

# The New 2020 Hours of Service Rule:

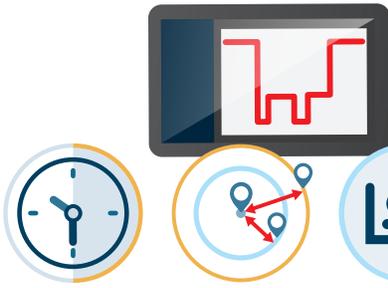
## More Flexibility & Productivity



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# The New 2020 Hours of Service Rule: More Flexibility & Productivity

## Introduction

Roughly two years in the making, new federal hours-of-service (HOS) rules have arrived. If you've been stung by HOS revisions in the past, you may be pleasantly surprised by what you find in the current batch of changes.

The new rules could provide commercial truck and bus drivers across the nation with a lot more flexibility — and with more productivity — if applied correctly. They also hold the risk of increased liability for those who don't apply them properly.

The changes affect the 30-minute break, the short-haul exception, the sleeper-berth option, and the exception for adverse conditions. But before using the new rules, you and your drivers must understand how and when they apply — and how to implement them properly.

This whitepaper summarizes the new hours-of-service rules, who's affected by the new rules, how they might apply to your operations, how you can use each of the four changes to your benefit, and considerations you need to keep in mind as you put the new rules into use.

## The Four Rules That Are Changing

Effective September 29, 2020, the changes impact four areas of the HOS rules in 49 CFR Part 395:

1. **The 30-minute break rule,**
2. **The 100-air-mile exception,**
3. **The sleeper-berth provisions, and**
4. **The exception for adverse driving conditions.**

**Taken together, the changes are meant to add a measure of flexibility for both long- and short-haul truck and bus drivers.** That flexibility can translate into additional work hours, which the U.S. DOT estimates will result in nearly \$275 million in annual savings.

Now is the time to prepare for these important new rules by:

- Evaluating whether and when they might benefit your operations;
- Understanding how the changes can best be implemented in your fleet;
- Updating your training programs and making sure all affected individuals are trained on the new rules;

- Updating your policies and procedures as needed; and
- Talking to vendors about how the changes impact your electronic logging devices (ELDs), forms, training programs, and reference materials.

## Who's Affected?

The federal hours-of-service rules apply to all drivers of commercial motor vehicles (CMVs) operating in interstate commerce, i.e., commerce that crosses state or national borders. "Commercial motor vehicles" are defined in §390.5 as vehicles that:

- Have a gross vehicle weight rating (GVWR), gross combination weight rating (GCWR), gross vehicle weight (GVW), or gross combination weight (GCW) of 10,001 pounds or more, whichever is greater;
- Are designed or used to transport nine or more passengers (including the driver) for compensation;
- Are designed or used to transport 16 or more passengers (including the driver) not for compensation; or
- Are used to transport hazardous materials that require a placard.



## In-state Compliance

The Federal Motor Carrier Safety Administration (FMCSA) has jurisdiction to enforce its HOS rules on drivers engaged in interstate commerce, but each state has jurisdiction over transportation that remains strictly within its borders, i.e., *intrastate* commerce.

When the FMCSA changes its HOS rules as it has in this instance, the states are expected to follow suit. **Each state will have three years to adopt "compatible" requirements for intrastate drivers.**

Some states adopt federal HOS changes as soon as they happen, while others need to pass a new law to update their HOS rules, which can take time. In addition, many states have their own unique HOS rules that may or may not need amending to marry up with the federal rules.

As a result, if you operate in intrastate commerce only, you will need to monitor your state's adoption of the new HOS rules to figure out if and when those rules will apply. Better yet, partner with a compliance company like J. J. Keller & Associates, Inc., to help. Such a partnership can be particularly helpful if you have intrastate operations in multiple states.

## Looser Standards Make Compliance Optional

It's important to keep in mind that the HOS rule changes do not add any requirements. In fact, drivers who continue to follow the "old" rules will remain in compliance after the new rules are in effect, as the new rules simply create additional flexibility for drivers.

