
HOURS OF SERVICE RULE: LITIGATION ISSUES 2003-2009

**Federal Motor Carrier Safety Administration
Motor Carrier Safety Advisory Committee**



ADVOCATES
for Highway & Auto Safety

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Hours of Service Regulatory Background Highlights

2000 (Oct.): NPRM issued

2003 (Apr.): Final Rule issued

(June): First HOS Lawsuit Filed

2004 (July): First Court of Appeals decision - remands HOS rule to FMCSA

(Sept): ANPRM on Electronic On-Board Recorders (EOBRs) issued

2005 (Jan.): HOS NPRM issued – proposal identical to 2003 HOS final rule

(Aug.): Final Rule issued – same as 2003 HOS final rule except –

1) sleeper berth requires at least one 8-hour rest period, and

2) EOBRs not included in HOS rulemaking

2006 (Feb.): Second HOS Lawsuit Filed

Hours of Service Regulatory Background Highlights

2007 (Jan.): NPRM on EOBRs Issued

(June): Second Court of Appeals decision - remands rule to FMCSA

(Dec.): Interim HOS Final Rule issued – identical to 2005 final rule

2008 (Jan.): Court of Appeals denies motion to enforce June, 2007 decision

(Nov.): Third HOS Final Rule issued – identical to 2005 final rule

(Dec.): Petition for Reconsideration of HOS final rule filed with FMCSA

2009 (Jan.): FMCSA denies Petition for Reconsideration

(Mar.): Petitioners file third HOS lawsuit

(Oct.): Parties reach settlement agreement on new rulemaking

2010 (July): HOS Draft NPRM to be sent to OMB

2011 (July): HOS Final rule to be issued

Hours of Service (HOS) Legislative Background

- 1984 Motor Carrier Safety Act
 - 1995 Interstate Commerce Commission Termination Act
 - 1999 Motor Carrier Safety Improvement Act
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1984 Motor Carrier Safety Act

Section 206(a) of the Motor Carrier Safety Act of 1984 requires:

“At a minimum, the [federal safety standards] shall ensure that—

* * * * *

(3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and

(4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators.”

49 U.S.C. Section 31136(a). The Motor Carrier Safety Act of 1984 was Title II of the Tandem Truck Safety Act, Pub.L. 98-554 (October 30, 1984)

1995 Interstate Commerce Commission Termination Act (ICCTA)

§408 of the ICCTA, Pub.L. No. 104-88, required rulemaking

“dealing with a variety of fatigue-related issues pertaining to commercial motor vehicle safety (including 8 hours of continuous sleep after 10 hours of driving, loading and unloading operations, automated and tamper-proof recording devices, rest and recovery cycles, fatigue and stress in longer combination vehicles, fitness for duty, and other appropriate regulatory and enforcement countermeasures for reducing fatigue-related incidents and increasing driver alertness).”

49 USC § 31136 note.

1999 Motor Carrier Safety Improvement Act (MCSIA)

Section 3 of the MCSIA, Pub.L. No. 106-159, requires:

“meaningful measures to improve safety [that] must be implemented expeditiously to prevent increases in motor carrier crashes, injuries, and fatalities.

Section 4 of MCSIA requires FMCSA:

“To reduce the number and severity of large-truck involved crashes...”

Section 101(a) of MCSIA states the statutory mission of the agency as:

“Safety as Highest Priority.—In carrying out its duties, the Administration shall consider the assignment and maintenance of safety as the highest priority, recognizing the clear intent, encouragement, and dedication of Congress to the furtherance of the highest degree of safety in motor carrier transportation.”

HOS Rule Changes Comparison

HOS ISSUE	Pre-2003 Rule	2003 Final Rule
Maximum Consecutive Driving Hours Per Shift	10	11
Sleeper Berth Exception	Split into 2 segments Of at least 2 hours each	same
Maximum Shift/Day On-Duty Hours	15 hours; extended for off-duty breaks	14 hours; no extension
Minimum Off-Duty Hours between On-Duty Shifts	8	10
Daily Work/Rest Cycle Hours	18 (10/8)	21 (11/10) or 24 (14/10)
Total Allowed Driving Hours in a 24-hour Period	16	14
Minimum Off-Duty Weekly Hours	Remaining time in week	34-restart
Maximum Weekly Driving Hours		
<ul style="list-style-type: none"> ■ <i>Maximum Hours</i> 	60/7 days 70/8 days	60/7 days 70/8 days
<ul style="list-style-type: none"> ■ <i>Actual Driving Limit</i> 	60/7 days 70/8 days	77/7 days 88/8 days
Electronic On-Board Recorders	Not required	Not required
24-Hour circadian rhythm	18 (10/8)	21 (11/10)

HOS I – *Public Citizen, et al. v. FMCSA*

The Parties

■ Petitioners

- Public Citizen
- Citizens for Reliable and Safe Highways (CRASH)
- Parent Against Tired Truckers (P.A.T.T.)

