



ISSUE TYPE	Regulatory (Federal)
AGENCY	FMCSA
STATUS	Active/Tracking
DIVISION IMPACT	MC, Rail, Marine, 3PL
INTERESTED PARTIES	ATA, CVSA, Safety Advocates, OOIDA
KEY DATES	July 1, 2013 — Drivers must comply with all provisions of 2011 HOS Final Rule Aug. 2, 2013 – U.S. Court of Appeals upholds Final Rule, with exception of 30-minute off-duty break requirement as it applies to short-haul drivers Dec. 16, 2014 – FY15 appropriations law defunds enforcement of the once-a-week 34-hour restart and mandates further study of rule’s safety benefits
MOST RECENT ACTION	Dec. 18, 2015 – The FY16 appropriations law requires statistically significant safety and health improvements from FMCSA’s study in order to reinstate the once-a-week 34-hour restart, accidentally applies requirement to entire restart.

Statement of the Issue

On July 1, 2013, drivers were required to be compliant with all provisions of the 2011 Federal Motor Carrier Safety Administration (FMCSA) Final Rule governing Hours of Service (HOS). The Final Rule limited use of the 34-hour restart provision to once a week and added a requirement that the restart contain two consecutive 1:00 – 5:00 a.m. “off duty” periods, and required drivers to take thirty minute breaks after driving for eight consecutive hours. In Dec. 2014, Congress passed a law suspending the once-a-week 34-hour restart and two consecutive 1:00-5:00 a.m. “off duty” periods until further study of their safety benefits could be conducted.

Policy Position – Adopted by the Board (11/14/2010)

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

Effective July 1, 2013, HOS regulations limit the use of the 34-hour restart provision to once a week and require, as part of the restart, two consecutive 1:00-5:00 a.m. “off duty” periods. This change effectively reduced the maximum 7-day driving hours by 12 (70 vs.82). The HOS Final Rule also added a requirement that drivers take 30 minute breaks after driving for eight consecutive hours. FMCSA’s 2010 Notice of Proposed Rulemaking proposed decreasing driving time from 11 hours per day to 10; the Final Rule retained the 11-hour driving allowance.

On Aug. 2, 2013 the U.S. Court of Appeals, responding to an ATA petition challenging the once-a-week 34-hour restart and off-duty break requirements, issued a decision upholding the HOS rule with the exception of the 30-minute break requirement as it pertains to short-haul drivers; it remains intact for long-haul operators. Following the decision, FMCSA issued guidance and updated its final HOS rule, defining short-haul drivers as 1) drivers with or without a Commercial Driver License (CDL) operating within 100 air-miles of their reporting location; or 2) drivers without a CDL operating within 150 air-miles of their reporting location. On Dec. 19, 2013 FMCSA clarified that drivers beginning their day as short-haul but occasionally exceed time or distance limits are subject to the 30-minute off-duty break requirements and must prepare a record-of-duty status.

Industry unease over the HOS Final Rule continued and Congress responded by requiring a field study of the 34-hour restart provision in MAP-21. FMCSA results from the field study, released on Jan. 31, 2014, supported the once-a-week 34-hour restart and cited merits of added safety. Reps. Bill Shuster (R-PA) and Tom Petri (R-WI), citing concerns with the agency’s methodology, requested GAO evaluate the findings. On July 29, 2014, GAO released their analysis, contending the field study did not meet certain research standards such as reporting limitations and linking conclusions to the results.

Drivers Hours-of-Service

With Congress' concern mounting over the once-a-week 34-hour restart, an appropriations bill defunding enforcement of that particular piece of the HOS law and calling for further study on the topic was signed into law on Dec. 16, 2014. Replacing the controversial restart requirements are those that were effective through June 30, 2013, meaning a driver's week can be restarted more than once during a seven day period and drivers are no longer required to take two consecutive 1:00 – 5:00 a.m. "off duty" periods within the 34-hours. A subsequent law, the "Consolidated Appropriations Act, 2016," further stipulated that the July 1, 2013 restart requirements cannot be reinstated unless FMCSA is able to demonstrate, through its ongoing study, statistically significant improvements in all outcomes related to safety, operator fatigue, driver health and longevity, and work schedules.

In Feb. 2016, the U.S. Department of Transportation (USDOT) alerted Congress to their interpretation that the "Consolidated Appropriations Act, 2016" will void all federal regulations governing a driver's restart, should FMCSA's study fail to produce statistically significant findings. If the Congressionally-mandated study fails to demonstrate benefits of the once-a-week 34-hour restart and two consecutive "off duty" periods, a driver will be unable to take a 34-hour rest and reset at all. Congress, agreeing with USDOT's interpretation, acknowledged the inadvertent overextension of language. The industry is under instruction to continue operating as usual while Congress establishes a legislative fix for the drafting error.

The HOS rule contains six elements of significance to intermodal motor carriers:

- 1) Retains the 11 hour daily driving limit;
- 2) Reduces the weekly driving limit by 12 hours (from 82 to 70 hours in a seven day period);
- 3) Retains the 14-hour maximum driving window;
- 4) Mandates a 30-minute break during, or at the end of, an eight hour driving window before a driver can continue to operate. Short-haul drivers are exempt from this provision;
- 5) Maintains the 34-hour restart provision, but requires two 1:00 am to 5:00 a.m. periods off within those 34 hours (restart provision can be used once in seven calendar days). As mentioned, this piece of the rule was rolled back through the FY15 appropriations law; and,
- 6) Revises the definition of "on-duty" to allow a team driver to log as "off-duty" up to two hours spent in passenger seat immediately before or after eight hours spent in the berth; time spent in a parked CMV is no longer on-duty.

Potential Impacts to Intermodal Freight Transportation

Impact 1: Weekly maximum hours for CMV drivers are reduced by 12. Increased service delay may become an unintended consequence resulting from this significant reduction in the potential number of hours a driver may operate. Such delays would negatively impact the competitiveness and viability

of intermodal transportation. Additionally, an increase in required drivers would mean more power units required, causing increased emissions.

Impact 2: The 34-hour restart provision is critical to intermodal drivers because it permits them to restart their work period in the shortest amount of time allowable. The restart period has a strong positive effect for motor carriers supporting international and port facility drayage services. A 34-hour restart basically provides an additional half-day to full-day of work weekly, allowing drivers to work five-and-a-half to six days per week. If the work week is reduced, many additional power units and drivers would be required to operate on the highway during the Monday-Friday period, subsequently increasing traffic congestion and related emissions. The two consecutive 1:00 am to 5:00 a.m. "off" restrictions within a seven day period will essentially require many drivers to extend their restart period to 48 hours or longer.

Impact 3: 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.