

Driver Hours of Service

ISSUE TYPE	Regulatory (Federal)	KEY DATES	Dec. 21, 2018 – FMCSA preempts California’s meal and rest break rules
AGENCY	FMCSA		
STATUS	Active/Tracking		May 14, 2020 – FMCSA publishes HOS Final Rule
DIVISION IMPACT	MC, Rail, Marine, 3PL		Sep. 16, 2020 – Teamsters & safety groups file court petition for review of HOS final rule
INTERESTED PARTIES	ATA, CVSA, OOIDA, Safety Advocates		Nov. 17, 2020 – FMCSA preempts Washington’s meal and rest break rules
			Jan. 15, 2021 – U.S. Court of Appeals for the Ninth Circuit denies petitions to review FMCSA’s determination that California’s meal and rest break laws are preempted.
		MOST RECENT ACTION	July 26, 2022 – U.S. Court of Appeals for the District of Columbia Circuit denies petition for review of HOS final rule

Statement of the Issue

The Federal Motor Carrier Safety Administration’s (FMCSA) Hours of Service (HOS) requirements govern working hours for commercial motor vehicle (CMV) operators. Current regulations: allow CMV operators to drive up to 11 hours during a 14-hour maximum work period; require long-haul CMV operators to take a 30-minute break within eight hours of driving time; and limit CMV operators to driving 60/70 hours in 7/8 consecutive days – this period restarts after taking 34 or more consecutive hours off duty. Drivers using a sleeper berth must spend at least 10 hours off duty, which can be split into two periods with one being at least seven hours long.

Policy Position – Adopted by the Board (11/14/10)

IANA evaluated the final regulations for impacts on intermodal operations and continues to monitor the actions of Congress, the FMCSA and industry groups such as the American Trucking Associations (ATA). Comments will be filed if there are any changes to the regulations that reduce the amount of driving time and/or the restart period is increased.

Summary

Federal Regulations

In May 2020, the FMCSA published a final rule adopting changes to its HOS regulations effective Sept. 2020. Specifically, the final rule implemented four major changes: 1) expanding the short-haul radius from 100 to

150 air-miles and extending the maximum duty period from 12 to 14 hours. Drivers using this exception are not required to use RODS or ELDs and are exempted from the 30-minute break; 2) increasing the driving window during adverse driving conditions by up to an additional two hours; 3) requiring a 30-minute break after eight consecutive hours of driving time rather than on-duty time, to be satisfied using any non-driving period – on-duty, off-duty, or sleeper berth – of at least 30 minutes; and 4) allowing drivers to satisfy their 10 hours off-duty in two periods, given that one period is at least two hours and the other includes at least seven hours in the sleeper berth. The two periods must total at least 10 hours and neither counts against the maximum 14-hour driving window.

The International Brotherhood of Teamsters and four safety groups petitioned the FMCSA to reconsider the HOS changes implemented in the final rule. After the FMCSA denied their request, the groups filed a petition in Sept. 2020 for review of both the final rule and the FMCSA’s denial of the petition for reconsideration with the U.S. Court of Appeals for the District of Columbia Circuit. The petition was denied in July 2022.

In its Aug. 2019 HOS notice of proposed rulemaking, the FMCSA requested comments on a split-duty provision. However, it was not incorporated into the final rule. The provision would have allowed one off-duty break of at

least 30 minutes but not more than three hours that would pause the 14-hour driving window, provided the driver takes 10 consecutive hours off-duty at the end of their shift.

To test the safety implications of a potential split duty provision within HOS regulations, the FMCSA proposed and solicited comments on a new pilot program in Sep. 2020. The Split Duty Period Pilot Program would study 200 to 400 drivers who will have the option to pause their 14-hour shift using an off-duty break as proposed in the HOS NPRM. In Jan. 2021, the FMCSA suggested a second pilot program to collect data on additional flexibilities beyond a 7/3 split. The Flexible Sleeper Berth Pilot Program, which would offer options to split off-duty time into a 6/4 or 5/5 split, is based in part on a proposal submitted by the ATA and the Minnesota Trucking Association in 2013.

In Jan. 2021, the FMCSA proposed modifying HOS regulations to clarify CMVs in “yards” as “yard moves.” The regulatory guidance would allow drivers to record the time as on-duty-not-driving time as opposed to driving time at locations including intermodal yards, port facilities, and parking lots privately owned by shippers.

In March 2022, the Commercial Vehicle Safety Alliance (CVSA) submitted a petition requesting FMCSA amend its HOS guidance pertaining to the use of personal conveyance to record off-duty status. CVSA proposed the definition of “personal conveyance” be clarified by adding a maximum time and/or mileage limit. CVSA asserts the existing guidance could be misused to circumvent HOS limits and extend driving time, thereby increasing driver fatigue and compromising road safety.

Federal Legislation

Throughout the COVID-19 pandemic, the FMCSA issued waivers exempting drivers transporting essential goods from certain HOS requirements. Rep. Mast’s (R-FL) Keep on Trucking Act, introduced in July 2022, proposes to permanently extend this flexibility to all drivers. He contended the lengthy waivers demonstrate that existing limitations on driving time are “unnecessary” and that a driver’s adherence to safety standards is not dependent on the type of cargo transported.

Related State Laws

Some states have passed their own HOS standards, though there is disagreement as to whether Federal

Aviation Administration Authorization Act (F4A) preemption policies extend to such requirements. Legislation preempting state restrictions on CMV operator meal and rest breaks over federal HOS rules has been filed, however, none have successfully made it into law.

In Dec. 2018, the FMCSA granted a petition submitted by ATA which requested California’s meal and rest break provisions be preempted by federal law. The state of California and the Teamsters union filed separate suits asking the court to reverse this decision, which were ultimately denied. In Nov. 2020, the FMCSA also determined Washington state’s meal and rest break requirements are preempted by federal HOS rules. The decision followed the Washington Trucking Association’s petition filed in April 2019 which argued the outcome in California necessitated the same determination regarding Washington’s rules.

Potential Impact to Intermodal Freight Transportation

Impact 1:

Revision of the definition of “off-duty” could be a positive action for intermodal drayage carriers as this could allow for “wait” times at intermodal facilities and shippers’ docks to be logged as off duty versus the current “on-duty not driving” status.

Impact 2:

The HOS final rule expanded the exception for short-haul drivers, exempting CMV operators that work within a 150 air-mile radius of their reporting location and that complete their workday within 14 hours from ELD requirements. Most intermodal CMV drivers operate within a 150 air-mile radius of their reporting location and will therefore benefit from this exemption.