

## Driver Hours of Service

<p><b>ISSUE TYPE</b></p> <p><b>AGENCY</b></p> <p><b>STATUS</b></p> <p><b>DIVISION IMPACT</b></p> <p><b>INTERESTED PARTIES</b></p>	<p>Regulatory (Federal)</p> <p>FMCSA</p> <p>Active/Tracking</p> <p>MC, Rail, Marine, 3PL</p> <p>ATA, CVSA, OOIDA, Safety Advocates</p>	<p><b>KEY DATES</b></p>	<p><b>March 9, 2017</b> – FMCSA study finds no significant safety benefits resulting from the two “off-duty” periods of 1-5a.m. and the once-a-week 34-hour restart. Therefore, the provisions will not be enforced</p> <p><b>June 21, 2018</b> – HOURS Act is introduced</p> <p><b>Aug. 23, 2018</b> – FMCSA publishes HOS ANPRM</p> <p><b>Dec. 21, 2019</b> – FMCSA preempts California’s meal and rest break rules</p> <p><b>Feb. 6, 2019</b> – Teamsters sue to overturn FMCSA’s preemption of California’s meal and rest break rules</p> <p><b>Feb. 7, 2019</b> – State of California sues to overturn FMCSA’s preemption of California’s meal and rest break rules</p>
		<p><b>MOST RECENT ACTION</b></p>	<p><b>June 7, 2019</b> – FMCSA delays publication of HOS rulemaking, pending OMB approval</p>

### 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 coming on duty; 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 eight hours long. A 2013 Rule limited use of the 34-hour restart provision to once a week and added a requirement that the restart contain two consecutive 1 – 5 a.m. “off-duty” periods, however these provisions are suspended.

### 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

By limiting the use of the 34-hour restart provision to once a week and requiring two consecutive 1– 5 a.m. “off duty” periods, the 2013 HOS regulations effectively reduced seven day driving hours by 12 (70 vs.82). Responding to an ATA petition challenging these requirements, the U.S. Court of Appeals issued a decision upholding the HOS rule with the exception of a requirement that called for short-haul drivers to take a 30-minute break after driving eight consecutive hours. Short-haul drivers are defined 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.

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. GAO was asked to evaluate the findings due to concerns held by Members of Congress regarding the

agency's methodology. GAO found the study did not meet research standards such as reporting limitations and linking conclusions to the results.

In response to mounting concerns, Congress suspended funding in the FY15 and FY16 appropriations laws for enforcement of the once-a-week restart and two consecutive 1 – 5 a.m. "off-duty" periods. In Jan. 2017, FMCSA's restart study did not find net safety benefits resulting from the two suspended provisions. The OIG concurred with FMCSA's conclusion, and in March 2017, FMCSA notified Congress the two "off-duty" periods of 1 – 5 a.m. and the once-a-week restart provisions will not be enforced.

In June 2017, FMCSA proposed a pilot program to allow CMV operators to use alternative split times in their sleeper berths. On Aug. 23, 2018, FMCSA issued an advanced notice of proposed rulemaking (ANPRM), seeking public input on four specific HOS areas in which the FMCSA is considering changes: the short-haul HOS limit; the HOS exception for adverse driving conditions; the 30-minute rest break provision; and split sleeper berth rules. The ANPRM also requested input on two petitions filed by stakeholders: the Owner-Operator Independent Drivers Association's (OOIDA) petition to amend HOS rules to allow drivers to take a rest break once per 14-hour duty period for up to three consecutive hours if the driver is off-duty and to eliminate the 30-minute rest break; and a TruckerNation petition to amend the driving window to 14-hours of on-duty time, to allow drivers to use multiple off-duty periods of three hours or longer in lieu of having 10 consecutive hours off-duty, and to eliminate the 30-minute break. This ANPRM is not intended to provide definitive regulations but instead just to seek public input. In late 2018, FMCSA announced it would no longer implement the sleeper berth pilot as the Aug. 2018 ANPRM will help to address sleeper berth time splits without the need for a study. FMCSA announced the HOS notice of proposed rulemaking (NPRM) would be published on June 7, 2019. However, on June 7, 2019, FMCSA pushed that back to an unspecified date pending the completion of the Office of Management and Budget's review.

Some states have passed their own HOS standards, but there is disagreement as to whether or not Federal Aviation Administration Authorization Act (F4A) preemption policies extend to these requirements. Legislation preempting state restrictions on CMV operator rest and meal breaks over federal HOS rules has been filed, however none have successfully made it

into law. ATA submitted a petition in Sept. 2018 to FMCSA requesting a determination that California's meal and rest break rules are preempted by Federal law. On Dec. 21, 2018, FMCSA granted ATA's petition and preempted California's meal and rest break provisions. In Feb. 2019, the state of California and the International Brotherhood of Teamsters union filed separate suits with the U.S. Court of Appeals for the Ninth Circuit, asking the court to reverse FMCSA's decision.

The HOS regulations contain four elements of significance to intermodal motor carriers:

- 1) Retains the 11-hour daily driving limit;
- 2) Retains the 14-hour maximum driving window;
- 3) 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; and,
- 4) 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 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:

Revision of the current HOS regulations to harmonize short-haul exemption rules could have a positive impact on intermodal CMV operators. The HOURS Act includes a provision that would exempt all 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 would therefore benefit from this exemption.