



Owner-Operator Independent Drivers Association

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October 15, 2019

The Honorable Raymond Martinez
Administrator
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Docket # FMCSA-2018-0248, “Hours of Service of Drivers”

Dear Administrator Martinez:

The Owner-Operator Independent Drivers Association (OOIDA) is the largest trade association representing the views of small-business truckers and professional truck drivers. OOIDA has more than 160,000 members located in all fifty states that collectively own and operate more than 240,000 individual heavy-duty trucks. OOIDA’s mission is to promote and protect the interests of its members on any issues that might impact their economic well-being, working conditions, and the safe operation of commercial motor vehicles (CMVs) on our nation’s highways.

For many years, OOIDA members have repeatedly told lawmakers that the existing Hours of Service (HOS) rules are not sensible for today’s trucking industry. According to a 2017 OOIDA Foundation (OOFI) survey, three of the top five regulations that owner-operators said should be eliminated or amended were related to HOS.¹ OOIDA members have also voiced their HOS frustrations to the Federal Motor Carrier Safety Administration (FMCSA) through various outlets such as listening sessions and public comments. These relentless grassroots efforts have resulted in the Agency’s HOS Notice of Proposed Rulemaking (NPRM).

The FMCSA’s NPRM represents a welcomed shift toward developing regulations that better reflect the realities of trucking and improve safety for all highway users. OOIDA strongly supports the Agency’s approach, which will provide drivers more opportunities to rest when they are tired, to stay off the road during adverse driving conditions, and to maintain greater control over their own schedules. Specifically, we commend the Agency for addressing two key issues included in OOIDA’s February 2018 petition to initiate this rulemaking – the introduction of a

¹ The top five regulations in order were (1) ELD Mandate; (2) Speed Limiter Mandate; (3) Hours-of-Service 14-Hour Clock Provision; (4) Hours-of-Service Split Sleeper-Berth Restriction; and (5) Hours-of-Service Rest Break Provision.

single off-duty rest break and a modification of the 30-minute break rule. We also fully support FMCSA's efforts to create split sleeper-berth standards that don't force truckers to sit idle when they are otherwise capable of driving safely. Together, these important reforms will help reverse the rising crash rates highway users have experienced since the inception of existing HOS standards.

The current HOS regulations that dictate a truck driver's work schedule are overly complex, provide virtually no flexibility, and in no way reflect the physical capabilities or limitations of individual drivers. They effectively force drivers to be on the road when they are tired, during busy travel times, during hazardous weather and road conditions, or when they simply are not feeling well. The unyielding 14-hour clock also pressures truckers to drive faster when they're running short on available time. Additionally, drivers are frequently at the mercy of shippers and receivers in regards to loading and unloading their truck, which consumes between 11 and 20 hours in an average each week. Consequently, today's HOS requirements have not resulted in statistical improvements to highway safety. Since the July 2013 HOS changes, the total number of crashes involving large trucks, as well as fatal crashes involving large trucks, has increased by 45.4 percent and 8.7 percent respectively. While a majority of these crashes are the fault of other vehicles, it's still an alarming statistic and changes to the HOS rules will reduce crashes.

The provisions included in the NPRM will provide much needed flexibility and do not increase the maximum allowable driving time. However, in order for these changes to have the most safety benefits, drivers should have sole discretion about how and when to use these provisions. Drivers have the best understanding of when they should take a break, when road conditions are too dangerous, and when they should rest. Today's truckers have never faced more regulations and compliance with those regulations has never been higher. Yet, crash numbers are going in the wrong direction. OOIDA believes that the NPRM is a practical and necessary step to reverse that trend. We encourage FMCSA to enact and implement these proposals as soon as possible because these common-sense changes will improve highway safety.

Following the release of the NPRM in August 2019, OOFI conducted a general survey of OOIDA members regarding the various HOS provisions in order to answer some of the Agency's questions and to provide relevant data. Many of the following responses and recommendations to FMCSA's questions incorporates data from that survey. The comments also reference an OOFI survey that gathered feedback from drivers after the August 2018 HOS ANPRM.² Other industry stakeholders can better address any questions that have been omitted.

1. Short-haul Operations - *Extends the driving window from 12 hours to 14 hours and the distance from 100 air miles to 150 air miles.*

OOIDA supports extending the 12-hour short-haul exception to 14 hours. Extending the short-haul exception would provide short-haul drivers additional flexibility to complete their trips and return home if they encounter unforeseen delays during their work schedules. Additionally, a 14-hour short-haul exception would mirror the 14-hour window in place for long-haul drivers, thus

² The Survey generated 816 total responses for any one question for a started/viewed rate of 44 percent and a 99 percent confidence level with approximately 4 percent margin of error. The 2017 survey therefore received enough responses to be statistically valid. The complete survey is attached in addition to these comments.

simplifying enforcement in our opinion. As long as short-haul drivers do not exceed 11 hours of on-duty driving time, then they should have an equal number of working hours in their daily schedules. 20% of survey respondents indicated they currently operate under the short-haul operations exception, while 13% indicated that they would fall under the short-haul operations exception if the radius is expanded from 100 to 150 air miles as proposed in the NPRM.

