

Eased Rest-Break Rule For Truckers Primed For Challenges

By **Linda Chiem**

Law360 (August 15, 2019, 6:52 PM EDT) -- The federal government's bid to relax rules on truckers' rest breaks deepens a rift between trucking companies wanting more operational flexibility and highway safety advocates worried the changes will only exacerbate crash risks.

The U.S. Department of Transportation's Federal Motor Carrier Safety Administration on Wednesday **proposed** revisions to its hours-of-service regulations after the trucking industry bemoaned what it described as a perpetual race against the clock to expedite freight deliveries amid swelling congestion, shoddy infrastructure and bad weather.

By **easing regulations** in five key areas that govern how long commercial drivers can spend on the road and when they're required to rest, the FMCSA sought to give truckers some relief from indisputably rigid mandates. But experts say parts of Wednesday's 129-page proposal are ripe for challenges from advocacy groups that argue the agency has compromised public safety in advancing the administration's deregulatory agenda.

"These rules keep the same total-hours limitations, which promote safety, while giving the drivers more flexibility to determine when it makes sense for them to take their breaks," said Scott D. Carey, chair of Baker Donelson Bearman Caldwell & Berkowitz's transportation group.

"There will undoubtedly be some opposition to the changes," he added. "The FMCSA is taking comments now and may tweak the rules, but I expect that the final rules will look very similar to what has just been proposed."

Trucking Industry On Board

The fixed schedules for long-haul, big-rig or local delivery drivers' operations are often riddled with delays because of extended wait times for cargo to load or unload, as well as unexpected gridlock and bad weather.

Trucking industry stakeholders for years have lobbied the FMCSA to ease its HOS rules, essentially to give drivers leeway in how they time their breaks without being forced off the highway just because they've hit an arbitrary cap on their hours.

"The industry can be grateful that FMCSA, under the current administration, is truly aiming to facilitate operations while maintaining evidence-based safety standards. Too often, the regulatory ratchet moves only in one direction," said Marc S. Blubaugh, co-chair of Benesch Friedlander Coplan & Aronoff LLP's transportation and logistics practice group.

Current regulations limit commercial truck drivers to 11 hours of driving time within a 14-hour window after they come on duty, and they can only come on duty after taking 10 consecutive hours of rest time.

Notably, the FMCSA's proposal on Wednesday could stretch a truck driver's on-duty workday to as long as 17 hours by allowing the driver to squeeze in an off-duty break lasting anywhere from 30 minutes to three hours into that 14-hour window.

"It's a true attempt to allow drivers flexibility and allow them to be better able to use on-duty time as they or their owners see fit," said Ron Leibman, a partner with McCarter & English LLP who specializes in supply chain and logistics law. "That might turn out to be very significant, for example, if a consignee is holding you up or your delivery. I don't see anything that would negatively affect safety."

Another proposed change that truckers are excited about is easing the 30-minute rest break rule. Drivers currently have to take a 30-minute rest break — regardless of whether they were actually driving or waiting on shipments to load — if they've been on duty for eight hours since the end of their last off-duty or sleeper-berth period lasting at least a half-hour.

The FMCSA has proposed bending that requirement by making the 30-minute break mandatory only if they've actually been driving for eight hours straight. And truckers can theoretically still be on duty and complete non-driving tasks like filling out paperwork or refueling their trucks and have that count toward the required 30-minute rest break.

"While various segments of the industry would have been exhilarated if FMCSA had actually removed the 30-minute break requirement altogether, the proposal is definitely an improvement over the existing regulations," Blubaugh said. "The NPRM was drafted with an eye toward memorializing a break from driving as opposed to a break from mere on-duty status — which is a genuine and important distinction that will benefit a wide range of carriers."

Trucking industry groups such as the American Trucking Associations, Owner Operator Independent Drivers Association and others overwhelmingly came out in support of the FMCSA's proposed HOS rule on Wednesday.

