HOS Regulations

TLC Client Questions and Feedback
Many questions have been asked recently regarding the appeals and changes back to the old HOS. This Newsletter will answer many of your questions and remove some of the anxieties and doubts regarding immediate changes back to the old regulations in 2004. TLC will help to answer your questions and keep you up to date through this newsletter and other follow-ups as changes occur. Please review this newsletter to stay abreast of the activities occurring with the FMCSA and in Congress.

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Originally created well over 60 years ago, the HOS regulations were (and are) designed to keep tired drivers off the road. These regulations, located in Part 395 of the Federal Motor Carrier Safety Regulations (FMCSR), limit the number of hours you can drive, as well as the number of hours you can be on duty. The HOS regulations require you to maintain a record of duty status. The record of duty status, commonly called the driver’s daily log, has four classifications of time indicated on the grid.

Off-Duty Time – Any time that you are not “on-duty” for your employer, and are not responsible for a vehicle or its load, should be logged on line 1 of the grid.

Sleeper Berth – Any time spent in a sleeper berth that meets the criteria in §393.76, if such a berth exists, should be logged on line 2 of the grid. No other time may be logged on this line.

Driving Time – All time spent behind the wheel is considered driving time and should be logged on line 3 of the grid. Under current rules after 11 hours of driving time, you must have 10 consecutive hours off duty before you can drive again.

On-Duty Time – Any time spent in the vehicle when you are not behind the wheel or in the sleeper berth must be logged on line 4 of the grid as on-duty, not driving time. Any other non-driving work is also on-duty time and must be logged on line 4. For a full description of what is included in the definition of on-duty time, see §395.2.

The “current” HOS rules
Under current HOS (HOS) rules, you cannot begin or continue to drive after the 14th consecutive hour after coming on duty. Those rules came into effect as of October 1, 2005. You cannot drive again until you have 10 consecutive hours off duty. Lunch breaks or other off-duty time do not extend that 14 hour period. The 14 hours are consecutive from the time you start your tour of duty.

60/70 Hour Limit – Under this requirement (which remained unchanged from the “old” rule), you cannot drive after having been on duty for 60 hours in any 7 consecutive days or 70 hours in any 8 consecutive days. Keep in mind that consecutive days does not mean a week (Sunday through Saturday) or a “work week,” it means any 7- or 8-consecutive day period. You don’t start over when counting total hours. The oldest day’s hours drop out of consideration as each new days’ hours are added.

34-hour Restart – The regulations include an optional “restart” provision. This allows you to “re-start” your 60 or 70 hour clock after having at least 34 consecutive hours off duty. Originally, you could not use the 34 hour restart if you had exceeded the 60/70 hour rule, and had to continue to calculate hours available under the 60/70 hour rule.

However, effective October 1, 2005, you can now use the 34-hour restart option no matter how many on-duty hours have accumulated. Prior to that date, drivers had to be under the 60/70-hour limit before starting the 34-hour off-duty period.

Record of Duty Status – You are required to keep a record of your duty status (log) for each 24-hour period. You must complete the record of duty status in your own handwriting (in duplicate) or by using an automatic on-board recording device. The record must be legible and kept current to your last change of duty status.

The original must be submitted to your company within 13 days of completion. Your company is required to keep records of duty status and all supporting documentation for six months. You must have a copy of each record for the last seven consecutive days. These copies, along with the original record for the current day, must be in your possession and available for inspection while you are on duty.

No changes for passenger vehicles
The requirement for passenger-carrying vehicles did not change under the new HOS regulations:

• Ten hours of driving time following eight consecutive hours of off duty.
• No driving after 15 hours of on-duty following eight consecutive hours off duty.
• No driving after accumulating 60 hours in any seven consecutive days or 70 hours in any eight consecutive days.

A chronology of the HOS legal battle
Here is a brief chronology of the court battle that has been ongoing since the “new” HOS rules were issued.

On July 16, 2004, The United States Circuit Court of Appeals for the District of Columbia vacated the Federal Motor Carrier Safety Administration’s (FMCSA) HOA regulations that became mandatory on January 4, 2004. That decision sent the HOS regulations back to FMCSA for review. FMCSA had a minimum of 45 days to review the decision and decide what to do. During that time, the current HOS regulations remained in effect. The Court Order was a result of a lawsuit filed by Public Citizen, Citizens for Reliable and Safe Highways (CRASH), and Parents Against Tired Truckers (PATT).

FMCSA files motion to seek stay in suit
On August 30, 2004, FMCSA filed a motion with the Court of Appeals seeking to stay further action on the HOS rule. If the stay was granted, the new HOS rules would remain in effect for the time being. After consultations with federal and state officials, FMCSA believed a stay was necessary to avoid substantial disruption in enforcement of HOS requirements. Staying the Court’s decision would allow the agency time to address and correct concerns expressed by the Court about the new HOS rules.


The three consumer safety groups then filed another brief with the Court asking it to uphold its decision to overturn the new HOS regulations. The brief was filed on September 13, 2004, and asked the Court to refuse the FMCSA request for a delay of the decision. FMCSA then had until September 23, 2004, to respond one final time to the Court.