■ Amici

- Advocates for Highway and Auto Safety
- Insurance Institute for Highway Safety

■ Respondents

- FMCSA (DOT & DOJ)

■ Intervenors

- American Trucking Associations
 - Distribution and LTL Carriers Association
 - Truckload Carriers Association
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HOS I – *Public Citizen, et al. v. FMCSA*

The Issues

- Truck Driver Health
 - Increase in Maximum Driving Time from 10 to 11 Consecutive Hours Per Shift
 - Sleeper Berth Exception
 - Electronic On-Board Recorders (EOBRs)
 - 34-Hour Restart
 - 24-Hour Circadian Rhythm
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HOS I – *Public Citizen, et al. v. FMCSA*

Truck Driver Health

Petitioners' Claims

- FMCSA did not address the effect of longer driving and working hours on the physical and medical health of truck drivers; a key statutory factor that Congress required the agency must consider when issuing rules affecting drivers

FMCSA Responses

- FMCSA conducted driver health and wellness study, and screens drivers for physical and medical conditions
- FMCSA is not required to protect driver health to the exclusion of other factors

Court of Appeals Opinion

- “We hold that the final rule is arbitrary and capricious because the agency neglected to consider a statutory mandated factor – the impact of the rule on the health of drivers.” The agency is not required to exclude other factors but it is required to give consideration to factors expressly required by Congress. “The FMCSA points to nothing in the agency’s extensive deliberations establishing that it considered the statutorily mandated factor of drivers’ health in the slightest.”
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HOS I – *Public Citizen, et al. v. FMCSA*

Increase in Maximum Driving Time from 10 to 11 Consecutive Hours Per Shift

Petitioners' Claims

- Studies show that crash risk increases geometrically after the 8th hour of driving
- In light of fatigue problem and research increase in consecutive driving hours is unsafe
- Research does not support the view that increasing off-duty time to 10 hours, and limiting the duration of on-duty shift time to 14 hours instead of 15 hours, makes an 11th consecutive hour of driving safer

FMCSA Responses

- Increase in off-duty rest time to 10 hours between 11-hour driving shifts, and limiting drivers to a 14 hour nonextendable on-duty shift, offsets increases in driving time

Court of Appeals Opinion

- “We have our doubts about whether these two justifications are legally sufficient. The agency freely concedes that ‘studies show[] that performance begins to degrade after the 8th hour on duty and increases geometrically during the 10th and 11th hours’ on duty. . . the agency cited absolutely no studies in support of its notion that the decrease in daily driving-eligible tour of duty from fifteen to fourteen hours will compensate for these conceded and documented ill effects from the increase.”
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HOS I – *Public Citizen, et al. v. FMCSA*

Sleeper Berth Exception

Petitioners' Claims

- 8 hours of uninterrupted opportunity for rest is needed to obtain sufficient sleep; traditional split sleeper berth practice is unreasonable and promotes fatigue

FMCSA Responses

- Studies indicate that sleeping in a sleeper berth provides less restorative rest than sleeping in a bed, splitting off-duty rest into 2 shorter rest periods is acceptable
- Sleeper berth split sleep is less of a problem for team drivers
- Sleeper berth exception is engrained industry practice that would be difficult to change

Court of Appeals Opinion

- “[T]he agency’s citation to the study . . . that sleeping in a berth is less restorative than sleeping in a bed supports eliminating, not retaining, the exception.”
 - “[T]he agency’s observation that solo drivers less effectively use the sleeper berths than do team drivers also supports eliminating the exception for solo drivers. . . .”
 - “In sum, we have grave doubts about whether the agency’s explanation for retaining the sleeper-berth exception would survive arbitrary-and-capricious review.”
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HOS I – *Public Citizen, et al. v. FMCSA*

Electronic On-Board Recorders (EOBRs)

Petitioners' Claims

- Congress required agency to issue a rule “dealing with” automated and tamper proof recording devices.”
- Although the mandatory use of EOBRs was included in the proposed rule in 2000, the 2003 final rule did not address the issue of EOBRs.