"There may not be a one-size fits all solution, but the proposed changes are a positive start since truckers don't have any control over their schedules or traffic conditions," OOIDA President Todd Spencer said in a statement on Wednesday. "For too long and too often, they find themselves in unsafe circumstances because of current, overly restrictive rules that decrease highway safety."

Challenges on the Horizon

Tim Wiseman, a managing partner with Scopelitis Garvin Light Hanson & Feary PC who specializes in regulatory compliance, told Law360 he was pleasantly surprised the proposed rule gave "extensive relief" to industry — much more than it anticipated. But that will inevitably trigger opposition from consumer or highway safety advocates, he said.

"I worry a little bit that there are some fairly significant changes that might get tied up in litigation since the last two major changes [to truckers' rest break regulations] did get caught up in litigation for an extended period of time," Wiseman said.

Industry sees the benefit of drivers feeling less stressed to make up in driving time what they lost by waiting around for shipments, but highway safety advocates might only see that the FMCSA is conceivably extending the 14-hour on duty window. That's one piece of the proposed rule that stands to face a challenge, he added.

Advocates for Highway and Auto Safety argue that current FMCSA regulations already allow truck drivers to maintain demanding schedules of up to 11 hours behind the wheel during a 14-hour workday. It's an existing schedule that allows truckers to drive up to 77 hours in seven days, nearly double the average American work week, the group said.

"Any proposal that increases pressure on truck drivers, opens new opportunities for abuse of the rules, and further endangers truck drivers and all those who share the roads with them should be rejected," Cathy Chase, president of Advocates for Highway and Auto Safety, said in a statement Wednesday.

"While the proposal does not technically change total driving and off-duty time, it does run counter to established science, which shows that driver fatigue and crash risk is impacted by the quality of sleep and by when driving is occurring," Chase said. "Driving later in the day, later in a shift, and changing

the nature of breaks all lead to more fatigue and more risk of crashes.”

The International Brotherhood of Teamsters said it has “serious concerns” about the FMCSA’s proposal, saying in a Wednesday statement that trucking is already one of the nation’s most dangerous jobs and that “we shouldn’t be sacrificing the health and safety of drivers just to pad the profits of their big business bosses.”

“In an effort to increase so-called ‘flexibility’ for trucking companies, the FMCSA is abandoning safety and allowing drivers to push themselves to the limit even further,” Teamsters General President Jim Hoffa said in the statement. “Changes for short-haul truckers, for example, would extend their days from 12 to 14 hours on the job. That means a longer and more exhausting workday for tens of thousands of American workers.”

Short-haul truck drivers, who typically just drive within a local region, would see an expansion of an exemption they receive to log their on- and off-duty time in what the industry calls “records of duty status,” or RODS, which used to be captured on traditional paper logs but now must be recorded in electronic logging devices.

The FMCSA proposed bumping from 12 hours to 14 hours the time that short-haul drivers can go without logging hours in their RODS. It also proposed extending the distance those short-haul drivers can operate from a radius of 100 air miles to 150 air miles from their base or headquarters.

The proposed change is “beneficial” to short-haul drivers, but one that might also be challenged “because of the newness of the ELD regulation that would mean thousands of drivers would no longer be subject to the ELD requirement to ensure the accuracy of their hours of service reporting,” Wiseman said.

The FMCSA issued its **ELD rule** in December 2015, requiring interstate commercial truckers to use electronic logging devices to track their hours on the road.

Other proposed changes include extending the current 11-hour cap for on-duty driving time by up to two hours, meaning up to 13 hours of actual driving time, when a truck driver encounters adverse driving conditions such as snow, sleet or fog. Another would apply to drivers that use sleeper berths in their trucks to allow them to split up driving time over two periods, if desired.

“While the industry naturally longs for even more improvements, the industry should not make the perfect the enemy of the good,” Blubaugh said.

The FMCSA's proposed HOS rule is scheduled to be published in the federal register on Aug. 20. The public will then have 45 days to weigh in with comments.

--Editing by Philip Shea.