

Transportation Alert: DIY Motor Carrier Fixes to Supply Chain Problems: Hours of Service

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In these times of increased shipping volume and a continued drought of qualified drivers, there are actions a motor carrier can take to help alleviate the crunch. This alert addresses ways a motor carrier may maximize a driver's available hours under the Federal Motor Carrier Safety Administration's (FMCSA) hours of service (HOS) regulation.

Good HOS management is a fundamental principle for carriers, particularly with the precision brought about by Electronic Logging Devices (ELDs) for long haul drivers, which first became mandatory in December 2017. The supply chain crunch has added many dead hours to a driver's shift and what follows are some things a carrier should consider to stretch hours – safely and legally.

Fully Implement the 2020 HOS Changes

The FMCSA made the HOS rules more flexible in four different ways beginning September 29, 2020:

1. The 30 minute required break can now be satisfied if the driver is on duty but not driving. In other words, the break is now a break from driving not from working.
2. Drivers can drive for longer periods of time in the event of an unforeseen "adverse driving condition."
3. The short-haul exemption for drivers of Commercial Motor Vehicles (CMVs) with a Gross Vehicle Weight Rating (GVWR) of at least 26,000 pounds has been expanded both with respect to the type of hauls that are now considered "short-haul" and with respect to the maximum on-duty hours.
4. Drivers using sleeper berths have more flexibility about when and how to take their required 10 hours off duty.

If the fog of COVID caused you to overlook these changes, please incorporate them into your plans and operations. If you have implemented them, keep an eye on the current court challenge against them by the Teamsters and others seeking to invalidate them. *Advocates For Highway and Auto Safety v. FMCSA*, No. 20-1370 (D.C. Cir.).

Take Full Advantage of Exceptions

Hurray For Christmas. During the holiday season (Dec. 10 to 25) HOS maximums (10 hours off, 14 hours on duty, 11 hours of drive time) do not apply to "deliveries from retail stores and/or retail catalog businesses to the ultimate consumer" so long as the driver stays within a 100-air mile radius of the driver's work-reporting location. A provider of last-mile services should consider whether those deliveries are from "retail stores."

Longer Work Days for Short-Haul Drivers of Lighter CMVs. Some short-haul drivers may drive during a longer period of time on certain days. The 14-hour on-duty rule is modified if the short-haul driver starts and ends the workday at the same location and operates a CMV with a GVWR between 10,001 and 25,999 pounds.

Tandems Keep the Wheels Turning

Team drivers can be well suited for lengthy deliveries where the turnaround time at point of consignment is predictable. That is, if you can find a team.

Transportation Management Systems

For carriers charged with managing millions of road miles annually, it may be time to invest in a Transportation Management System or an upgrade to the one you already have. A good TMS will help a carrier better optimize both miles and driver hours.

Wait Time Surcharges

Taxes have a funny way to change behaviors, and shippers and consignees will want to avoid holding your driver at the gate if they know a surcharge will be coming. The current crisis may be an opportune time to introduce them into your business relations.

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