



Hours of Service Regulations – The Basics

What are hours of service regulations?

Hours of service (HOS) regulations are federal regulations limiting when and for how long a driver of a commercial motor vehicle (CMV) may drive during the course of a single day and an entire week. The purpose of the HOS regulations are to keep CMV drivers alert while driving and to reduce driver fatigue. The HOS regulations can be found in Title 49 of the Code of Federal Regulations (CFR) Part 395 (49 CFR 395).

Who has to comply with hours of service regulations?

The vast majority of CMV drivers have to comply with HOS regulations. "In general, a CMV is a vehicle that is used as part of a business and is involved in interstate commerce and fits any of these descriptions:

- Weighs 10,001 pounds or more;
- Has a gross vehicle weight rating or gross combination weight rating of 10,001 pounds or more;
- Is designed or used to transport 16 or more passengers (including the driver) not for compensation;
- Is designed or used to transport 9 or more passengers (including the driver) for compensation; or
- A vehicle that is involved in Interstate or intrastate commerce and is transporting hazardous materials in a quantity requiring placards is also considered a CMV."

Background:

In November 1996, the Federal Highway Administration (FHWA) announced its intention to review federal regulations on drivers' HOS by issuing an Advanced Notice of Proposed Rulemaking (ANPRM), thus beginning a twelve year ordeal in revising the regulations, which had remained relatively unchanged since their establishment by the Interstate Commerce Commission in 1937. In May 2000, the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Proposed Rulemaking (NPRM) outlining significant and sweeping proposed changes for drivers of all types. Opposition to the proposed changes was immediate and fierce. Not only did the proposal seek to severely diminish the total number of hours drivers could be on-duty, it sought to eliminate the 24-hour clock reset exception enjoyed by the construction and other industries and to eliminate the tolerance guidelines enacted in some states that provide additional flexibility for intrastate drivers. It was immediately evident that, should the regulations included in the NPRM move forward, prices on everything from toothpaste to groceries to concrete would dramatically increase and an already well-documented driver shortage would be exacerbated.

NRMCA took immediate action to defeat the proposed changes and engaged the entire ready mixed concrete industry to take action against the rule. NRMCA members and staff participated in all of the hearings held by the FMCSA throughout the country and submitted comprehensive comments including a recommendation for establishing a construction industry type driver. NRMCA worked in coalitions with several trucking and construction industry groups that ultimately secured congressional support in keeping the proposed regulations from moving forward.

In April 2003, after receiving over 50,000 comments on the proposal, the FMCSA issued a final drivers' HOS rule that is vastly different from the original proposal. Although the ready mixed concrete industry scored significant victories in retaining the 24-hour clock reset exception and intrastate tolerance guidelines, the regulations made several changes to which the ready mixed concrete industry is subject. The regulations were challenged a year

later and a second final rule was issued in October 2005 with very minor changes to only the sleeper birth requirements.

In December 2006, public safety advocacy groups challenged the October 2005 rule in the DC Circuit Court of Appeals. In July 2007, the DC Circuit court issued an opinion striking down certain provisions of the 2005 HOS rule because their implementation had not been fully subject to notice and comment. A stay was then filed with the court which was granted for a 90-day period. At the end of the stay in December 2007, the FMCSA issued an interim final rule (IFR) that retained the vacated provisions. FMCSA issued the IFR after they had obtained new data showing that the vacated provisions have actually helped to improve highway safety. NRMCA commented, in April 2008 on the IFR, advocating for the retention of the provisions.

Then, in November 2008, the FMCSA issued a final rule on HOS. The new rule left the regulations unchanged, with all HOS provisions taken advantage of by the ready mixed concrete industry remaining intact.

Following the November 2008 final rule however, public safety advocacy groups again filed their third suit challenging the rule in the DC Circuit Court of Appeals. In response, just one day before FMCSA was scheduled to file its court brief, in October 2009, at the direction of the new Administration, FMCSA entered into an agreement with the public safety advocacy groups to re-review the final rule. FMCSA was given nine months to propose its changes, if any, to the White House and an additional 12 months to issue a new final rule.

In furthering the process of re-reviewing the rule, FMCSA held four listening sessions in January 2010, all of which NRMCA presented comments at. Following the listening sessions, FMCSA published a new proposed HOS rule in December 2010 with suggested changes to the driving window, on-duty time frame, the definition of on-duty, and limits on restarting weekly hour accumulations. FMCSA then held another listening session in February 2011 on the new proposal, which NRMCA presented at as well. February 2011 also held the due date for comments to be submitted on the rule, which NRMCA submitted. In June 2011 the U.S. House of Representatives Committee on Small Business held a hearing on the new HOS proposal, during which NRMCA provided testimony for and NRMCA member who detailed the erroneous nature of the proposal.

Finally, in December 2011, after missing two court-set dates to finalize a new HOS rule, the FMCSA issued a new final rule on HOS containing drastic changes. Following the rule's finalization, in February 2012, both trucking advocates and public safety advocacy groups filed the fourth law suit against FMCSA and HOS regulations. The groups alleged the rule was over burdensome and didn't go far enough, respectively. The U.S. Court of Appeals for the District of Columbia Circuit heard both groups' arguments in March 2013. Absent a court ruling overturning the December 2011 rule, the new HOS rule changes went into effect July 1st, 2013.

Current Status:

All HOS provisions taken advantage of by the ready mixed concrete industry remain intact. To view the new rules currently in place please visit http://www.fmcsa.dot.gov/documents/hos/Interstate-Truck-Driver-Guide-to-HOS_508.pdf.

Changes Summary:

On December 22nd, 2011 the FMCSA published a contentious and long-awaited new final HOS rule. Specifically, the rule:

- Limits the use of the 34-hour restart provision to just once a week covering "at least two periods between 1 a.m. and 5 a.m.";
- Requires drivers to take a 30-minute break after at most eight consecutive hours;
- Changes the "on-duty time" definition to not include "...any time resting in a parked CMV"; and
- Permits penalties for "egregious violations of driving-time limits." The definition of an "egregious violation" is: "A driver who exceeds, or motor carrier that requires or permits a driver to exceed, by more

than three hours the driving-time limit..." Such a violation could result in a fine of up to \$11,000 for motor carriers, and/or \$2,750 for drivers, for each violation.

→ The compliance date for the 34-hour restart change and the mandatory 30-minute break was **July 1st, 2013**.

→ The "on-duty time" change and the "egregious violation" provisions became effective **February 27th, 2012**.

*Note: The HOS provisions of importance to the ready mixed concrete industry, including the 24-hour weekly clock reset for construction materials deliveries, the 16-hour short-haul exception, the 100 air-mile logbook exemption, and the current intrastate tolerance guidelines remain unchanged by the new rule.

*Although the new HOS rule applies to interstate commerce (crossing state lines), as with many other regulations set at the federal level, most states adopt the new regulations making them effective in those states as well, either automatically or at a later date. Most state adoption timelines differ, however for those that don't adopt the new regulations they risk losing federal transportation money. Please check with your state association or state enforcement agency to determine if and/or when your state will adopt these changes.

For more information on the new HOS rule please visit FMCSA's website at <http://www.fmcsa.dot.gov/rules-regulations/topics/hos/index.htm>, or obtain a copy of NRMCA's HOS Compliance Guide 2013 by visiting <http://my.nrmca.org/scriptcontent/BeWeb/Orders/ProductDetail.cfm?pc=2PHOS>.

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