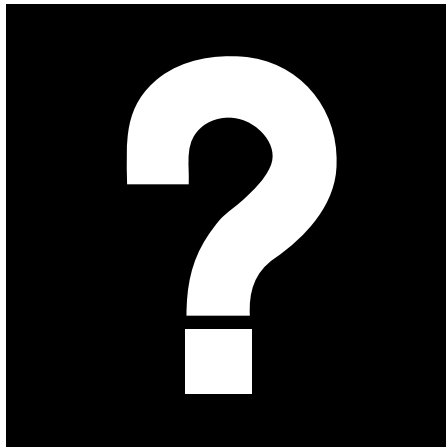


Hours of Service (HOS) Rule

Frequently Asked Questions (FAQs)



August 19, 2005

Conversion Chart

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Hours of Service (HOS) Rule **Frequently Asked Questions (FAQs)**

A. LATEST REVISIONS

A-1. When are carriers and drivers required to comply with the latest revisions of the HOS rule?

Carrier and drivers are required to comply with the latest revisions of the HOS rule on October 1, 2005, the effective date of the rule. Carriers and drivers will not be allowed to operate under the HOS rule prior to its effective date.

A-2. How does the 2005 HOS rule differ from the current (April 2003) HOS rule?

Important changes were made in three areas.

(1) Sleeper Berth: To use any of the HOS provisions regarding sleeper berths, a driver must now have one of the following:

Continuous Sleeper Berth Provision: At least 10 consecutive and uninterrupted hours in the sleeper berth.

Sleeper Berth Provision: The equivalent of at least 10 consecutive hours off-duty (equivalent means at least 8 hours but less than 10 consecutive hours in a sleeper berth and a separate period of at least 2 hours but less than 10 consecutive hours either in the sleeper berth or off duty, or any combination of both).

Continuous Off-Duty and Sleeper Berth Provision: At least 10 consecutive hours sleeper berth and off-duty time combined and uninterrupted. Further details are on the internet at www.fmcsa.dot.gov/documents/rulesregs/hos/logbook-examples.pdf.

(2) Operators of property-carrying commercial motor vehicles not requiring a commercial driver's license: Drivers of non-commercial driver's license (CDL) vehicles (those vehicles not requiring a CDL to operate) who are operating within a 150 air-mile radius of their normal work reporting location and return to their normal work reporting location at the end of their duty tour are now covered by a separate HOS provision. Drivers meeting these conditions are not eligible for the existing 100 air-mile radius provision in § 395.1(e) or the current 16-hour exception in § 395.1(o), since those conflict with this new "Non-CDL, 150 Air-Mile Radius" provision. These drivers are required to comply with the following:

(a) The 11 hours driving, minimum 10 hours off-duty, 14 consecutive hour duty period, 60/70 hours in 7/8 days, 34-hour restart all apply.

(b) On any 2 days of every 7 consecutive days, the driver may extend the 14-hour duty period to 16 hours.

(c) There is no requirement that the driver be released from duty at the end of the 14- or 16-hour duty periods. The driver may continue to perform non-driving duties, which would be counted against the 60/70 hour weekly limitation.

(d) Time records may be used in lieu of records of duty status (RODS).

(3) 34-Hour Restart: Previously, a driver was required to be in compliance with the "60/70 on-duty hours in 7/8 days" limitation before the driver could start counting a 34-hour restart period. Now the 34-hour restart period may begin at the start of any consecutive 34-hour off-duty period.

A-3. Are previous interpretations and guidance regarding HOS still valid?

The Federal Motor Carrier Safety Administration (FMCSA) will be updating and revising its regulatory guidance to Part 395 of the Federal Motor Carrier Safety Regulations (FMCSRs) to provide additional guidance concerning the application of HOS regulations. All prior interpretations and regulatory guidance relating to Part § 395 of the FMCSRs, as well as FMCSA and Federal Highway Administration memoranda and letters concerning Part 395, may no longer be relied upon as authoritative to the extent they are inconsistent with the current rule. All interpretations and guidance for Parts other than Part 395 remain valid.

A-4. Where can I obtain more details about the 2005 revisions of the HOS rules?