FMCSA Responses

- Agency did not have sufficient information on costs and benefits of technology; readouts would not be uniform; and, drivers object to use of such invasive technology.

Court of Appeals Opinion

- “[T]he agency has not bothered to study what benefits EOBRs might have. This one-sided and passive regulatory approach in all likelihood does not comport with Congress’s direction for the agency to ‘deal[] with’ this issue. . . .”
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HOS I – *Public Citizen, et al. v. FMCSA*

34-Hour Restart

Petitioners' Claims

- Does not provide sufficient time for rest and recovery from weekly and week-to-week accumulated sleep debt, and permits 17 (28%) or 18 (25%) more driving hours over the 60 hour/7 day or 70 hour/8 day weekly driving rotations respectively.

FMCSA Responses

- Allows drivers to get 2 rest periods of 8 hours; provides scheduling flexibility to industry; and allows drivers to keep a more regular schedule and use extended off-duty at home.

Court of Appeals Opinion

- FMCSA “does not even acknowledge, much less justify, that the rule ... dramatically increases the maximum permissible hours drivers may work each week.” The agency’s failure to address that increase “makes this aspect of the rule’s rationality questionable.”
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HOS I – *Public Citizen, et al. v. FMCSA*

24-Hour Circadian Rhythm

Petitioners' Claims

- The final rule still allows drivers to operate on less than a 24-hour circadian cycle allowing drivers to operate on a 21-hour (11/10) work/rest cycle;
- research studies show that performance degrades for workers operating on rearward rotating schedules that interfere with the biological 24-hour cycle.

FMCSA Responses

- The final rule permits drivers to use the 14-hour work window coupled with a 10-hour off-duty period to keep a 24-hour circadian rhythm;
- Even for drivers who maximize drive/rest hours on a 21-hour rotation that is closer to a full circadian cycle than the previous 18-hour rotation.

Court of Appeals Opinion

- Not addressed by the Court's opinion.
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Rule Changes

■ **EOBRs**

- FMCSA started separate rulemaking proceeding
- ANPRM, 69 *Federal Register* 53386 (Sept. 1, 2005)
- NPRM, 72 *Federal Register* 2340 (Jan. 18, 2007)

■ **Sleeper Berth**

- FMCSA changed sleeper berth exception to require 10-hour off-duty period be split into 2 segments of 8/2 hours

■ **FMCSA retained all the other provisions in exact same form as in 2003 final rule.**

HOS II – *OOIDA v. FMCSA*

OOIDA Case

■ Parties

□ Petitioner

- Owner-Operator Independent Drivers Association

Intervenors:

- Teamsters and the California Trucking Association

Respondents:

- FMCSA (DOT & DOJ)

■ Issues

- Sleeper Berth Exception
- 14-hour Daily On-Duty Limit with no off-duty rest break extension
- Loading and Unloading

■ Court Ruling

- Petition denied
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HOS II – *OOIDA v. FMCSA*

Public Citizen Case

■ Parties

- **Petitioners**: Public Citizen, CRASH, PATT, International Brotherhood of Teamsters, Advocates & IIHS (Amici)
- **Respondents**: FMCSA (DOT & DOJ)
- **Intervenors**: American Trucking Associations, Distribution and LTL Carriers Association and Truckload Carriers Association

■ Issues

- Truck Driver Health
- 11 Hours of Consecutive Driving
- 34-Hour Restart
- Lack of public notice of crash data analysis and methodology

■ Court Ruling

- Petition granted, rule remanded to agency due to lack of public notice and explanation of agency's crash data model to explain the "crash risk curve" methodology and time-on-task analysis.
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Rule Changes

- **NONE:** FMCSA retained all the provisions in exact same form as in 2005 final rule.
 - Interim HOS final rule published Dec. 17, 2007
 - Final rule published Nov. 19, 2008
 - Petition for Reconsideration:
 - filed Dec. 18, 2008
 - denied Jan. 16, 2009
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HOS III – *Public Citizen, et al v. FMCSA*

- Third HOS Case filed on March 9, 2009
 - Petitioners' brief filed on August 27, 2009
 - Settlement Agreement executed Oct. 26, 2009
 - Case is held in abeyance by Court of Appeals – at least until issuance of next NPRM
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