For example, even though the new rules allow truck drivers to remain on duty for their 30-minute breaks, the rules do still allow off-duty rest breaks. **By following the new rules, drivers and their employers will gain new options that they never had before.** Eligible drivers will want to use the new rules if given the chance. So even though compliance with the new requirements is, in effect, optional, it's important for drivers to be trained on how to use them.

## Why Now?

Oddly enough, **the HOS rule changes would never have been made if it weren't for the ELD mandate.**

The ability of ELDs to closely monitor HOS compliance has led to claims that the devices are simply too rigid. They don't allow for log "adjustments" to account for things that are out of drivers' control, like weather, delays at the dock, and parking availability. Drivers feel they're unable to take rest breaks when they're tired and are pushed to "race the clock" to remain in compliance.

Another catalyst for the rule changes was a government-wide effort to remove unnecessary regulations. Though HOS rules are vital for highway safety, the FMCSA, along with trade groups and members of Congress, felt the rules could be tweaked to remove some of the burden they have imposed.

## The Changes and Their Impact

### 1. 30-minute Breaks

This rule is designed to make sure truck drivers get a break from driving if they intend to continue driving late into the day.

**Rule:** 49 CFR §395.3(a)(3)(ii)

**Applies to:** Drivers of property-carrying CMVs

**Those most affected by the changes:** Long-haul drivers



Current / Old Rule	New Rule
A 30-minute rest break is required after 8 consecutive hours on the clock if the driver will continue to drive a CMV.	A 30-minute break from driving is required after accumulating 8 hours of <i>driving</i> time if the driver will continue to drive a CMV.
Drivers must be off duty and/or in a sleeper berth for their breaks.	Drivers may remain on duty (not driving) for their breaks.



#### The impact:

- Anything a driver does for 30 consecutive minutes *besides driving* a CMV will count as a valid break.
- A break will be needed only by those who drive a CMV more than 8 hours per workday. Fewer drivers, therefore, will need the break to remain in compliance, which will reduce violations.
- Many drivers will have the flexibility to shift their breaks to a later point in the workday (after 8 driving hours rather than 8 consecutive hours after starting the workday).
- Drivers will gain productivity since they need only stop driving for their break, they can continue to perform other work activities. They will be able to load/unload, fuel, do vehicle inspections or paperwork, or engage in other work activities during the 30-minute break.

- Some segments of the industry already have a special exemption allowing them to remain on duty for their breaks, such as haulers of explosives or ready-mix concrete. Those exemptions will no longer be necessary.



**Points to consider:**

- Driving while fatigued will still be prohibited, making off-duty rest breaks an important option for many drivers. Company policies may still require drivers to log off duty for their breaks.
- Parking shortages will not be an excuse to violate the rule. Drivers should not wait until they drive nearly 8 hours before seeking a place to park for their break.
- There is no requirement to add notes to a log or ELD to indicate which break was used to comply. Such notes are optional.
- Consult with an HR professional for guidance on complying with state labor laws if your state mandates rest breaks.



## 2. The 100 (now 150) Air-Mile Exception

This rule allows short-haul truck and bus drivers to keep basic time records instead of logs or ELDs — and go without 30-minute breaks or supporting documents (like purchase receipts or bills of lading) — as long as they stay local and return to their starting location each day.

**Rule:** 49 CFR §395.1(e)(1)

**Applies to:** Drivers of property-carrying and passenger-carrying CMVs

**Those most affected by the changes:** Local/regional drivers who return home each day

Current / Old Rule	New Rule
Drivers must be done working within 12 consecutive hours.	Drivers must be done working within 14 consecutive hours.
Drivers must remain within a 100 air-mile radius.	Drivers must remain within a 150 air-mile radius.



**The impact:**

- More drivers will be eligible for this exception and will gain productivity.
- Almost 58 statute miles will be added to the distance (radius) that both truck and bus drivers can service when using the exception.
- Drivers should have more flexibility to spend time with customers and respond to changes in market demand, given the increase to a 14-hour workday.
- Less time will be needed to verify whether drivers who regularly work up to the 12-hour or 100-air-mile limits are eligible for the exception.
- **Enforcement officers may spend more time closely scrutinizing drivers who claim the exception**, since these drivers are not required to carry any HOS records.
- Some short-haul drivers already have a special exemption allowing 14 hours, but those exemptions will no longer be necessary.



