

October 15, 2019

The Honorable Raymond P. Martinez
Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Administrator Martinez:

The Federal Motor Carrier Safety Administration (FMCSA) tasked the Committee with Task 19-1, Hours of Service for Drivers of Commercial Motor Vehicles (CMVs), directing the Motor Carrier Safety Advisory Committee (MCSAC) to provide feedback to the Agency regarding FMCSA's proposed amendments to its hours-of-service (HOS) requirements to provide greater flexibility for drivers subject to the HOS rules without adversely affecting safety.

The MCSAC met in public meetings on September 30 – October 1, 2019, to discuss the task. The Committee reviewed the Notice of Proposed Rulemaking (NPRM) on HOS, which was published on August 22, 2019, with an open comment period until October 21, and considered the Agency's proposed amendments to the HOS rules and how to best accomplish them without adversely affecting safety. Specifically, FMCSA asked the MCSAC to review the proposals to alter the short-haul exception to the record of duty status requirement available to certain CMV drivers, to modify the adverse driving conditions exception, increase flexibility for the 30-minute break rule by requiring a break after 8 hours of driving time (instead of on-duty time) and allow on-duty-not driving periods as qualifying breaks from driving, to modify the sleeper berth exception to allow a driver to spend a minimum of 7 hours in the berth combined with an minimum 2-hour off-duty period, provided the combined periods total 10 hours (rather than the current 8/2 split), and allow one off-duty break that would pause a truck driver's 14-hour driving window. The resulting comments are attached as the Task 19-1 Report.

On behalf of the MCSAC, I respectfully submit this report to FMCSA for its consideration.

Sincerely,



John Lannen
Chairman

Enclosure

Motor Carrier Safety Advisory Committee (MCSAC) Report for Task 19-1: Hours of Service for Drivers of CMVs

Introduction

The Agency requested that the MCSAC provide comments on FMCSA’s August 22, 2019, Notice of Proposed Rulemaking (NPRM) concerning amendments to the hours-of-service (HOS) requirements. The Agency explained that the intent of the proposed changes is to provide greater flexibility for drivers subject to the HOS rules without adversely affecting safety. The MCSAC reviewed the following table from the preamble to the NPRM which summarizes the existing requirements, the proposed changes, and the Agency’s description of the potential impacts.

Summary of FMCSA’s Proposal

HOS Provision	Existing Requirement	Proposed Changes	Potential Impacts
Short Haul	<p>Drivers using the short haul exception applicable to drivers requiring CDL may not be on duty more than 12 hours.</p> <p>Drivers using the short haul exception applicable to drivers requiring CDL may not drive beyond a 100 air-mile radius.</p>	<p>Would extend the maximum duty period allowed under the short-haul exception available to certain CMV drivers from 12 hours to 14 hours.</p> <p>Would also extend, from a 100 to a 150 air-mile radius, the maximum distance in which drivers qualifying for the short-haul exception may operate.</p>	<p>Increase the number of drivers able to take advantage of the short-haul exception.</p> <p>Shift work and drive time from long-haul to short-haul, or from driver to driver.</p> <p>No increase in freight movement or aggregate VMT.</p>
Adverse Driving Conditions	<p>A driver may drive and be permitted or required to drive a commercial motor vehicle for not more than 2 additional hours beyond the maximum time allowed. However, this does not currently extend the maximum “driving windows.”</p>	<p>Would allow a driver to use the adverse driving conditions exception to extend the maximum “driving windows” by up to 2 hours. This proposed change would apply for both property-carrying (14-hour “driving window”) and passenger-carrying (15-hour “driving window”) operators.</p>	<p>Increase the use of the adverse driving condition provision.</p> <p>Allow driving later in the work day, potentially shifting forward the hours driven and VMT travelled.</p> <p>Allow drivers time to park and wait out the adverse condition or driving slowly through it. This has the potential to decrease crash risk relative to current requirements, assuming drivers now drive through adverse conditions.</p> <p>No increase in freight volume or aggregate VMT, as adverse conditions cannot be planned for in advance.</p>

