

REVIEWED

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Part 395

Section § 395.2: Definitions.

Below are the available interpretations for the given section. To return to the list of parts, use the Parts link above. The menu to the left provides a full list of sections that have interpretations. To view interpretations for a different section, click on the menu item.

The regulations text of the section can be found on the eCFR website. To view the regulations text, use the link below. For assistance, please send an email to FMCSA.Webmaster@dot.gov.

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Guidance Q&A

Question 1: A company told all of its drivers that it would no longer pay for driving from the last stop to home and that this time should not be shown on the time cards. Is it a violation of the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a Commercial Motor Vehicle (CMV) from the last stop to home and not show that time on the time cards?

Guidance: The Federal Motor Carrier Safety Regulations (FMCSRs) do not address questions of pay. All the time spent operating a Commercial Motor Vehicle (CMV) for, or at the direction of, a motor carrier must be recorded as driving time.

Question 2: What conditions must be met for a Commercial Motor Vehicle (CMV) driver to record meal

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Interpretations Browser

§ 395.1

Scope of rules in this part.

§ 395.2

Definitions.

§ 395.3

Maximum driving time for property-carrying vehicles.

§ 395.5

Maximum driving time for passenger-carrying vehicles.

§ 395.8

Driver's record of duty status.

and other routine stops made during a work shift as off-duty time?**Guidance:**

Drivers may record meal and other routine stops, including a rest break of at least 30 minutes intended to satisfy [49 CFR 395.3\(a\)\(3\)\(ii\)](#), as off-duty time provided:

1. The driver is 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.

FR 78 41853, July 12, 2013]

Question 3: A driver has been given written permission by his/her employer to record meal and other routine stops made during a tour of duty as off-duty time. Is the driver required to record such time as off-duty, or is it the driver's decision whether such time is recorded as off-duty?

Guidance: It is the employer's choice whether the driver shall record stops made during a tour of duty as off-duty time. However, employers may permit drivers to make the decision as to how the time will be recorded.

Question 4: A driver has been given written permission by his/her employer to record meal and other routine stops made during a tour of duty as off-duty time. Is the driver allowed to record his stops during a tour of duty as off-duty time when the Commercial Motor Vehicle (CMV) is laden with HM and the CMV is parked in a truck stop parking lot?

Guidance: Drivers may record meal and other routine stops made during a tour of duty as off-duty time, except when a Commercial Motor Vehicle (CMV) is laden with explosive HM classified as hazard divisions 1.1, 1.2, or 1.3 (formerly Class A or B explosives). In addition, when HM classified under hazard divisions 1.1, 1.2, or 1.3 are on a Commercial Motor Vehicle (CMV), the employer and the driver must comply with [§397.5](#) of the FMCSRs.

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Question 5: Do telephone calls to or from the motor carrier that momentarily interrupt a driver's rest period constitute a change of the driver's duty status?

Guidance: Telephone calls of this type do not prevent the driver from obtaining adequate rest. Therefore, the FHWA does not consider these brief telephone calls to be a break in the driver's off duty status.

Question 6: If a driver is required by a motor carrier to carry a pager/beeper to receive notification to contact the motor carrier for a duty assignment, how should this time be recorded?

Guidance: The time is to be recorded as off-duty.

Question 7: May a sleeper berth be used for a period of less than 2 hours' duration?

Guidance: Yes. The sleeper berth may be used for such periods of inactivity. Periods of time of less than 2 hours spent in a sleeper berth may not be used to accumulate the 8 hours of off-duty time required by [§395.3](#) of the Federal Motor Carrier Safety Regulations (FMCSRs).

Question 8: If a "driver trainer" occasionally drives a Commercial Motor Vehicle (CMV), thereby becoming a "driver" (regardless of whether he/she is paid for driving), must the driver record all non driving (training) time as on-duty (not driving)?

Guidance: Yes.

Question 9: A driver drives on streets and highways during the week and jockeys Commercial Motor Vehicles in the yard (private property) on weekends. How is the yard time to be recorded?

Guidance: On-duty (driving).

Question 10: How does compensation relate to on-duty time?