### Points to consider:

- Use online mapping software to find the 150-air-mile (172-statute-mile) radius around your drivers' reporting location(s).
- Weigh the pros and cons of allowing more drivers to use the exception without also using electronic logs. **ELDs can simplify recordkeeping, enforcement, vehicle tracking, and the ability to track whether drivers are eligible to use the exception.** The benefits of ELDs would be lost with a switch to other timekeeping methods.
- Consider whether you want drivers to maintain their own time records (such as “exemption logs”) when using the exception, or whether someone else in the company will create the required records. Purchase any needed recordkeeping forms.
- The new rule does not amend the current 150-air-mile exception for non-CDL truck drivers, found in §395.1(e)(2). This exception provides additional benefits for eligible drivers, such as a twice-weekly 16-hour workday.

## 3. Sleeper-Berth Provisions



The sleeper-berth provisions indicate how a sleeper berth may be used to obtain required rest. Changes to the rules will affect the “split break” option, which allows drivers to split their 10-hour rest breaks into two separate, qualifying breaks.

**Rule:** 49 CFR §395.1(g)(1)

**Applies to:** Drivers of property-carrying CMVs equipped with a sleeper berth that complies with §393.76

**Those most affected by the changes:** Regional and long-haul truck driving teams operating sleeper cabs

Current / Old Rule	New Rule
To get a “split” break, truck drivers must spend at least 8 consecutive hours in a sleeper berth, plus another rest break of at least 2 hours, to reach 10 hours total.	To get a “split” break, drivers must spend at least 7 consecutive hours in a sleeper berth, plus another rest break of at least 2 hours, to reach 10 hours total.
The shorter break counts against the 14-hour limit.	Neither rest period counts against the 14-hour limit.
To get 10 consecutive hours of rest in a moving vehicle, a driver may ride in the passenger seat for up to 2 hours after spending at least 8 hours in the sleeper.	To get 10 consecutive hours of rest in a moving vehicle, a driver may ride in the passenger seat for up to 3 hours after spending at least 7 hours in the sleeper.



### Impact:

- Individual and team drivers who “split” their 10-hour break into two qualifying breaks will have more flexibility in deciding how long their rest breaks will be, since a 7/3 split will be a new option.
- More drivers will take an interest in trying the split-break option if they discover it can be used to pause the 14-hour clock, especially if they use ELDs that calculate compliance automatically.

- More drivers may choose to go off duty for 2 or more hours when they encounter delays — so they can pause the 14-hour clock — as long as they will be able to go into a sleeper for at least 7 hours later in the day. However, drivers who fail to complete all 10 hours of “split” rest may easily go into violation, so they should plan ahead to ensure they will achieve the entire 10-hour break when they take the shorter of the two breaks.
- Drivers will gain more productivity since neither qualifying rest break counts against the 14-hour limit.
- Enforcement personnel will have a tougher time determining if a driver who took a mid-day, two-or-more-hour rest break is in compliance, since there is no way to know whether that driver will enter the sleeper berth later on to complete 10 hours of rest. (If the driver does NOT go into the sleeper later in the day, the shorter break will count against the 14-hour limit; otherwise, it will not.)

### Can all drivers pause the 14-hour clock?

The FMCSA had been considering the controversial idea of allowing all truck drivers to pause the 14-hour clock with a rest break of up to 3 hours. That change was not justified, the agency says, and so was not included in the new rules.

In effect, however, drivers using the split-sleeper option can still pause their 14-hour clock with an off-duty rest break of at least 2 hours. That rest break will not count against the 14-hour limit as long as the driver “completes the split” by getting another break of at least 7 hours in a sleeper berth, for a total of 10 hours of rest.



#### Points to consider:

- The “split” sleeper option is one of the most confusing HOS rules around. Make sure drivers who want to use that option are adequately trained.
- If your drivers avoided split breaks in the past, they may want to consider them again, given the additional benefits provided under the new HOS rules. The changes give drivers more flexibility in dealing with delays or working their schedules around rush-hour traffic.
- Consider partnering with an ELD vendor that has a proven track record of compliance with the sleeper-berth rules.
- There is no change to the 11-hour driving limit for drivers using a sleeper berth.