Extensive information and downloadable HOS documents are available on the Internet at www.fmcsa.dot.gov/rules-regulations/truck/driver/hos/revised-hos.asp. In particular, note the "Frequently Asked Questions" (FAQs) link on that page. You may also contact the FMCSA Office in your State. A directory of those offices is available at www.fmcsa.dot.gov/about/contact/offices/displayfieldroster.asp.

B. GENERAL PROVISIONS

B-1. Do these HOS regulations apply to *intrastate* commerce?

No. *Intrastate* commercial motor vehicle regulations are under the jurisdiction of each State. The HOS regulations apply directly only to *interstate* commerce. However, most States have adopted intrastate regulations which are identical or very similar to the Federal hours-of-service regulations. A driver involved exclusively in *intrastate* operations should contact the State agency handling commercial vehicle enforcement in the driver's home State with any questions. Usually this is the state police or

highway patrol, although in some States, the function is handled by the department of motor vehicles, department of public safety, or public service commission.

B-2. What are the penalties for violating the HOS rules?

Drivers or carriers who violate the HOS 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;
- FMCSA may levy civil penalties on driver or carrier, ranging from \$1,000 to \$11,000 per violation depending on severity;
- The carrier's safety rating can be downgraded for a pattern of violations; and
- Federal criminal penalties can be brought against carriers who knowingly and willfully allow or require HOS violations, or drivers who knowingly and willfully violate the HOS regulations.

B-3. Are drivers of *passenger-carrying* commercial motor vehicles (CMV) required to comply with the same HOS rule as property-carrying drivers?

No. Motorcoach operators and drivers will continue to operate under the HOS rules as specified in § 395.5

B-4. What happens if a driver operates both a bus and truck for part of each day or each week?

A driver will be subject to the limits on driving time applicable to the CMV the driver is driving (11 hours for a property-carrying CMV, 10 hours for a passenger CMV), and will be required to meet the off-duty requirements applicable to the type of CMV the driver will drive immediately after that off-duty period (10 hours if the next assignment is in a property-carrying CMV, 8 hours if it is in a passenger CMV). For example, if a bus driver completes 8 hours off-duty for the motorcoach company, the driver must remain off-duty for another 2 hours before driving for the trucking company. After completing 10 consecutive hours off-duty, the driver may drive for 11 hours for the trucking company. Following 8 consecutive hours off-duty, the driver may then drive for the bus company.

B-5. If a State has an 8-hour off-duty requirement for intrastate operations, may a driver who takes 8 hours off-duty after completing an intrastate trip begin driving on an interstate trip?

No. The driver of a property carrying vehicle must take an additional 2 consecutive hours off-duty, for a total of 10 consecutive hours, before beginning an interstate trip.

B-6. How would “waiting time” at a terminal, plant, or port be logged?

"Waiting time" at a terminal, plant, or port may be recorded as off-duty, sleeper berth, or on duty/not driving, depending on specific circumstances.

For "waiting time" to be off-duty, the following off-duty conditions must be met:

1. The driver must be relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, and any cargo or passengers it may be carrying.
2. During the stop, and for the duration of the stop, the driver must be at liberty to pursue activities of his/her own choosing and to leave the premises where the vehicle is situated.

If circumstances permit a driver to utilize a valid sleeper berth without being disturbed for a specific period of "waiting time," that time in the sleeper berth may be recorded as "sleeper berth" time. However, a driver must take eight consecutive hours in a sleeper berth, plus another two consecutive hours off duty or in a sleeper berth, in order to meet the requirement for the equivalent of 10 consecutive hours off duty. In most other circumstances, such as when the driver is required to remain with the vehicle to move it when necessary, the "waiting time" should be recorded as "on duty/not driving."

These provisions should not be confused with waiting time of drivers of vehicles that are specially constructed to service oil wells.

B-7. May a driver be called after 8 hours off-duty to report to work 2 hours later?

Yes. The HOS rule does not control communication between the driver and the motor carrier during the driver's off-duty time, so the call may occur. However, the driver cannot be required to do any work for the motor carrier during the 10 hours of off-duty time.