<p>30 Minute Break</p>	<p>If more than 8 consecutive hours have passed since the last off-duty (or sleeper berth) period of at least half an hour, a driver must take an off-duty break of at least 30 minutes before driving.</p>	<p>Would make the 30-minute break requirement for property-carrying CMV drivers applicable only in situations where a driver has driven for a period of 8 hours without at least a 30-minute interruption. If required, a 30-minute break could be satisfied with a non-driving period, either off duty, in the sleeper berth, or on-duty not-driving.</p>	<p>Increase the on-duty/non-driving time by up-to 30 minutes, or allow drivers to reach their destination earlier.</p> <p>No anticipated fatigue effect because drivers continue to be constrained by the 11-hour driving limit and would continue to receive on-duty/non-driving breaks from the driving task. Additionally, drivers are enabled to take off-duty breaks when needed via the split-duty day provision.</p> <p>Minimal or no change to hours driven or VMT, as the current off-duty break only impacts these factors if the schedule required driving late within the 14-hour driving window.</p>
<p>Split-Sleeper Berth</p>	<p>A driver can use the sleeper berth to get the “equivalent of at least 10 consecutive hours off duty.” To do this, the driver must spend at least 8 consecutive hours (but less than 10 consecutive hours) in the sleeper berth. This rest period does not count as part of the 14-hour limit. A second, separate rest period must be at least 2 (but less than 10) consecutive hours long. This period may be spent in the sleeper berth, off duty, or sleeper berth and off duty combined. It does count as part of the maximum 14-hour driving window.</p>	<p>Would modify the sleeper-berth requirements to allow drivers to take their required 10 hours off-duty in two periods, provided one off-duty period (whether in or out of the sleeper berth) is at least 2 hours long and the other involves at least 7 consecutive hours spent in the sleeper berth. Neither time period would count against the maximum 14-hour driving window.</p>	<p>Allow one hour to be shifted from the longer rest period to the shorter rest period.</p> <p>Potentially increase the use of sleeper berths because drivers using a berth have two additional hours to complete 11 hours of driving (by virtue of excluding the shorter rest period from the calculation of the 14-hour driving window).</p> <p>No anticipated effect on fatigue because aggregate drive limits and off-duty time remains unchanged.</p> <p>Hours driven or VMT may change for an individual driver on a given work shift (by increased use of the sleeper berth). Total hours driven or aggregate VMT would remain the same.</p>
<p>Split-Duty Provision</p>	<p>Once the duty period starts, it runs for 14 consecutive hours, after which the driver may not drive a commercial motor vehicle (CMV) again until having another 10 or more consecutive hours off duty. Nothing stops the running of the “14-hour clock” except a minimum 8-hour period in a sleeper berth.</p>	<p>Would add a new option for one off duty break of at least 30 minutes, but not more than 3 hours, during the course of a driver’s 14-hour “driving window” to extend that period for the length of the break, provided that drivers take at least 10 consecutive hours off duty at the end of the work shift.</p>	<p>Allow up to 3 hours in an off-duty status to be excluded from the 14-hour driving window.</p> <p>Drivers could use this time to: rest without the penalty of losing time in their driving window, avoid traffic via waiting in a parking lot and increase their VMT efficiency, or mitigate the effect on the 14-hour rule of long detention times by allowing driving later in the work shift.</p>

			<p>Minimizing the effect on fatigue because drivers could use the voluntary pause to rest, off-setting any potential effect of driving later in the work shift.</p> <p>Depending on the situation, hours driven and VMT on a given work shift could: remain the same but shift within the driving window; decrease the hours driven by increasing VMT per hour; allow the driver to finish more work during the current work shift instead of postponing it to the next one.</p>
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MCSAC Comments on the NPRM

General Comments

The MCSAC believes more information is needed to understand the impacts of the proposed changes. Although the preamble to the NPRM indicated the rulemaking would increase flexibility without reducing safety, there was concern that the rulemaking may not provide quantitative improvements to safety.

The deliberations included a discussion of the history of certain hours-of-service (HOS) provisions to understand the Agency’s rationale for the current requirements and the reasons for proposing changes. The discussion highlighted the need to consider data and information presented by commenters to the rulemaking docket before making any final decisions about changes to the HOS rules.

The MCSAC considered potential enforcement challenges associated with the proposed changes and there were discussions about the need to ensure that the use of the increased flexibility is at the driver’s discretion. Drivers may be pressured by shippers/receivers to use the flexibility to go into an off-duty status rather than addressing detention time issues.

In addition, there was concern that additional HOS flexibility should not be provided to high-risk carriers that have demonstrated safety performance problems and difficulty achieving compliance with the current HOS rules.

I. Issues FMCSA Should Consider About Changes to the Short-Haul Exception for RODS.

Safety Concerns

- The rulemaking would result in fewer motor carriers being required to use electronic logging devices. While there was no estimate on the number of carriers that would no longer be subject to the records of duty status (RODS) requirements, there was concern that it may not be in the best interest of safety to have fewer drivers using ELDs.
- The Insurance Institute for Highway Safety (IIHS) completed a study concerning large trucks involved in crashes with injuries or deaths in which IIHS and University of North Carolina researchers found that drivers using a short-haul exception “had a crash risk nearly five times as high” as those not using the exception.
- Currently short-haul drivers cannot exceed the 11-hour driving time by more than 1 hour; they must return to the normal work-reporting location within 12 hours. Under the proposed change, a driver could exceed the 11-hour limit by up to 3 hours by the time he/she returns to the work reporting location. The current recordkeeping requirements, shown below, do not provide a means to detect excessive driving time:
 - § 395.1(e) – *Required Records for Short Haul: The motor carrier that employs the driver must maintain and retain for a period of 6 months accurate and true time records showing:*
 - *The time the driver reports for duty each day;*
 - *The total number of hours the driver is on duty each day;*
 - *The time the driver is released from duty each day; and,*
 - *The total time for the preceding 7 days in accordance with § 395.8(j)(2) for drivers used for the first time or intermittently.*
- The Agency should consider different recordkeeping/documentation requirements for those operating between 100 -150 air mile radius to address the risk of drivers exceeding the 11-hour driving time limit.

