Questions and Answers

Hours-of-Service (HOS) for Commercial Motor Vehicle Drivers

2011 Final Rule

1. Why is this rule being issued?

The goal of this rulemaking is to reduce excessively long work hours that increase both the risk of fatigue-related crashes and long-term health problems for drivers. A rule cannot ensure that drivers will be rested, but it can ensure that they have enough time off to obtain adequate rest on a daily and weekly basis. The objective of this rule, therefore, is to reduce both acute and chronic fatigue by limiting the maximum number of hours per day and week that the drivers can work. On average, the rule reduces a driver's maximum allowable hours of work per week from 82 hours to 70 hours, a 15% reduction. The 15% reduction in the average maximum allowable hours of work based on the new rule results from the restrictions on the use of the restart period.

2. When is compliance required?

Compliance with the § 395.2 definition of "on-duty time" and the § 395.1(d) "oilfield" provisions, when applicable, is required 60 days after publication of the Final Rule in the Federal Register. Compliance with all other provisions is required no later than July 1, 2013. Because the new rule is more restrictive than the current rule, drivers and carriers may comply at any time after the effective date of the rule; in other words, if they are in compliance with the new rules, they will also be in compliance with the current rules.

3. Which drivers are most likely or unlikely to be affected by the rule changes?

The rule will mainly affect drivers who work more than 70 hours a week on a continuing basis. These drivers are mostly a subset of long-haul truckload drivers. Local drivers and less-than-truckload drivers, who rarely work more than 5 days a week, are unlikely to be affected.

4. What are the costs and benefits of the rule?

The rule has annual costs of about $470 million and benefits of around $630 million. FMCSA's best estimate is that the rule will produce net benefits of $160 million a year.

5. Does this rule impact passenger-carrying drivers in any way?

The only amendments that affect passenger-carrying drivers are the change to the on-duty definition, which allows time spent resting in a parked commercial motor vehicle to be considered off duty, and the penalties provision, which categorizes as "egregious" any violation of the driving-time limit by 3 or more hours (thus invoking maximum penalties).

6. What are the primary changes of the HOS regulations in this final rule?

A. Restart limited to once per week

The rule limits the use of the "34-hour restart" to once a week (168 hours).

(1) What is the purpose of the 168-hour provision?

The purpose of the rule change is to limit work to no more than 70 hours a week on average. Working long daily and weekly hours on a continuing basis is associated with chronic fatigue, a high risk of crashes, and a number of serious chronic health conditions in drivers.

(2) What is wrong with taking two 34-hour restarts in a week?

Multiple restarts in each week would not generally be a problem because frequent 34-hour-long off-duty periods would leave little time in a given week to build up excessive duty hours. If, however, restarts are taken every 6 days, a problem does arise: under existing rules, alternating 14 hours on-duty and 10 hours off, a driver would reach 70 hours in less than 5 full days. After a 34-hour break, the driver could then begin this same cycle again, totaling 70 hours on-duty every 6 calendar days, for an average of almost 82 hours per calendar week. Limiting restarts to one every 168 hours prevents this excessive buildup of on-duty hours, while still allowing drivers to use the restart provision to their advantage and avoiding the complexity of special provisions for more frequent restarts.

(3) Why doesn't a 34-hour restart provide the driver enough rest?

A driver using the minimum restart every 5 or 6 days could average 80 or more hours a week. To do this, a driver would have to be working close to 14 hours a day. If a driver did this week after week, he or she would be chronically fatigued – two nights of sleep would only mitigate, not eliminate the slept debt the driver built up during the work week. That sleep debt would increase over time.

(4) Which drivers are most likely to be affected by the 168-hour provision?

Drivers who work very long hours (more than 70 per week) on a continuing basis are most likely to be affected by the 168-hour provision. The available data indicate that a small percentage of truckload drivers work these extreme hours.

(5) How will inspectors be able to enforce the provision during roadside inspections?