B-8. How does the HOS rule apply to Mexican and Canadian drivers? Are Canadian and Mexican military or other government employees exempt?

Mexican and Canadian drivers operating in the United States must comply with FMCSA's HOS regulations. Although compliance with the HOS regulations is checked by looking backward in time, and activity occurring outside the U.S. may be taken into account, State and Federal officials may only impose penalties for violations that occurred in this country.

For example, upon entering this country, Canadian and Mexican drivers must show a current RODS for the previous 7 consecutive days. U.S. officials cannot penalize a driver for actions that occurred abroad, but failure to have the previous 7 days of RODS while in the U.S. is a violation of § 395.8(k)(2). Additionally, Mexican and Canadian drivers of property-carrying commercial motor vehicles may not drive in the U.S. unless their last off-duty period (either here or abroad) amounted to 10 consecutive hours (or an authorized sleeper-berth equivalent). If such a driver took only 8 consecutive hours off-duty in Mexico or Canada just before starting a trip into the U.S., he/she would be required to take 10 consecutive hours off-duty immediately after entering this country.

Canadian and Mexican military and other government employees are NOT exempt from the HOS regulations. The general exemption in § 390.3(f)(2) applies only to U.S. Federal, State, and local governments.

B-9. How are property-carrying and passenger-carrying drivers determined as the terms are used in the HOS rule?

It is easiest to determine passenger-carrying, with any other CMV drivers to be considered property-carrying. The definition of a CMV in § 390.5 should be used to determine passenger-carrying. If a driver is operating a CMV “designed or used to transport more than 8 passengers (including the driver) for compensation; or designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation,” the driver would be considered to be passenger-carrying regardless of whether there were actually any passengers on the vehicle. This would include, for example, new buses being delivered (driven) from manufacturer to dealer.

C. SHORT-HAUL OPERATIONS

General Questions

C-1. What is a “short-haul” operation?

The HOS regulations do not specifically define or use the term "short haul" except as a caption for § 395.1(e), which includes requirements for drivers using the 100 air-mile radius exception and those covered by the "non-CDL, as defined in Part 383, 150 air-mile radius" provision.

C-2. What is an "air-mile"?

The term "air-mile" is internationally defined as a "nautical mile" which is equivalent to 6,076 feet. Thus, the 100 air-miles are equivalent to 115.08 statute miles, and 150 air-miles are equivalent to 172.6 statute miles.

C-3. What are the recordkeeping requirements for a driver who is utilizing either the 100 or non-CDL, as defined in Part 383, 150 air-mile radius provisions?

Under both provisions, a driver may use time records in lieu of RODS.

C-4. May drivers who work split shifts take advantage of the short-haul operations provisions found in Part § 395.1(e)?

For property-drivers, the concept of "split shifts" is no longer relevant due to the limitations of the 14-hour rule. The provisions in § 395.1(e) only provide an exception to the RODS requirements. Generally, they do not exempt the driver from any requirements of the HOS rules.

100 air-mile radius driver - A driver may go on- and off-duty multiple times during a duty tour, after completing at least 10 hours off duty, but the total of all on- and off-duty time accumulates toward their 12 hours. Once a driver is on duty more than 12 hours they no longer meet the 100 air-mile radius exemption.

Operators of property-carrying commercial motor vehicles not requiring a commercial driver's license - A driver may go on- and off-duty multiple times during a duty tour, but the total of all on- and off-duty time accumulates towards the 14- or 16-hour time limit, whichever is applicable at the time, until the driver has a period of 10 or more consecutive hours off-duty.

Prior Regulatory Guidance (§ 395.1 Question 19) on this subject no longer applies to property-carrying drivers.

C-5. How does a driver comply if during a 7-day period the driver operates some days under the 100 air-mile radius exception, some days under the "non-CDL 150 air-mile radius" provision, and some days under neither?

