

ISSUE TYPE	Regulatory (Federal)
AGENCY	FMCSA
STATUS	Active/Tracking
DIVISION IMPACT	MC, Rail, Marine, 3PL
INTERESTED PARTIES	ATA, CVSA, Safety Advocates, OOIDA
KEY DATES	Dec. 22, 2011 – FMCSA released Final Rule Feb. 27, 2012 – On-duty time provision became effective July 1, 2013 – Restart and rest break provisions became effective Aug. 2, 2013 – The U.S. Court of Appeals upheld rule, with exception of 30-minute off-duty break requirement as it applies to short-haul drivers Aug. 8, 2013 – FMCSA issued a notice that it will no longer enforce 30-minute off-duty break requirement as it applies to short-haul drivers Dec. 16, 2014 – The FY15 appropriations law defunded enforcement of the 34-hour restart provision and mandated further study of rule’s safety benefits
MOST RECENT ACTION	July 29, 2015 – GAO finds FMCSA’s Jan. 31, 2014 study did not completely meet certain research standards, such as reporting limitations and linking conclusions to the report

Statement of the Issue

In December of 2010, the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Proposed Rulemaking amending the Hours of Service (HOS) rule, which governs the amount of time commercial motor vehicle drivers are required to rest. FMCSA issued the final rule in December of 2011 and required compliance by July 1, 2013; it reduced maximum 7-day driving hours by 12 (70 vs.82), redefined “on-duty” time and maintained 34-hour restart provision but allows just one restart per week and added two consecutive 1:00 – 5:00 a.m. “off duty” periods.

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

IANA should evaluate final regulations once released and file comments if the Final Rule reduces the amount of driving time and/or the restart period is increased. In addition, IANA should review the official policy of the American Trucking Associations and coordinate IANA comments with those of ATA, if applicable.

Summary

Per a 2009 court settlement between the Administration and a number of organizations, including Public Citizen and the International Brotherhood of Teamsters, FMCSA published a new HOS Final Rule Dec. 22, 2011. While it retained the 11 hour daily driving limit, it cut maximum weekly hours worked by 12, redefined “on-duty” time and changed the 34-hour restart provision.

In July 2012, ATA filed a petition with the U.S. Court of Appeals seeking review of the final HOS rule; the petition challenged the rule’s 34-hour restart provisions and off-duty break requirements. IANA, along with 14 other trade associations, filed a [joint amici curiae brief](#) with the U.S. Court of Appeals for the District of Columbia Circuit in support of ATA’s lawsuit.

On Aug. 2, 2013 a U.S. appeals court issued a ruling, 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 this ruling, 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 Hours-of-Service

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.

On Jan. 31, 2014, FMCSA released results from its MAP-21-mandated field study of the 34-hour restart provision; the study supported the provision 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, GAO released their analysis, contending the field study did not meet certain research standards such as reporting limitations and linking conclusions to the results. FMCSA issued a response, in which the agency said the GAO report recognizes the impact the 34-hour restart rule has had in increasing safety.

With Congress' concern over the 34-hour restart provision mounting, 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 December 16, 2014. Replacing the 34-hour 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. On Jan. 15, 2015, FMCSA announced it will be conducting the study by collecting safety data over a five month period from two sets of drivers. One driver group will adhere to the 34-hour restart regulations in place through June 30, 2013 and currently, and the second group will follow the 34-hour restart regulations that existed July 1, 2013 through Dec. 16, 2014.

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.