Guidance: The fact that a driver is paid for a period of time does not always establish that the driver was on-duty for the

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purposes of part 395 during that period of time. A driver may be relieved of duty under certain conditions and still be paid.

Question 11: Must non transportation-related work for a motor carrier be recorded as on-duty time?

Guidance: Yes. All work for a motor carrier, whether compensated or not, must be recorded as on-duty time. The term “work” as used in the definition of “on-duty time” in [§395.2](#) of the Federal Motor Carrier Safety Regulations (FMCSRs) is not limited to driving or other non transportation-related employment.

Question 12: How should time spent in transit on a ferry boat be recorded?

Guidance: Time spent on a ferry by drivers may be recorded as off-duty time if they are completely relieved from work and all responsibility and obligation to the motor carriers for which they drive. This relief must be consistent with existing regulations of the ferry company and the U.S. Coast Guard.

Question 13: What is the duty status of a co-driver (truck) who is riding seated next to the driver?

Guidance: On-duty (not driving).

Question 14: How must a Commercial Motor Vehicle CMV driver driving a non-Commercial Motor Vehicle CMV at the direction of a motor carrier record this time?

Guidance: If Commercial Motor Vehicle CMV drivers operate motor vehicles with Gross Vehicle Weight Rating (GVWR)s of 10,000 pounds or less at the direction of a motor carrier, the Federal Highway Administration (FHWA) requires those drivers to maintain records of duty status and record such time operating as on-duty (not driving).

Question 15: How must the time spent operating a motor vehicle on the rails (roadrailer) be recorded?

Guidance: On-duty (not driving).

Question 16: Must a driver engaged in union activities affecting the employing motor carrier record such time as on-duty (not driving) time?

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Guidance:

The union activities of a driver employed by a unionized motor carrier must be recorded as on-duty (not driving) time if the collective bargaining agreement requires the motor carrier to pay the driver for time engaged in such activities. Otherwise these activities may be recorded as off duty time unless they are combined with normal duties performed for the carrier.

Efforts by a driver to organize co-workers employed by a non-unionized motor carrier, either on the carrier's premises or elsewhere, may be recorded as off duty time unless the organizing activities are combined with normal duties performed for the carrier.

Question 17: How is the 50 percent driving time in the definition of "driver-salesperson" in [§395.2](#) determined?

Guidance: The driving time is determined on a weekly basis. The driver must be employed solely as a driver-salesperson. The driver-salesperson may not participate in any other type of work activity.

Question 18: May a driver change to and from a driver-salesman status at any time?

Guidance: Yes, if the change is made on a weekly basis.

Question 19: May the time a driver spends attending safety meetings, ceremonies, celebrations, or other company-sponsored safety events be recorded as off-duty time?

Guidance: Yes, if attendance is voluntary.

Question 20: How must a driver record time spent on-call awaiting dispatch?**Guidance:**

The time that a driver is free from obligations to the employer and is able to use that time to secure appropriate rest may be recorded as off-duty time. The fact that a driver must also be available to receive a call in the event the driver is needed at work, even under the threat of discipline for non-availability,

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does not by itself impair the ability of the driver to use this time for rest.

If the employer generally requires its drivers to be available for call after a mandatory rest period which complies with the regulatory requirement, the time spent standing by for a work-related call, following the required off-duty period, may be properly recorded as off-duty time.

Question 21: How does a driver record the hours spent driving in a school bus operation when he/she also drives a Commercial Motor Vehicle (CMV) for a company subject to the Federal Motor Carrier Safety Regulations (FMCSRs)?

Guidance: If the school bus meets the definition of a Commercial Motor Vehicle (CMV), it must be recorded as driving time.

Question 22: A motor carrier relieves a driver from duty. What is a suitable facility for resting?

Guidance: The only resting facility which the Federal Highway Administration (FHWA) regulates is the sleeper berth. The sleeper berth requirements can be found in [§393.76](#).

Question 23: How many times may a motor carrier relieve a driver from duty within a tour of duty?

Guidance: There is no limitation on the number of times a driver can be relieved from duty during a tour of duty.

Question 24: If a driver is transported by automobile from the point of a breakdown to a terminal, and then dispatched on another run, how is the time spent in the automobile entered on the record of duty status? How is the time entered if the driver goes off-duty once he reaches the terminal?