FMCSA responds to brief in HOS lawsuit

On September 30, 2004, FMCSA filed its reply with the Court of Appeals in support of its earlier motion for a stay of the Court’s mandate to rescind the new HOS rules.

FMCSA indicated that it believed the petitioners were incorrect in their assertions that such a stay “would be unprecedented, inconsistent with the Court’s rules, and unnecessary.” FMCSA believed a stay was warranted, given “the lack of a holding that the current rule is unsafe, coupled with the severe enforcement void that would result.”

Congress keeps current HOS rules in place

Then, while all eyes were trained on the Court for its ruling, a Congressional bill passed on Thursday, September 30, 2004, providing an eight-month extension in federal highway funding and including a provision to keep the current HOS rules for truck drivers in place for up to one year. The bill was signed by President Bush late on September 30, 2004. It kept the existing HOS rules in effect until either FMCSA issued new rules or September 30, 2005, whichever was earlier.

This Congressional action acknowledged the Court decision by stating that a new FMCSA rule would address “the issues raised by the July 16, 2004, decision.” Those issues included the additional hours of driving time, the 34-hour restart, sleeper-berth usage and electronic on-board recorders.

New HOS rule appears in Federal Register

FMCSA published a final rule governing HOS for commercial motor vehicle drivers, following a Notice of Proposed Rulemaking published January 24, 2005. The rule addressed requirements for driving, duty and off-duty time; a recovery period, sleeper-berth usage and electronic on-board recorders.

Congress had provided, through the Surface Transportation Extension Act of 2004 that the 2003 regulations would remain in effect until the effective date of a new final rule addressing the issues raised by the Court or September 30, 2004, whichever occurred first. The August 25 rule is the one that became effective October 1, 2005.

Groups go to Court a second time on HOS rule

In a petition filed in the US Court of Appeals for the District of Columbia Circuit, five groups asked the Court to review the final HOS rule issued August 25, 2005, by FMCSA. The two-page petition was the first step in legally challenging the rule. In the petition, five organizations told the Court on February 28, 2006, that the federal government’s rule detailing how many hours truckers may drive before taking a break is flawed and should be changed to help reduce fatigue-related crashes.

Three of the groups – Public Citizen, CRASH and PATT – had successfully sued the government over the rule in 2003. This time they were joined by Advocates for Highway and Auto Safety, which filed a critical amicus brief in the previous case, and the International Brotherhood of Teamsters.

In the opinion of the protesting groups, the 2005 rule increases the number of hours that truckers may drive without a break and the number of hours truckers may drive per week. Further, the 2005 rule, like the 2003 rule, fails to require electronic onboard recorders, which the groups say would provide reliable data on how many hours truckers drive and permit effective enforcement of the rule.

The five groups jointly petitioned FMCSA in September 2006 to reconsider its rule. After waiting five months for an answer, the groups withdrew the petition for reconsideration and filed with the Court. The case was litigated by Public Citizen lawyers.

Court consolidates HOS cases and sets schedule

The United States Court of Appeals for the District of Columbia Circuit, overseeing the current legal challenges to the federal HOS rules, issued three procedural orders to consolidate the cases, denied a request from one of the petitioners, and set a briefing schedule for the action. The first two orders were issued on May 8, 2006, and the briefing schedule was issued on May 10, 2006.

On its own motion, the Appeals Court consolidated separate challenges filed by the Owner-Operator Independent Drivers Association (OOIDA) and a coalition of safety groups led by Public Citizen, so the Court will have to hear only one case. The Court also denied a request by Public Citizen that the HOS case be heard by the same panel of judges that heard the group’s 2003 challenge to the HOS rules. And the Court set a briefing schedule calling for briefs in the case to be filed between June 26 and September 29, 2006. A final decision in the case was not expected before early 2007.

Oral arguments occur in HOS case

The most recent chapter had the US Court of Appeals for the District of Columbia Circuit hearing the court case challenging federal HOS rules on Monday, December 4, 2006, before Judges Ginsburg, Henderson and Garland.

All sides submitted final written arguments. The OOIDA and safety advocacy group Public Citizen challenged numerous aspects of FMCSA’s latest HOS rule revisions, issued August 25, 2005. Oral arguments were presented to the three-judge panel, and a final decision in the case was expected sometime in early 2007.

No decision yet issued in HOS case

As of this writing, a ruling on the most recent challenges had not yet been issued by the Court in Washington, DC. Meantime, the October 1, 2005, manifestation of the rules remains in effect.

Congratulations!

Drivers of the Month

Each driver will receive a TLC gift.

TLC recognizes safe drivers each month.

Theodore Cook Jr.
David Plant
Richard Fezuk
Michael Burkhart
Alvin Towns
Orville Glover
Donny Brown
Larry Daniel
Edward Mock
David Wolfe

Ole West Express LLC
Phoenix Express
Pyne Freight Lines, Inc.
Oglebay Norton Ind Sands Inc.
Paris Trucking Co.
Owner Operators Inc
One Source Transportation
Patco
Piedmont Transportation Group Inc.
Pollywog Transport Inc.