1.2 Will drivers drive further or longer in the driving window under the short-haul exception? Would this be different than these loads being hauled by drivers complying with the ELD requirements?

The nature of short-haul operations varies considerably from operations that are required to comply with ELD requirements. Short-haul drivers may elect to drive further with the expanded air mile radius, especially in more rural areas. However, the proposal maintains the current 11-hour driving limit. OOIDA does not anticipate that short-haul drivers would drive any further or longer than those complying with ELD requirements.

1.3 What cost savings are expected from not having to comply with the ELD requirements?

FMCSA estimated, “the typical carrier will likely be required to spend about \$584 per CMV to purchase and install ELDs. In addition to purchase costs, carriers will also likely spend about \$20 per month per CMV for monthly service fees.”³ In many cases, OOIDA members have been forced to buy multiple devices due to ELD malfunctions and failures, so the cost savings would be significant without compromising safety.

1.4 Should drivers using the short-haul exception be allowed to end the work shift at a different location than the one from which they were dispatched?

Yes. OOIDA does not believe safety would be negatively impacted if drivers using the short-haul exception were allowed to end the work shift at a different location than the one from which they were dispatched. We also think this allowance would reflect the diverse nature of the trucking industry, especially the needs of those who would benefit from it.

2. Adverse Driving Conditions - The proposal would allow a driver up to a 16-hour driving window (for property carriers) within which to complete up to 13 hours of driving, or a 17-hour duty period (for passenger carriers) within which to complete up to 12 hours of driving, if the driver encounters adverse driving conditions.

OOIDA supports the proposal that would allow a driver up to a 16-hour driving window, for property carriers, within which to complete up to 13 hours of driving if the driver encounters adverse driving conditions. OOIDA members have commented that the exception should apply to the 14-hour duty period in order to achieve the most practical benefits. Many drivers also noted that they were hesitant to use the exception because law enforcement personnel often use their own subjective evaluation to determine whether the exception is appropriate. OOIDA recommends that the definition be modified to include other circumstances like unusual traffic

³ Brian Preslopsky et al., *Regulatory Evaluation of Electronic Logging Devices and Hours of Service Supporting Documents Final Rule*, FMCSA (2015), pg. 61.

congestion, accidents, construction, detours, or road closures. We also believe an updated definition could help clarify some of the current confusion between drivers and law enforcement personnel about which situations are appropriate for utilizing the provision.

2.1 Will this change cause drivers to travel further in adverse conditions?

No, this change would actually cause truckers to drive safer, not further, in adverse conditions. Drivers could also choose to stop and avoid continuing through adverse or unforeseen circumstances altogether. Under the proposal, drivers would feel less pressure to continue operating in unsafe road conditions or to drive faster than is prudent for those conditions.

2.2 Will this change drivers' behavior when encountering adverse conditions? How so?

Yes, this change would provide more flexibility for drivers to stop when it doesn't make sense or is less safe to drive. Truckers do not necessarily want to drive more hours; rather, drivers and owner-operators desire more flexibility so that they can *wait out* adverse driving conditions rather than *drive out* of them. One member said, "If I am stuck in a major traffic jam for several hours, the clock just runs out and then I must park until I get hours back. Extending the on-duty driving time itself does little to help with the 14 hours allotted to a driver to complete all of their work. That is the most frustrating thing because it causes extreme stress [when the clock runs out], which we all know is bad for health. That is where the safety comes in. If I could be more relaxed about my clock somehow, that would definitely improve safety overall."

Others stated that extending the 14-hour duty period by two hours would improve safety as it allows drivers to find a safe place to park rather than stopping at the first available shoulder. A driver who is able to park and restfully wait out adverse conditions would be much safer on the road.

2.3 Understanding adverse conditions cannot be predicted, will drivers utilize this provision more often after this change?

Drivers would likely utilize the provision more, especially if the definition is expanded and clarified. This would give drivers the opportunity to stop when it doesn't make sense to drive instead of pushing through in hazardous conditions because they are stressed about complying with the 14-hour clock.

2.4 Should the knowledge of the existence of adverse conditions rest with the driver rather than the dispatcher?

Yes. The driver, who best knows the status of the current road conditions, should have the responsibility for making these safety decisions rather than the dispatcher. 88% of OOIDA members surveyed said "yes."