The driver complies with the provisions of the 100 air-mile radius exception or the non-CDL, as defined by Part 383, 150 air-mile radius provision if either of those are applicable for the entire duty period (usually one day). For example, if a driver operates within the 100 air-mile radius for part of the day and then travels outside the radius during the same duty period, the exception would not apply. The driver must remain under the

conditions of the exception for the entire duty period. Compliance may vary from one duty period to the next, depending on operating circumstances. A driver operating under the 100 air-mile radius exception for one day and then outside the radius for the second day would only be required to make a RODS for the second day.

100 Air-Mile Radius Provision

C-6. How would you summarize the 100 air-mile radius HOS provision in § 395.1(e)(1)?

The 100 air-mile radius exception in Part § 395.1(e)(1) is an *option* to use time records in lieu of RODS on days when the driver meets the conditions of the exception, which are:

- The driver operates within a 100 air-mile (115 statute miles) radius of the normal work reporting location, and
- The driver returns to the work reporting location and be *released from duty* within 12 consecutive hours, and
- The driver maintains time records as specified in the rule, and
- The driver is not covered by the "non-CDL 150 air-mile radius" provision.

C-7. May a “100 air-mile radius” driver utilize the “16-hour duty period” exception in Part § 395.1(o)?

Yes. A driver normally operating under the 100 air-mile radius exception in § 395.1(e) may also meet the requirements in § 395.1(o) enabling the driver to have one period of 16 hours on-duty each week (or after a 34-hour restart). However, on the day in which the 16-hour exception is utilized, the driver would not meet the 12-hour duty-period requirement of the 100 air-mile radius exception and would therefore be required to make a RODS for that day.

Non-CDL 150 Air-Mile Radius Provision

C-8. What drivers are covered by the Non-CDL 150 air-mile radius provision?

Operators of property-carrying commercial motor vehicles not requiring a CDL, as defined in Part 383, may be covered by the Non-CDL 150 air-mile radius provision. Note that the applicability depends on the type of vehicle being driven, not whether the operator possesses a CDL.

C-9. How would you summarize the Non-CDL 150 air-mile radius provision in Part § 395.1(e)(2)?

Drivers of non-CDL vehicles (those vehicles not requiring a CDL, as defined in Part 383 to operate) who are operating within a 150 air-mile radius of their normal work reporting location and return to their normal work reporting location at the end of their duty tour are

now covered by separate HOS provisions. Drivers meeting these conditions are not eligible for the existing 100 air-mile radius provision in § 395.1(e)(1) or the current 16-hour exception in § 395.1(o), since those conflict with this new Non-CDL 150 air-mile radius provision. These drivers are required to comply with the following:

(a) The 11 hours driving, minimum 10 hours off-duty, 14 consecutive hour duty period, 60/70 hours in 7/8 days, 34-hour restart all apply.

(b) On any 2 days of every 7 consecutive days, the driver may extend the 14-hour duty period to 16 hours.

(c) There is no requirement that the driver be released from duty at the end of the 14- or 16-hour duty periods . The driver may continue to perform non-driving duties, which would be counted against the 60/70 hour weekly limitation.

(d) Time records may be used in lieu of records of duty status.

D. 14-HOUR DUTY PERIOD

D-1. May a driver be on duty for more than 14 consecutive hours?

Yes. A driver may remain on duty for more than 14 hours; however, the driver of a property-carrying CMV cannot *drive* after the 14th hour after coming on duty. Also, the additional on-duty time will be counted toward the 60/70-hour on-duty limit.

D-2. If a carrier allows a driver to log mealtime or similar activities as off-duty time, does that permit a driver to extend the 14-hour duty period?

No. Off-duty breaks during the day do not extend the workday to permit a driver to drive after the 14th consecutive hour on duty. However, time logged as off duty is *not* counted in calculating a driver's 60/70-hour on-duty limit.

E. 16-HOUR EXCEPTION

E-1. What is a “duty tour” as the term is used in Part § 395.1(o)?

The 16-hour exemption in § 395.1(o) is designed for one-day “duty tours.” The duty tour is the interval between the time a driver comes on-duty and is released from duty on a daily basis. This period begins and ends at the driver's normal work reporting location and may only be used following 10 or more consecutive hours off-duty, 10 or more consecutive hours in the sleeper berth, or a combination of 10 or more consecutive hours off-duty and sleeper berth time.