FMCSA recognizes that this provision will not always be enforceable during roadside inspections. FMCSA and our State partners will be able to verify compliance with this provision during compliance reviews or other interventions.

B. <u>Restart must include 2 night periods between 1:00-5:00 a.m.</u>

The restart must cover at least 34 consecutive hours and include at least two periods between 1:00 a.m. and 5:00 a.m., not two periods between midnight and 6:00 a.m. as proposed in the NPRM. Although both alternatives cover most estimates of when the "window of circadian low" occurs, the 4-hour (rather than 6-hour) period addresses concerns drivers raised in the comment period by giving drivers greater flexibility in ending and beginning the restart.

(1) Who will be affected by the 2-night provision?

Only drivers who drive nights and work more than 60 or 70 hours in a week will be impacted. The nighttime operations of the major less-than-truckload (LTL) carriers should be minimally impacted, as their drivers generally receive 2 days off duty a week. Drivers who will be impacted by this provision work heavy and irregular schedules that include some nighttime driving.

(2) What is the minimum length of time a driver has to be off duty to get the 2 night periods?

The minimum period is 34 hours. Most drivers driving day-time schedules will be able to obtain the 2 nights in a minimum 34-hour restart, if they need to use the restart at all. For example, a driver who begins a restart period when going off duty at 7:00 pm on a Friday would complete the minimum 34 hours off duty at 5:00 a.m. on Sunday. This would have included the required 2 nights off between 1:00 a.m. and 5:00 a.m. Only drivers who have a regular overnight driving schedule and who work more than 5 nights a week will need to take longer restarts to obtain the 2 nights off.

(3) If a driver works 10 hours a night 6 nights a week and takes the 7th night off, does he then have to take an extra night off?

No, the driver would be working 60 hours in 7 days and would not need a restart to start working again on the 8th day. The driver, therefore, would not need to use the restart provision.

(4) Won't the 2-night provision cause night drivers to change to day time driving and add more trucks to the road during the day?

The FMCSA knows of no reason why drivers would stop driving at night to avoid the extra hours that may be needed to meet the 2-night requirement. Most drivers who regularly drive overnight do not work enough hours to need a restart and, therefore are not subject to the 2-night requirement. J.B. Hunt, a truckload carrier, stated that 32 percent of its drivers occasionally drove at night; these drivers did so on average only 6 nights a month.

(5) Won't the 2-night requirement make drivers "flip" their sleep schedule on their days off?

It is likely that most nighttime drivers already flip their schedules regardless of the restart length, particularly when taking a restart at home; otherwise they would have minimal time to spend with their (day-oriented) families. Because daytime sleep is shorter and of lower quality, switching to night sleep helps at least to attenuate the sleep debt a driver working maximum hours builds up. Research consistently indicates that it is difficult to get more than 4 to 6 hours of sleep during the day; sleeping during the day on days off, therefore, simply increases the driver's sleep debt.

(6) Are the two nighttime periods based on the driver's terminal time or local time, when different?

Drivers' logs are based on the time zone of their home terminal. The 2-night periods are, therefore, set by the time at the home terminal. They are not related to "local time."

(7) Will the 2-night provision end nighttime deliveries?

No. Most drivers who routinely drive at night are either LTL line-haul operators or work for local private carriers making deliveries (such as grocery and restaurant suppliers). Neither of these is likely to switch to day driving nor is there any reason why they would need to. Most of these drivers work few enough hours per week (less than 60) that they can maintain their preferred schedule while still complying with the HOS rule. In particular, if they are not driving more than 60 or 70 hours, they are not affected by the changes to the restart. Long-haul truckload drivers may prefer to drive at night, but their schedules are irregular and determined by their appointment times. Even these drivers, according to ATA, do not routinely work enough hours to trigger the need for the restart. When they do work maximum hours, they can still drive at night 5 nights a week.

(8) Isn't the 2-night requirement based solely on one lab-based study?

