

## On The Clock

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U.S. Transportation Secretary Ray LaHood announced what he calls a final rule that allows drivers to get the rest they need to operate safely when on the road. The new rule by the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) revises the hours-of-service (HOS) safety requirements for commercial truck drivers.

Here is the good news: The final rule retains the current 11-hour daily driving limit. However, The FMCSA will continue to conduct data analysis and research to further examine any risks associated with the 11 hours of driving time.

Here is the bad news: FMCSA's new HOS final rule reduces by 12 hours the maximum number of hours a truck driver can work within a week. Under the old rule, truck drivers could work up to 82 hours within a seven-day period. The new HOS final rule limits a driver's work week to 70 hours. In addition, truck drivers cannot drive after working eight hours without first taking a break of at least 30 minutes. Drivers can take the 30 minute break whenever they need rest during the eight-hour window. The rule requires truck drivers who maximize their weekly work hours to take at least two nights' rest when their 24-hour body clock demands sleep the most - from 1:00 a.m. to 5:00 a.m. This rest requirement is part of the rule's "34-hour restart" provision that allows drivers to restart the clock on their work week by taking at least 34 consecutive hours off-duty. The rule allows drivers to use the restart provision only once during a seven day period.

Industry groups opposed that provision, saying the timing of the mandatory rest periods would keep drivers off the roads much longer than 34 hours. The American Trucking Associations (ATA) has used the example of a driver who finishes his shift at 8 a.m. and begins a restart period that normally would end at 6 p.m. the following day. However, because the driver would need to rest for two "overnight periods" to meet the 34-hour restart requirement, he would not be able to start work again until 6 a.m. the day after that, 46 hours after the end of his original shift. The ATA went on to say the rule will please no one except organized labor, which might benefit by having more trucks and drivers on the roads.

Shippers can expect their freight costs to continue to rise as a result of this new rule. A driver shortage is already a problem and this new rule will result in an increased shortage of drivers; further driving up costs. Commercial truck drivers and companies must comply with the HOS final rule by July 1, 2013.

To add to the burden on surface transportation, the Commercial Motor Vehicle Safety Enhancement Act, CMVSEA, reauthorizes the Federal Motor Carrier Safety Administration, to require electronic on-board recorders, or EOBRs, on all interstate trucks and buses to improve compliance with driver work rules. That's an idea applauded by the American Trucking Associations but opposed by the Owner-Operator Independent Drivers Association, which successfully challenged an FMCSA rule this year that allowed the agency to require some fleets to install EOBRs. The agency is working on a separate regulation to mandate the use of EOBRs in all interstate trucks and buses. The CMVSEA would give that mandate legal backing. The bill also would require any company applying for motor carrier authority to pass a safety proficiency exam and submit a safety management plan.

It is interesting to note that while the regulatory spotlight is on truck driver fatigue, the government regulators seems to be looking in a different direction when it comes to UPS and FedEx pilots. The Federal Aviation Administration exempted cargo pilots from the tougher limitations it placed on work rules for airline pilots, but Transportation Secretary Ray LaHood said he would ask cargo airlines to adopt the rules voluntarily. The decision prompted a strong backlash from the union representing UPS pilots, who said it "creates an unnecessary threat to public safety."

Under what the FAA called a "landmark" safety initiative, the agency said it would require that pilots have 10 hours off before flying, including eight hours of uninterrupted sleep during the 10-hour break. The revision, the first change to the rules to limited fatigue since 1985, will take effect in two years.

Cargo airlines can opt-in to the rule but LaHood said in the announcement that it was "tough to implement for cargo because of the cost-benefit" impact. By sharp contrast Trucking companies that allow drivers to exceed the 11-hour driving limit by three or more hours could be fined \$11,000 per offense, and the drivers could face civil penalties themselves of up to \$2,750 for each offense.

Expect to see further challenges to these rules by Trucking companies and UPS and FedEx pilots.