 C.F.R. § 395.15.

²⁸ 49 C.F.R. § 395.8(a).

²⁹ *J.B. Hunt Transport, Inc. v. Bentley*, 427 S.E.2d 499 (Ga. 1993).

³⁰ *Thomas v. Tyler*, 841 F.Supp. 1119 (D.Kansas 1993).

³¹ *Id.*

E. Violations of Hours of Service Provisions

A driver will be declared out of service if he drives after being on duty in excess of the maximum periods or if he fails to have a record of duty status current on the day of examination and for the prior 7 consecutive days.³² A carrier may not allow a driver who has been declared out of service for violating the maximum hours regulations to operate a motor vehicle until he may lawfully do so under the rules.³³ A driver who has been declared out of service for failure to prepare a record of duty status cannot operate a commercial vehicle until he has been off duty for 10 consecutive hours.³⁴ A driver must notify the carrier within 24 hours of being placed out of service for such a violation.³⁵

****Practice Pointer:** Request information about prior violations of hours of service regulations by the motor carrier and its drivers.

³² 49 C.F.R. § 395.13(b).

³³ 49 C.F.R. § 395.13(c)(1).

³⁴ 49 C.F.R. § 395.13(c)(1).

³⁵ 49 C.F.R. § 395.13(d)(3).