To study the effectiveness of the 2-night restart provision, FMCSA tested in a controlled sleep lab environment. This is done under the premise that if a provision is not effective in the lab, it certainly will not be effective in a field-related environment. That is, if people cannot obtain adequate sleep in the best-case environment (a dark, quiet room, with no possibility of interruption), they will not be able to obtain adequate sleep in a normal environment, let alone in a sleeper berth at a truck stop or beside a road. The study found that the 2-night provision works better than 1-night to mitigate driver fatigue in nighttime drivers. The findings of the study could be conservative, i.e., they could understate the adverse effect of night work on performance. In the study, the subjects did not work more than half of the full 14-hour work period and had 58 hours off between weeks. The impact on drivers who are working twice as much and attempting to start work again in a shorter period is likely to be more severe than the study indicated.

C. No driving if more than 8 hours since last break of 30 or more minutes

The final rule requires that if more than 8 consecutive hours on duty have passed since the last off-duty (or sleeper-berth) period of at least half an hour, a driver must take a break of at least 30 minutes before driving. To address an issue raised by commenters, FMCSA has also added an exception for drivers of commercial motor vehicles (CMVs) carrying Division 1.1, 1.2, or 1.3 explosives to allow them to count on-duty time spent attending the CMV, but doing no other on-duty work, toward the break.

(1) Why is FMCSA requiring drivers to take breaks?

Recent research found that any break from driving reduces risk in the hour following the break, but off-duty breaks produced the largest reduction. This study also showed that when non-driving activities (both work- and rest-related) were introduced during the driver's shift—creating a break from the driving task—these breaks significantly reduced the risk of being involved in a safety critical event during the 1-hour window after the break. The benefits of breaks from driving ranged from a 30- to 50-percent reduction in risk with the greatest benefit occurring for off-duty (non-working) breaks.

(2) Do I have to take a break exactly 8 hours after I come on duty?

No, the rule gives drivers flexibility in when and where to take the break. The rule only prohibits driving if more than 8 consecutive hours have passed since the last off-duty period of at least 30 minutes. For example, if a driver spends 2 hours loading at the beginning of the day, then has a 10-hour drive ahead of him, he must take the break no later than 8 hours after coming on duty. He can, however, take the break earlier. If he takes a half-hour or more break at some point between the 4^{th} and 8^{th} hours after coming on duty, he can complete the rest of his planned 10 hours of driving without another break.

(3) Does the break have to be spent resting?

No. The driver must be off duty for at least a half hour. Meal breaks or any other off duty time of at least 30 minutes qualifies as a break. Drivers carrying certain explosives, who are required to attend the vehicle at all times, are allowed to count attendance time, which is on duty, toward the break if they do no other work during that time.

(4) Can the shorter sleeper-berth break (minimum 2 hours) be used to meet the half-hour break requirement?

Yes. Any off-duty or sleeper-berth period of 30 minutes or more will meet the requirement.

(5) Does the break count against the 14-hour driving window?

Yes. Allowing off-duty time to extend the work day would allow drivers to drive long past the time when fatigue becomes extreme. The 14-consecutive-hour rule was adopted to prevent that and to help drivers maintain a schedule that is consistent with circadian rhythms.

(6) Which drivers are most likely to be affected by this provision?

Commenters to the proposed rule stated that most drivers already take breaks, so they are unlikely to be affected. The only drivers who will be affected are those who drive after working for more than 8 hours without taking any off-duty time.

(7) Can time spent waiting to be loaded or unloaded count toward the break requirement?

Time spent waiting to be loaded or unloaded is on duty unless the driver has been released from all responsibility for the truck. Except for drivers attending loads of certain explosives, on-duty time cannot be considered as a break.

7. What other changes are there in the rule?

A. Definition of On-Duty Time

The FMCSA is excluding from the definition of on-duty time any time resting in a parked commercial motor vehicle (CMV), or up to 2 hours in the passenger seat of a moving CMV, immediately before or after 8 consecutive hours in the sleeper berth.

