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OOSC, Part I, Item 9. Driver's Record of Duty Status - No Record of Duty Status

STATUS

Open

Driver-Traffic Enforcement Committee

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There is dissension among enforcement personnel regarding a driver who is required a record of duty status (RODS) for only one day and whether the lack of a RODS for that one day is an out of service violation.

For example, a driver is normally a short-haul driver but one day a week the driver is NOT under the short-haul exception because they leave their 150 air mile radius. If that driver is stopped for an inspection, is the driver considered to have no RODS and therefore declared out of service, or should the driver be considered to not have their RODS current to the last change of duty status, and thus, NOT declared out of service?

This scenario involves two other elements that seems to change some enforcement members' answers. In both scenarios, the trip is the same (short-haul every day of the week except the date of inspection; outside, or going outside, the 150 air mile radius when stopped for inspection).

In scenario #1, the driver has no RODS whatsoever. They have no paper log in their possession and no logging software app on their phone. They have absolutely nothing for a RODS. Some enforcement members are enforcing this as no RODS because the driver does not have the ability to bring the log up to date. Their answer is based on the 2025 out-of-service criteria, Part I, Item 9.a.(4), which reads:

No record of duty status (See footnotes 5, 6, and 8)

No RODS in possession when one is required (395.8(a)(1)) Declare driver out of service for 10 consecutive hours.

Other enforcement members are enforcing this scenario as RODS not current because the driver can pull out a piece of paper and draw a logbook graph or easier yet, download a logging software app quickly on their phone and make their log current. This answer is based on the exception in 49 CFR §395.13(b)(3):

(3) Exception. A driver failing only to have possession of a record of duty status current on the day of examination and the prior day, but has completed records of duty status up to that time (previous 6 days), will be given the opportunity to make the duty status record current.

The enforcement members that would NOT declare the driver out of service argue that while the driver is required a RODS, it is only for one day at the time of the stop, and thus they are subject to the exception in §395.13(b)(3), and therefore allowed to just update their log. The justification is also that there is no seemingly "imminent hazard" in this situation.

In scenario #2, the facts are all the same EXCEPT the driver has a blank logbook or logging software in his possession. In this scenario, the enforcement members who would have declared the first driver out of service for no RODS would only record a violation of log not current in the second scenario since they physically possess a RODS of some sort, even if it's blank. The only thing that's different in the two scenarios is the presence of a log book.

The listed scenarios would also apply to someone like a construction worker who is short-haul while operating from a hotel for two weeks and then moves to a new job site beyond the 150-air mile radius, or a driver moving between motion picture production sites more than 100 miles (per §395.1(p)).

Would a driver in those situations who only needs a log book for the trip for one day when moving from one jobsite to another be considered log not current or out of service for no log when missing just one day? In other words, the driver has no RODS whatsoever for that trip. Does the answer change if the driver has a blank log page in their possession like in scenario #2, but it's not filled out for that day?

For comparison, an over-the-road (OTR) driver who is required and possesses a log book for the past 8 days, but is only missing the DAY of inspection and the PREVIOUS day, would be afforded the exception in §395.13(b)(3). So, in reality the OTR driver could be missing nearly two days' worth of RODS and NOT be declared out of service per the exception.

An argument can be made that the exception in §395.13(b)(3) is only for a driver who has six days of logs because we have six days to review during an inspection, but a short-haul driver would not have any RODS to review since they are not required to carry them. Therefore, they are not afforded the exception in §395.13 to make their log current. Additionally, a short-haul driver is only subject to the requirements in §395.1(e), and thus the exception in §395.13(b)(3) doesn't apply.

Another scenario to consider regarding the "imminent hazard" definition is the lack of an ELD. An OTR driver who has 8 days of paper logs but is required an ELD is declared out of service for 10 hours when not using an ELD. After the 10 hours, the driver may continue to their final destination and even pick-up more cargo along the way, but just can't take a new dispatch until they are using an ELD. Why is the no ELD an imminent hazard at first, but the driver is allowed to continue to their final destination if it's so hazardous the first time even when they have a completed paper RODS? I know this question was debated when the ELD was first put into place and the decision was made at that time, but the question remains as we ponder the "imminent hazard" definition.

JUSTIFICATION OR NEED

Simply stated, uniformity and consistency across North America is the justification for this issue. We must strive to be uniform across all jurisdictions. There are regular complaints from industry saying two different enforcement members give two different interpretations or answers to the same question. I even see it in my own state. It frustrates industry and, in this case, could delay shipments affecting everyone in the supply chain, or financially burdening motor carriers. We owe it to industry to all be on the same page especially when it comes to declaring a driver out of service.

Several years ago, I polled multiple enforcement personnel from multiple states with these same scenario questions. The answers were not unanimous. In fact, they were divided about 50%. This shows a lack of consistency among enforcement nationwide.

As stated several years ago at a CVSA Workshop, it's important the Alliance keeps the definition of "imminent hazard" at the forefront of our minds as we make decisions affecting the out of service criteria. This is an example of when that definition needs considered, just as it was on issue request #22-016-DRV, when the requirement to print logs by a driver using logging software (non-ELD, non-AOBRD) was changed. The incident that gave rise to that issue request resulted in a driver being declared out of service who had just completed a 10 hour off-duty break at a hotel. He had a hotel receipt and was just a few miles from the hotel with a plate of food from the hotel still in his possession. The way the OOSC was written at that time, the driver had to be declared out of service simply because he couldn't print his logs (no printer in the truck). The driver made a valid point that in a sense, the imminent hazard was created by the OOSC requiring him to park for 10 hours after he had already taken a qualifying rest period at a hotel. Now he had to sit for 10 hours in his truck before starting his trip.

REQUEST FOR ACTION

I am requesting the driver-traffic enforcement, and possibly training committees, discuss these scenarios and come to a consensus of the Alliance. Based on the decision made, I am requesting the information be included in the NAS Part A and NAS PCVI course material, as well as future instructor update material to improve consistency nationwide.