Enforcement Experience/Challenges

- Inspectors currently accept the driver’s explanation that he/she is operating under the short-haul exception but may opt to follow up with the carrier if there are suspicions that the driver is operating in violation of the requirement to prepare a RODS.
- The enforcement practice would be the same if the short-haul limits were extended to 14 hours and 150 air miles.

Benefits of Increased Flexibility

- The proposal would provide relief from the RODS requirement (i.e., a paperwork savings), but would not extend the 11-hour driving time limit or extend the 14-hour window. Currently, short-haul carriers may conduct any of the operations carried out by non-short-haul carriers if they are willing to incur the costs of preparing RODS.

II. Issues FMCSA Should Consider About Changes to Adverse Driving Conditions

Safety Concerns

- Currently, the determination of what constitutes adverse driving conditions is subjective which provides the opportunity for abuse of the exception by carriers and drivers.
- The proposal would extend the 14-hour window which could increase the risk of driver fatigue

Benefits of increased flexibility

- Drivers are able to make a more prudent drive/no drive decision if this available

Enforcement Experience/Challenges

- Inspectors/investigators will look for patterns of adverse driving condition notations as indications of misuse and falsification of RODS.
- Inspectors may contact other government officials to determine whether claims about unusual whether/traffic are valid.
- Drivers tacking on personal conveyance

III. Issues FMCSA Should Consider About Changes to the 30-Minute Rest Break

Safety Concerns

- A 30-minute on duty break may not have the same benefit as a 30-minute off-duty break.
- More frequent shorter breaks totaling 30 minutes (e.g., two, 15 minute breaks) may be better than a single 30-minute break. For example, allow drivers to satisfy the requirement with three 10-minute breaks.

Benefits of the Increased Flexibility

- A break from the driving task of staring down the road and holding the steering wheel is helpful, including an on-duty break.
- Better incentive for drivers to take a break; the idea of a forced off-duty break does not put the driver in the right mindset to rest.

IV. Issues FMCSA Should Consider About Changes to the Split Sleeper-Berth Provision

Safety Concerns

- The Agency should consider whether there is data or information to confirm that a 7-3 split provides the same level of safety as the 8-2 split.
- MRB should be consulted

Benefits of the Increased Flexibility

- When the hours of service changed (around August 2005), drivers were limited to an 8-2 split. Since that time, drivers have argued that it is difficult to spend 8 consecutive hours in

the sleeper berth, especially for team drivers trying to obtain rest in a moving vehicle. Also, for team drivers, most individuals do not want to drive for 8 consecutive hours.

- Expanding the split sleeper beyond 7-3 to 6-4 or 5-5 may provide additional levels of flexibility (there would need to be data/research to support this though).

V. Issues FMCSA Should Consider About Allowing an Off-Duty Pause to the 14-Hour Clock

Safety Concerns

- The proposal could create a 17-hour window for individuals to complete their driving tasks, and there are no studies addressing the potential safety risks of extending the window.
- The proposal does not limit the use of 17-hour window throughout the workweek. What happens if these adjustments occur multiple times during the week, or on consecutive days?
- There is uncertainty whether drivers would rest during the pause of the 14-hour clock; the criteria (i.e., the Agency's regulatory guidance) for recording the time as off-duty must be satisfied.

Benefits of the Proposal

- Provides drivers with the ability to stop and pause the clock and then move on with their day when the driving time would be more productive.

Concerns About the Potential Abuse of Drivers

- Drivers may be pressured by shippers/receivers to use the flexibility to go into an off-duty status rather than addressing detention time issues.
- Drivers may use flexibility to pause, as long as it doesn't violate a security standard or create a safety concern.
- FMCSA needs to promote greater use of its driver hotline and have a robust investigation/enforcement program to follow up on those complaints.

VI. Issues FMCSA Should Consider to Ensure Flexibility is at the Driver's Discretion; Prevention Against Coercion

- Motor carriers could place greater importance on meeting customer expectations than addressing driver concerns.
- FMCSA needs to ensure there is greater awareness of the Agency's hotline for driver complaints. This also applies to shipper and receiver coercion
- There should be a means for collecting data concerning the complaints to the hotline and the final disposition of those complaints.