## 4. Adverse Driving Conditions

This exception gives truck and bus drivers extra time to complete their runs after encountering unexpected delays caused by weather or traffic conditions.

**Rule:** 49 CFR §395.1(b)(1), §395.2

**Applies to:** Drivers of property-carrying and passenger-carrying CMVs

**Those most affected by the changes:** Truck drivers subject to the 14-hour limit



Current / Old Rule	New Rule
Drivers may extend their driving limit, but not their on-duty limit, by 2 hours.	Drivers may extend both their driving and on-duty limits by 2 hours.



### Impact:

- Drivers will have an added cushion of on-duty time when using the exception. All driving (up to 13 hours for truck drivers or 12 hours for bus drivers) will need to be done within 16 consecutive hours for truck drivers or 17 on-duty hours for bus drivers.
- With the expanded hours, more drivers will be eligible to use the exception to wait out unexpected weather or traffic conditions, rather than trying to “race the clock” to complete the run.
- Use of this exception is rare today and will continue to be rare under the new rules.



### Points to consider:

- Refer to the updated definition of “adverse driving conditions” in §395.2 for important restrictions. Allowable uses of this exception remain relatively narrow.
- Motor carriers are obligated to make sure the adverse conditions were unknowable at the time of dispatch. Motor carriers and drivers should check traffic and weather conditions before starting a run.
- Make sure drivers are aware that they cannot use this exception for routine weather or traffic delays. The delay must be unexpected, and it cannot be due to normal rush-hour traffic, vehicle breakdowns, loading or unloading delays, or an inability to find parking.
- Though not required, drivers should be advised to enter a note on their log to indicate when they’re using the exception and why. Consider requiring this under company policy.

## The Impact on ELDs

The new HOS rules will have a sizable impact on the software built into most ELDs. If your ELDs perform log auditing and are programmed to recognize any of the four provisions affected by the new HOS rules, the devices will benefit from an update.

That’s part of the reason the FMCSA waited four months for the new rules to go into effect after publishing them — so vendors would have time to amend their auditing software.

**Talk to your vendor about its timeline for updating its software and how those updates will be distributed.**

If your ELDs are not programmed to account for the split-sleeper option, short-haul exceptions, or other special provisions, they may identify violations where they don’t exist. You’ll want to consider switching to an ELD system that can account for the exceptions your drivers use.

## Training Will Be Key

As with any significant regulation change, training on the new HOS rules will be vital to compliance. Use the time available before the rules go into effect to train your drivers, dispatchers, and others on:

- How the changes might impact them, and
- What your expectations are in terms of how the new provisions are — or are not — to be used.

You’ll want to make sure your drivers are implementing the changes correctly and according to your instructions, rather than relying on what they heard through the “rumor mill” out on the road.

To that end, consider purchasing a new copy of the Federal Motor Carrier Safety Regulations (or similar resource) for each driver as a reference of the new HOS regulations.

## Final Thoughts

The new HOS rules are far from perfect. However, the changes do hold promise for adding some flexibility to an otherwise rigid, “one-size-fits-all” set of regulations. Now is the time to evaluate your operations to see how the rules might benefit you.

Do keep in mind, however, that prevention of fatigued driving is still a critical concern. Drivers who have more time on the road under the new rules may become more fatigued, putting them at higher risk of a crash. You’ll want to closely monitor your transition to the new rules to ensure your drivers are staying safe.

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## About the Author

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A Senior Editor in the Transportation Publishing Department of Editorial Resources at J. J. Keller & Associates, Inc., Daren Hansen is responsible for writing and editing content for safety-related products, publications, and services for the trucking industry, including handbooks, guides, newsletters, posters, online services, forms, and training programs. Daren’s primary areas of expertise include the Federal Motor Carrier Safety Regulations related to hours of service, cargo securement, drug and alcohol testing, and driver qualification. He has spoken and written extensively on these topics, both for clients and for industry groups, and has contributed to trade publications and radio programming. Daren is a member of the National Private Truck Council’s Legislative & Regulatory Advisory Committee.



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