



## Summary of the Hours of Service Final Rule May 2020

**SUMMARY:** This month, the Federal Motor Carrier Safety Administration (FMCSA) announced a Final Rule revising federal hours-of-service (HOS) requirements. FMCSA’s rule increases driver flexibilities and introduces modifications to the existing ruleset, including changes to the 30-minute break requirement, sleeper berth splits, adverse driving conditions, and revisions to the current short-haul exception. The Final Rule goes into effect 120 days after the date of publication in the Federal Register, and can be read in its entirety at FMCSA’s website.

**BACKGROUND:** HOS requirements are a long-standing area of federal policy intended to improve the safety of our Nation’s roadways. Decades of human sleep cycle research generally shows a strong, positive association between driving hours and fatigue-related incidents. However, the balance between efficiency and safety has been the subject of frequent litigation and regulatory action. In 2003, FMCSA established the framework for modern HOS rules, requiring drivers to take a 10-hour off-duty period between shifts to maintain a regular 24-hour cycle. Successful legal challenges and FMCSA rulemaking subsequently permitted drivers to use sleeper berths to divide the 10-hour off-duty rest period into core 8/2 blocks.

In 2011, FMCSA introduced additional rules for property-carrying commercial motor vehicles. The 2011 rule required drivers to take a 30-minute break after 8 hours of on-duty time. FMCSA also added a requirement for drivers utilizing the 34-hour restart provision, requiring that period to include two 1:00 a.m. to 5:00 a.m. days. ATA challenged the 2011 rule on several grounds and successfully vacated the 30-minute rest break requirement for short-haul drivers. Later, in 2015, FMCSA suspended the restart provision following a study that failed to show statistically meaningful sleep cycle benefits. FMCSA’s 2020 Final Rule comes in response to a 2017 executive order directing federal government agencies to alleviate unnecessary regulatory burdens on the industry and requests for flexibility in light of Electronic Logging Device (ELD) requirements.

FMCSA’s 2018 Advanced Notice of Proposed Rulemaking (ANPRM) focused on four areas of the HOS regulations as well as petitions from the Owner-Operator Independent Drivers Association and TruckerNation. In 2019, the Agency released a Notice of Proposed Rulemaking, expanding the short-haul exception, permitting drivers to take the required 30-minute break in an on-duty/not driving status, proposing additional sleeper berth splits, lengthening adverse driving conditions time, and allowing drivers to pause the 14-hour duty clock. In comments to the Agency, ATA opposed changes to the short-haul provisions that would have allowed drivers to begin and end their duty day in different locations as well as raised concerns regarding the ability to accurately enforce these rules—absent an electronic device capable of tracking on-duty time, asked for clarification on what constituted adverse driving conditions, and broadly supported the proposed changes to the 14-hour clock if FMCSA showed changes did not adversely affect detention times and sleep cycles.

**RECENT ACTION:** FMCSA’s Final Rule accepted most of the changes proposed in the NPRM. However, the Agency did not move forward with changes to the 14-hour clock, referred to as the “split-duty period”. In total, FMCSA anticipates the rule will provide nearly \$273 million in annualized cost savings for the U.S. economy. Below is a table comparing the NPRM and Final Rule provisions.

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Provision	Current Requirements	NPRM (August 2019)	Final Rule & Impacts (May 2020)
<b>Short-Haul Exception</b> § 395.1(e)(1) or (2)	<p>Drivers using the short-haul exception are limited to a 100 air-mile radius and may not be on duty more than 12 hours.</p> <p>Drivers using the short-haul (150 air-mile radius) exception applicable to drivers not requiring a CDL may not drive beyond the 14th or 16th hour on-duty, depending upon the number of days on duty.</p>	<p>Changes the short-haul exception by lengthening drivers' maximum on-duty period from 12 to 14 hours and extending the distance limit from 100 to 150 air miles.</p> <p>Would have allowed drivers to begin and end the duty day in two different reporting locations.</p>	<p>Almost the same as the NPRM. The Final Rule does not allow drivers to begin and end the duty day in two different reporting locations.</p> <p>Permitting this change increases the number of drivers able to take advantage of the exception and shifts work and drive time from long-to short-haul.</p>
<b>Adverse Driving Conditions</b> § 395.1(b)(1)	<p>A driver may drive and be permitted or required to drive a CMV for not more than 2 additional hours beyond the maximum time allowed. However, this does not currently extend the maximum "driving windows."</p>	<p>Modifies the adverse driving conditions exception by extending by 2 hours the maximum window during which driving is permitted.</p>	<p>Same as NPRM. In addition, The Agency modified the definition of "adverse driving conditions" to clarify the role of the driver in determining when such conditions are identified. The Agency declined to expand the circumstances covered by the original definition.</p> <p>This change likely increases use of the adverse driving conditions provision.</p>
<b>Split-Sleeper Berth Provision</b> § 395.1(g)	<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>Permits drivers to split the required 10 hours off duty into at least 7 consecutive hours in the sleeper-berth and no less than 2 consecutive hours, either off duty or in the sleeper-berth, so long as both periods total at least 10 hours (<i>i.e. 8 hours in sleeper and 2 hours off-duty or in sleeper, OR 7 hours in sleeper and 3 hours off-duty or in sleeper</i>).</p> <p>Neither period would count against a driver's 14-hour driving window.</p>	<p>Same as NPRM.</p> <p>Potentially increases the use of sleeper berths because drivers using a berth have 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 negative effect on fatigue because aggregate drive limits and off-duty time remains unchanged.</p>
<b>30-Minute Rest Break</b> § 395.3(a)(3)(ii)	<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>Requires a 30-minute break only when a driver has driven for a period of 8 hours without at least a 30-minute interruption. If required, the break may be satisfied by any non-driving period of 30 minutes (<i>i.e. on-duty, off-duty, or sleeper berth</i>).</p>	<p>Same as NPRM. Increases the on-duty/not driving time by 30 minutes and allows drivers to reach destinations earlier. Minimal impacts on fatigue.</p>
<b>Split-Duty Day</b>	<p>Did not exist.</p>	<p>Allow one off-duty break of at least 30 minutes, but not more than 3 hours, that would pause a truck driver's 14 hour driving window, provided the driver takes 10 consecutive hours off duty at the end of the work shift.</p>	<p>Not included in Final Rule.</p>

Information and impacts taken from FMCSA HOS Final Rule Table 2 "Revised Requirements" FMCSA-2018-0248.