Guidance: The time spent in the automobile would be on-duty (not driving) if dispatched on another run once he/she reaches the terminal, and off-duty if he/she is given 8 consecutive hours off-duty upon reaching the terminal.

Question 25: When a driver experiences a delay on an impassable highway, should the time he/she is delayed [Submit Feedback >](#)

be entered on the record of duty status as driving time or on-duty (not driving)?

Guidance: Delays on impassable highways must be recorded as driving time because [§395.2](#) defines “driving time” as all time spent at the driving controls of a Commercial Motor Vehicle CMV in operation.

Question 26: Is time spent operating controls in a CMV to perform an auxiliary, non-driving function (e.g., lifting a loaded container, compacting waste, etc.) considered driving time? Does the location of the controls have a bearing on the answer?

Guidance: The location of the controls does have a bearing on the answer. [Section 395.2](#) defines “driving time” as all time spent at the driving controls of a Commercial Motor Vehicle CMV in operation. If a driver, seated at the driving controls of the vehicle, is able to simultaneously perform the driving and auxiliary function (for example, one hand on the steering wheel and one hand on a control mechanism), the time spent performing the auxiliary function must be recorded as “driving time.” If a driver, seated at the driving controls of the vehicle, is unable to simultaneously perform the driving and auxiliary function, the time spent performing the auxiliary function may be recorded as “on-duty not driving time.”

Question 27: A motor carrier has full-time drivers who are also volunteer fire fighters. Some of the drivers carry pagers and leave their normal activities only when notified of a fire. Others consistently work 3 to 4 non-consecutive 24-hour shifts at a fire station each month, resting between calls. The drivers receive no monetary compensation for their work. How should the time spent on these activities be logged on the record of duty status when the drivers return to work?

Guidance: When drivers are free from obligations to their employers, that time may be recorded as off-duty time. Drivers who are allowed by the motor carrier to leave their normal activities to fight fires and those who spend full days in a fire station are clearly off duty. Their time should be recorded as such.

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Question 28: How should time spent at National Guard meetings and training sessions be recorded for the hours of service requirements?

Guidance: A member of a military reserve component, serving in either an inactive duty status, such as weekend drills, or in an active duty status, such as annual training, may log that time as “off-duty time” regardless of whether such duty time is paid or un-paid. This is consistent with the rights and benefit entitlements provided in the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 *et seq.*).

Question 29: Although firefighters, emergency medical technicians, paramedics and other public safety professionals are often exempt from the hours-of-service (HOS) regulations under the governmental exception [[49 CFR 390.3\(f\)\(2\)](#)], they sometimes have second jobs with interstate motor carriers for which they are required to comply with the HOS rules. When one of these individuals has a second job with an interstate motor carrier and works a 24-hour shift for the fire/rescue/emergency services department, is all of the time spent during the shift considered on-duty time?

Guidance: No. Fire fighters and other public safety professionals working 24-hour shifts may record time during which they are required or permitted to rest as off-duty time. However, all time that the public safety specialist is required to perform work (e.g., administrative work, cleaning/repairing equipment, operating equipment, etc.) would be considered on-duty time.

Question 30: If a driver is required repeatedly to respond to satellite or similar communications received during his or her sleeper berth period, does this activity affect a driver’s duty status?

Guidance: Yes. The driver cannot be required to do any work for the motor carrier during sleeper berth time. A driver who is required to access a communications system for the purpose of read-ing messages from the carrier, responding to certain messages (either verbally or by typing a message), or otherwise acknowledging them, is performing work. For the purpose of this guidance, “repeatedly” means a pattern or series of interruptions that prevent a driver from obtaining restorative sleep during the sleeper berth period.

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Question 31: If a driver drives in a non-commercial vehicle to take a physical examination, should the duty status be recorded as on-duty not driving, or as off-duty? Would the answer change if the motor carrier directs the driver to go for the examination?

Guidance: So long as the driver schedules and attends the physical examination at a time of his or her own choosing, the time may be recorded as off-duty. If, however, the motor carrier directs the driver to attend at a specific time, the time is to be recorded as on-duty not driving.

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