E-2. If a driver is “on duty, not driving” during the 15th and 16th hour of his duty tour and does not drive after that, has he used the 16-hour exception in § 395.1(o)?

No. Example: If a driver was on duty 16 hours on Wednesday, but didn't drive after being on duty 14 hours, could the driver use the 16 hour extension on Friday and be allowed to drive after the 14th hour as long as all other conditions and regulations (11-, 16-, and 60/70- hour rules) were met?

In this scenario, the driver may choose to use the 16-hour extension on Friday as long as the driver meets all of the requirements for the 16-hour exception outlined in Part § 395.1(o) and also remains in compliance with Part § 395.3(a)(1) and Part § 395.3(b). Although the 16 hours on-duty on Wednesday will count toward the driver's 60/70 calculations, the driver has not utilized the 16-hour exception unless the driver has actually driven after the 14th hour.

E-3. May a driver having more than one work reporting location use the § 395.1(o), 16-hour exception?

As stated in § 395.1(o) and current § 395.1 Interpretation Question 15, a driver having more than one work reporting location could use the § 395.1(o) 16-hour exception; however, its availability would be limited by the requirement of § 395.1(o)(1) that the “carrier released the driver from duty at that location for the previous five duty tours the driver has worked...” A driver alternating between two normal work locations on a weekly basis would not be able to utilize the exception unless he worked six days per week, and then the exception could only be used on the sixth day.

E-4. May a driver utilize the adverse driving rule, which extends the driving time by two additional hours, in conjunction with the 16-hour exception?

No. A driver may not use the exception for adverse driving conditions while also using the 16-hour exception for property-carrying drivers. Section 395.1(b)(1)(ii) of the adverse driving conditions exception specifically states that a property-carrying driver may not drive or be permitted to drive after he/she has been on-duty after the end of the 14th hour after coming on-duty following 10 consecutive hours off-duty.

E-5. When the “16 hour exception” is used, may sleeper berth periods or extended off-duty periods be included in the “duty tour?” How does this affect team drivers?

The § 395.1(o) exception for property-carrying drivers is for drivers who return to the normal work reporting location and are released from duty at the end of each of the previous 5 duty tours. The use of 10 consecutive hours off duty or the equivalent (sleeper berth, off duty, or any allowable combination thereof) before returning to the

work reporting location would interrupt the duty tour, and the driver would not be eligible to use the 16-hour exception that day or again until after 5 or more duty tours when the driver did return to the work reporting location.

F. 34-HOUR RESTART

F-1. Does any period of 34 consecutive hours off-duty automatically restart the calculation of the 60/70-hour on-duty period?

Yes. Any period of 34 consecutive hours off-duty will restart the 60/70 hour calculation.

F-2. If a driver works at another job, unrelated to trucking, during his 34-hour off-duty restart period, and then begins a duty shift for the trucking company, does the 34-hour restart provision apply?

No. Performing compensated work for a person not a motor carrier is considered on-duty time, which would interrupt the 34-hour period.

F-3. If a driver is on-call, but has not been called for 34 hours, may those 34 hours be counted as a 34-hour restart?

Yes, provided the carrier has not required the driver to report for work until after the 34-hour period has ended.

F-4. If a driver takes the 34-hour restart in Canada or Mexico just before entering the U.S., will it be recognized as such in the U.S.?

Yes. Duty status changes and periods occurring in Canada or Mexico before entering the U.S. are included in HOS calculations while in the U.S.

F-5. How should the “recap” section of the RODS page be completed when using a 34-hour restart to begin a new 60/70 hour period?

The RODS pages printed by most commercial firms include a “recap” on each page for drivers to calculate compliance with the 60/70 hour limits and show “time remaining” within those limits. This “recap,” however, is not required or addressed by the FMCSRs. Therefore, the “recap” may be completed in any manner desired.

G. SLEEPER BERTHS

G-1. May a driver spend part of his or her 34-hours of consecutive off-duty time in a sleeper berth?

Yes, provided the 34-hour period is consecutive and not broken by on-duty or driving activities.