(1) If a driver spends time waiting to be loaded or unloaded resting or conducting personal business, can the driver log it as off duty?

The changes to the definition do not alter the existing parts of the definition that define, as on duty, "(5) All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a commercial motor vehicle being loaded or unloaded, remaining in readiness to operate the commercial motor vehicle, or in giving or receiving receipts for shipments loaded or unloaded." Unless a driver is released from all responsibility for the vehicle while waiting to be loaded or unloaded, time spent waiting is still considered on-duty time.

(2) Why didn't FMCSA limit the amount of time a driver can rest in a parked vehicle?

FMCSA does not believe that the rule should include a time limit in a parked CMV. Under the previous definition, a driver could be forced to spend time out of the cab even if there were no safe place to do so or no shelter or facilities. It is surely better that the driver can rest in the cab in these circumstances, regardless of the length of time involved.

(3) Why is a team driver limited to counting 2 hours in the passenger seat as off duty?

This rule continues to require drivers to take 8 consecutive hours in the sleeper berth, and allows them to take an additional 2 hours in the passenger seat when the vehicle is moving, without artificially confining them to the sleeper berth for the entire 10-hour period. This provides team drivers an opportunity to "keep the truck moving" by having driver A drive for 10 hours while driver B obtains a full daily rest period without having to stay in the sleeper berth for 10 straight hours. Driver B can take 8 hours in the sleeper berth and 2 hours in the passenger seat to accomplish the required off-duty period. Then the drivers may change positions and keep the truck moving. This reversal pattern could continue until either driver reaches the maximum limit of 60 or 70 hours on-duty in a 7 or 8 day period.

B. Oilfield provisions

As proposed, FMCSA is revising the oilfield operations exception to clarify the language concerning recording of waiting time and to state that waiting time is not included in the calculation of the driving window.

(1) Why is this change necessary?

The current regulation requires certain drivers to keep a separate record of "waiting time" at well sites, but does not specify how the record should be maintained. The new rule is more specific in response to requests for clarification from the industry and law enforcement.

(2) Does this change the exclusion of waiting time from the driving window?

No. FMCSA has previously stated that the waiting time at well sites is not included in calculation of the driving window. This new rule clarifies that by placing specific language in the regulatory text.

C. Penalties

The FMCSA is adopting, as proposed, a rule that driving (or allowing a driver to drive) 3 or more hours beyond the driving-time limit may be considered an egregious violation and subject to the maximum civil penalties. This rule allows, but does not require, the agency to treat these violations as egregious.

(1) Why did FMCSA select 3 or more hours as a potentially egregious violation?

Under adverse driving conditions, the hours-of-service regulations allow up to 2 extra hours of driving. Exceeding the normal driving-time limits by 3 or more hours, however, would severely test driver stamina and substantially

increase the risk of a fatigue-caused crash. A violation that serious warrants severe penalties.

8. Additional Questions and Answers

A. Is the driving time limit being changed from the current 11 hours?

No. In the NPRM, FMCSA proposed changing to a 10-hour limit or keeping the current 11-hour limit, with a preference for the 10-hour option. FMCSA examined many studies on the relationship between work hours and health and safety, both in trucking and other industries; reviewed the comments and information submitted to the docket, mostly in opposition to a 10-hour driving limit; and completed elaborate analyses in accordance with Presidential Executive Order 13563*, "Improving Regulation and Regulatory Review," of the costs and benefits to health and safety of 9-, 10-, and 11-hour driving limits. In the absence of compelling scientific evidence demonstrating the safety benefits of a 10-hour driving limit, as opposed to an 11-hour limit, and confronted with strong evidence that an 11-hour limit could well provide higher net benefits, the Agency has concluded that adequate and reasonable grounds under the Administrative Procedure Act for adopting a new regulation on this issue do not exist and that the current driving limit should therefore be allowed to stand for now.

