



# MOTOR CARRIER NEWS

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## Hours-of-service rulemaking to conclude in July

When the Federal Motor Carrier Safety Administration (FMCSA) published its proposed new truck driver hours-of-service rules two days before Christmas 2010, some in the trucking industry likened it to getting three lumps of coal under the tree.

The proposed rules include the possibility of reducing the maximum daily driving time from 11 hours to 10, prohibiting driving after 13 hours on-duty following 10 hours off-duty (rather than after the 14th hour), and continuing the 34-hour restart provision, allowing drivers to restart the clock on their weekly 60 or 70 hours duty period by taking at least 34 consecutive hours off-duty, but requiring that it include two consecutive off-duty periods between Midnight and 6 a.m. and prohibiting drivers from using the restart more than once in a seven-day period.

The rulemaking is now scheduled to end in July 2011. Here's a summary of all that's proposed:

### Required Off-Duty Period

— This remains at a minimum of 10 consecutive hours. Driving time between two such periods could be set at either 10 or 11 hours (FMCSA says it prefers a 10-hour limit, but it's still considering both a 10- and 11-hour driving limit).

**“Driving Window”** — This remains at 14 consecutive hours after coming on-duty following a break of at least 10 hours, with release from duty required at the end of the driving window. Twice a week, drivers would

be allowed to extend the driving window to 16 hours, but that would not increase driving or on-duty time and a driver using the extension must take up to 3 hours off-duty during that duty day and go off-duty at the end of the 16-hour driving window.

### Maximum On-Duty Within

**Driving Window** — A driver would be permitted to be on-duty for only 13 hours of the driving window time, instead of the current 14 hours.

### Consecutive Hours of Driving

— A driver may drive only if 7 hours or less have passed since the driver's last off-duty or sleeper-berth period of at least 30 minutes.

### Maximum

**On-Duty Hours** — The weekly limits remain unchanged — may not drive after 60 hours on-duty in 7 days or 70 hours on-duty in 8 days.

### “Restart”

— The 34-hour restart allowing drivers to restart their 60- or 70-hour on-duty clock by taking at least 34 consecutive hours off-duty, would have three limitations. First, any restart must include two periods between Midnight and 6 a.m. Second, a driver would be allowed to

begin another 34-hour off-duty period no sooner than 168 hours (7 days) after the beginning of the previous restart. Third, the driver would have to designate whether a period of 34 hours or more off-duty was to be considered a restart.

### Sleeper Berth

— The sleeper-berth rule remains unchanged. Drivers must take at least 8, but less than 10, consecutive hours in the sleeper berth and a shorter break of at least 2 hours off-duty or in the sleeper berth (in lieu of the standard 10 consecutive hours off-duty).

**On-Duty Time** — The definition of “on-duty” would change to allow team drivers to log as off-duty up to 2 hours spent in the passenger seat immediately before or after a period of 8 or more hours in the sleeper berth while the other team member is driving. Also, time spent resting in a non-moving CMV would not be “on-duty” time.

**Penalties** — Drivers and motor carriers would face civil penalties of up to \$2,750 and \$11,000, respectively, for each offense of driving or permitting someone to drive three or more hours over the driving-time limit (the yet-to-be-determined limit of 10 or 11 hours).



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# Hours-of-service proposal falls flat with all sides

The Federal Motor Carrier Safety Administration (FMCSA) finds itself caught between a rock and a hard place with its proposed changes to the hours-of-service rule. This latest rule-making got its start in October 2009 when the agency entered into a settlement with a coalition of advocacy and labor groups who demanded reconsideration of the current rules. But now both that coalition and the trucking industry are criticizing the results of FMCSA's reconsideration.

In a January issue of *Transport Topics*, Randy Mullett, Vice-President of Government Relations for Con-way Inc., was quoted as saying: "The only thing that I see that could have some benefit is this notion that you can take off-duty hours while you're being held up by a customer. And that is not a fair trade-off for all the other complexities and restrictions that go along with it."

On the other side, Public Citizen, Advocates for Highway and Auto Safety, and the Truck Safety Coalition issued a joint statement saying the changes don't go far enough: "The new proposed rule does not eliminate any of the anti-safety provisions that allow truck drivers to drive and work long hours, get less rest and drive while fatigued."

The proposal isn't fairing any better with at least one government agency responsible for enforcing the rules — the Oregon DOT Motor Carrier Transportation Division. In January, Administrator Gregg Dal Ponte filed comments in the rulemaking that noted Oregon inspectors currently have no trouble finding hours-of-service violations. In fact, according to FMCSA records Oregon ranks first in the country in the percentage rate that its inspectors find drivers with criti-

cal safety violations. In Federal Fiscal Year 2010, the FMCSA lists Oregon with 42,941 inspections and a 15% rate for placing drivers out-of-service. (Drivers with questionable records are targeted for inspection, rather than randomly selected, which explains the high out-of-service rate.) Overall throughout the nation, inspectors had only a 5% driver out-of-service rate.

"For years now Oregon inspectors have been making headlines in special multi-day inspection exercises," Dal Ponte said. "In eight major exercises in 2010 that extended over 40 days, inspectors checked 4,804 drivers and placed 1,278 out-of-service for critical safety violations (27%). Most of the violations were related to driving after the 14th hour after coming on duty, driving more than 11 hours, and holding logbooks that were not current, improperly completed, and/or falsified. The results in 2010 are very similar to results in previous years."

Dal Ponte is concerned about the training that will be required if new rules are adopted. "FMCSA believes

the developed rules are, 'Easy to understand and readily enforceable.' In my opinion, that's understating the size of the effort required to un-educate and re-educate over 500 certified safety inspectors in Oregon and who knows how many nationwide. I also don't think they've given sufficient consideration to the level of review that will be required roadside to evaluate all of the new subtleties introduced by new rules, such as the changes to the 34-hour restart."

Recent declines in truck crash totals also make Dal Ponte wonder what's driving a change. "I'm looking at nationwide gains in truck and driver safety and wondering why we are "fixing" the current rules that certainly seem to be working well," he said. "Bottom line here is that drivers will have difficulty understanding and complying with the changes and law enforcement personnel will have difficulty consistently enforcing them. It's ill-considered and inappropriate to propose such complex changes to the current hours-of-service rules."

## Comment period ends February 28

The FMCSA has received thousands of comments since it announced in 2009 that hours-of-service rules were back on the table. The most recent Notice of Proposed Rulemaking was published in the Federal Register on December 29, 2010, so its comment period ends on February 28, 2011. Those who receive this issue of the March Motor Carrier News in time can still file comments up to that date, or file late comments that may still be included in the record.

To submit comments and view all related documents, visit the Federal eRulemaking Portal — [www.regulations.gov](http://www.regulations.gov) — enter the Docket ID Number "FMCSA-2004-19608" in the "Enter Keyword or ID" box and click the "Search" button. Comments can also be mailed to Docket Management Facility, U.S. DOT, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001. Comments can be faxed to 1-202-493-2251. Each submission must include the agency name and the docket number — FMCSA-2004-19608. DOT posts all comments received without change, including any personal information included in a comment.

### Hours of Service Proposed Rulemaking — December 2010

[www.fmcsa.dot.gov/rules-regulations/TOPICS/hos-proposed/HOS%20NPRM.pdf](http://www.fmcsa.dot.gov/rules-regulations/TOPICS/hos-proposed/HOS%20NPRM.pdf)

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