G-2. If a team driver goes directly from 10 consecutive hours off-duty to the sleeper berth at the start of his duty period, can the sleeper-berth period be excluded from calculation of the 14-hour limit?

Yes. It would be a "...combination of consecutive sleeper-berth and off-duty time amounting to at least 10 hours" per § 395.1(g)(1). The driver would not be permitted to perform any duties, such as pre-trip inspections, prior to using the sleeper berth.

G-3. How does a driver who is utilizing the sleeper berth provision calculate his or her compliance with the 14-hour rule?

A sleeper-berth period of at least 8 consecutive hours is excluded from calculation of the 14-hour limitation. All other sleeper berth periods are included in the 14-hour calculation (unless part of a sleeper-berth/off-duty combination of 10 or more consecutive hours).

H. OILFIELD OPERATIONS

H-1. Are drivers of vehicles that are specially constructed to service oil wells required to log waiting time as on-duty time under the new rule?

No. The new rule retains the current exception in § 395.1(d)(2), which provides that drivers of vehicles that are specially constructed to service oil wells are not required to log time waiting at a natural gas or oil well site as "on-duty not driving" time. This specific group of drivers is allowed to extend, by the amount of their waiting time, the 14-hour period after coming on-duty during which driving is allowed.

H-2. Is off-duty time at a yard for oil-field equipment excluded from the 14-hour calculation?

No. Off-duty time at a yard for oil-field equipment is counted toward the calculation of the 14-hour rule. Only waiting time at a natural gas or oil well site may be excluded from on-duty time.

H-3. May “oilfield” drivers take advantage of the 16-hour exception provided for property-carrying drivers under § 395.1(o)?

No. The exception in § 395.1(o) is only available to drivers who otherwise strictly observe the 14-hour limit. Since § 395.1(d)(2) allows drivers of commercial motor vehicles specially constructed to service oil wells to exclude waiting time at a natural gas or oil well site from on-duty time, these drivers do not strictly observe the 14-hour limit on a daily basis. An oilfield driver may choose to use the exception provided in either § 395.1(d)(2) or § 395.1(o), but not both.

H-4. Mechanics are often dispatched with oilfield service crews. Some of the mechanic’s service vehicles meet the definition of a CMV. Can these mechanics use the oilfield operations exceptions found in § 395.1(d)?

Based on the language of § 395.1(d)(1), dedicated oilfield mechanics operating CMVs are able to take advantage of the 24-hour restart provision since they are servicing the vehicles/equipment associated with field operations. However, the mechanics may not take advantage of the provisions of § 395.1(d)(2) to exclude waiting time at a natural gas or oil well site from on-duty time because the vehicle being operated is not specially constructed to service oil wells.

I. DRIVER-SALESPERSONS

I-1. What HOS exceptions are available to “driver-salespersons”?

- Under § 395.1(c), a driver meeting the “driver-salesperson” definition in § 395.2 (private carrier, solely delivering and selling goods or services, 100 air-mile radius, no more than 50% of on-duty time is driving) does not have to comply with the 60/70-hour limitation if the driver does not exceed 40 hours driving in any 7-consecutive-day period.
- A property-carrying driver-salesperson may use the “no RODS” provision of § 395.1(e)(1) if the driver-salesperson meets the requirements of operating within a 100-air-mile radius and has at least 10 consecutive hours off-duty separating each 12 hours on-duty. Although a driver-salesperson is not required to return to the work reporting location to be released from work within 12 hours, the driver may not drive after the 14th hour after coming on duty. Driver-salespersons using the 100-air-mile radius exception must complete a RODS on days in which they exceed 12 hours on duty.
- A driver-salesperson may be eligible to use the 16-hour exception of § 395.1(o) if the driver meets all of the requirements of that section.
- A property-carrying driver-salesperson may use the 150-mile exemption, if applicable.

J. OTHER EXEMPTIONS

J-1. Are there other hours-of-service exemptions not included in this regulation?

Yes. The Motor Carrier Safety Act of 2005 (Part IV of SAFETEA-LU) includes several exemptions to the hours-of-service for specific industries. Although not included in this regulation, these exemptions are in effect.