* In this Executive Order, issued January18, 2011, the President requires Federal agencies to design cost-effective, evidence-based regulations that are compatible with economic growth, job creation, and competitiveness. It outlines the following guiding principles:

1. **Cost-effective and Cost-Justified**: Consistent with law, Agencies must consider costs and benefits and choose the least burdensome path.
2. **Transparent**: The regulatory process must be transparent and include public participation, with an opportunity for the public to comment.
3. **Coordinated and Simplified**: Agencies must attempt to coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for businesses and the public.
4. **Flexible**: Agencies must consider approaches that maintain freedom of choice and flexibility, including disclosure of relevant information to the public.
5. **Science-driven**: Regulations must be guided by objective scientific evidence. **Necessary and Up-to-Date**: Existing regulations must be reviewed to determine that they are still necessary and crafted effectively to solve current problems. If they are outdated, they must be changed or repealed.

B. Has FMCSA changed the sleeper berth rules?

No, FMCSA did not propose nor has it adopted any changes to the provisions that cover the use sleeper-berths.

C. Has FMCSA addressed the problem of detention time (shippers and receivers making drivers wait extended periods of time to be loaded or unloaded)?

No. FMCSA does not have the statutory authority to regulate shippers and receivers.

D. Why has FMCSA considered driver health issues?

FMCSA has a statutory mandate to ensure that "the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators." Recent research has linked long work hours and the resulting curtailment of sleep to a range of serious health effects, particularly when combined with a job that is basically sedentary, like truck driving. These health conditions – including obesity, high blood pressure, other cardiovascular diseases, diabetes, and sleep apnea – not only shorten drivers' lives, but also can result in substantial ongoing medical costs and put drivers' medical certifications at risk. CMV drivers suffer from these conditions at a higher rate than the population as a whole.

E. If truck accidents have been declining, why does the rule need to be changed?

The decline in crashes and crash rates for both trucks and cars started in the late 1970s and has continued for both types of vehicles. The declines tend to be sharper during periods of economic recession, but other factors, such as improved vehicle and road design, are generally considered to have contributed to reductions. Furthermore, the significant decrease in truck crashes may not necessarily translate into significant decreases in fatigue-related crashes. FMCSA believes that the 2003 rule, which limited the duty period and lengthened the off-duty period, has certainly not diminished safety, but the recent declines in crashes cannot be specifically attributed to that rule. More importantly, despite the improvement, 3,380 people were killed in truck crashes in 2009 (including 503 CMV drivers) and 74,000 were injured. Although historically low, the numbers are still far too high. Based on preliminary reports from the National Highway Traffic Safety Administration, the number of fatalities from truck crashes increased in 2010 by 8.7 percent, while car crashes continued to decline.

F. Will the rule increase the cost of transportation and consumer products moved by trucks?

Transportation costs represent a relatively small part of the cost of any consumer item. However, the largest contributor changes in transportation costs is the price of diesel fuel. The cost of the rule changes to the industry is the equivalent of an increase of less than $0.03 per gallon of diesel for the long-haul segment of the industry. The U.S. Department of Agriculture indicates that transportation represents only 2 to 6 percent of each food and beverage dollar. If, as FMCSA projects, transportation costs will increase by less than 0.25 percent, the increase in the price of each food item will be a very small fraction of a penny.

Impacts on consumers of increased freight transportation costs would be small for individual households, even for a rule that imposed substantial costs, because these costs would be spread among a wide range of goods, purchased by millions of households. Each billion dollars of increased costs, passed on to U.S. consumers in the 117.5 million households estimated for the year 2010 by the U.S. Bureau of the Census, would cost an average household less than $9 per year. This hours-of-service rule, with costs of $470 million annually, would have an impact of only about $4 per household per year.

9. Where can I find detailed information about this new HOS final rule?

- Details are available in the final rule document at [http://www.fmcsa.dot.gov/documents/hos-final/HOS-Final-Rule.pdf] .

- Further details of the technical analysis of the details are available at.[http://www.fmcsa.dot.gov/documents/hos-final/2011_HOS_Final_Rule_RIA.pdf]