2.5 Should the requirement for lack of advance knowledge at the time of dispatch be eliminated?

Yes. The phrase “none of which were apparent on the basis of information known to the person dispatching the run at the time it was begun” should be removed from the definition. 77% of OOIDA members surveyed said “yes.” The requirement prevents drivers from using the provision if road conditions suddenly change after the time of dispatch. Again, the driver, who knows the current conditions, should have the option to use the provision when necessary.

2.6 Should the current definition of “adverse driving conditions” be modified to address other circumstances?

The definition should be expanded to reflect other unpredictable conditions that a driver faces during their route such as traffic congestion, accidents, construction, detours, or road closures among others. OOIDA recommends replacing the term “adverse” with “unforeseen.” This would account for the scenarios mentioned as well as heavy rains, high winds, or any other weather event that delays traffic. OOIDA members suggested that any definition should include construction, congestion, major traffic accidents, severe weather, such as flooding, high winds, ice, snow, sleet, wild fires, or natural disasters including earthquakes, tornadoes, hurricanes, etc.

3. 30-minute Break Requirement - The Agency proposes to make the 30-minute break requirement applicable only in situations where a driver has driven for a period of 8 hours without at least a 30-minute non-driving interruption. If required, a 30-minute break could be satisfied with a period, either off duty, in the sleeper-berth, or on-duty not-driving.

The Agency’s proposal to make the 30-minute break requirement applicable only in situations where a driver has driven for a period of 8 hours without at least a 30-minute non-driving interruption would improve the current rules. However, the updated requirement would be more practical if drivers were allowed to split the break into multiple segments totaling 30 minutes. This would improve safety and efficiency as it allows the driver to take a break when he or she needs it without unnecessarily reducing their available drive time. Members stated that shorter, more frequent breaks increase driver performance and alertness and would allow for more frequent stops without lengthening the overall work day. Moreover, members said that splitting up the 30-minute break would also help to improve the overall health of drivers as it allows them to get up and move around more often. When asked how the break should be broken up, 53% of survey participants responded with two 15-minute breaks, 16% said three 10-minute breaks, and 31% indicated “other.”

Ideally, FMCSA should completely eliminate the current 30-minute break as required by § 395.3(a)(3)(ii). The needless and unfounded requirement does not correspond to the realities of freight movement. As concluded by Dr. Ronald Knipling, a former FMCSA, NHTSA, and Virginia Tech Transportation Institute Researcher:

“This requirement was promulgated primarily on the basis of a report entitled, “The Impact of Driving, Non-Driving Work, and Rest Breaks on Driving Performance in Commercial Motor Vehicle Operations” by Blanco et al. (2011). This study employed an Naturalistic Driving Mixed-Safety Critical Event [SCE] methodology in long- and line-haul trucking operations. Blanco et al reported associations between hours of driving and SCE) rate as well as before- and after changes associated with breaks from driving.

Specifically, breaks from driving were followed by a 30-50% decrease in SCE rate during the next one-hour window. However, only 4 of Blanco's 2,197 SCEs (0.2%) were actual crashes; the other 99.8% were non-crash kinematic events such as hard-braking or swerves. Such harmless surrogate events have no intrinsic significance; to be significant, they must be validated against actual harmful crashes or against a known hazardous condition such as driver drowsiness."⁴

The rule was implemented without any evidence that the break would reduce crashes and we have not seen any statistics since then proving a reduction in crashes. Furthermore, there are many operational situations where the 30-minute rest break requires drivers to stop when they simply do not need to, making the mandate either impractical or unsafe. Eliminating the requirement is a simple fix that would immediately remove drivers from several unsafe scenarios.

Drivers would still obtain adequate rest breaks throughout the day if the 30-minute rest break requirement was eliminated. During the course of their daily schedules, drivers have opportunities to take breaks at their own discretion or when routine maintenance requires them to do so. These stops include purchasing food and fuel, using the restroom, and/or performing necessary inspections such as checking load securement and vehicle equipment. Typically, drivers also spend excessive time waiting at loading/unloading facilities. These built-in breaks make the 30-minute rule unnecessary and often times unsafe. Additionally, drivers feel forced to occasionally park on the shoulder of the road, or in other less than ideal locations, simply to satisfy the rule. The 30-minute break only serves to increase drivers' fatigue and stress, and as such, should be eliminated entirely.

3.1 Will you take fewer total breaks from driving with this change? How many and when would those breaks have occurred during your route?

No, most drivers would not take fewer breaks given this change. 82% of survey respondents said they would not take fewer breaks.

23% said they would actually take more breaks with this change. Some members expressed that this would incentivize drivers to take additional breaks, especially if coupled with the ability to split up their 30-minute break into smaller increments.

3.2 Do you expect to still take a 30-minute break if you have less than 8 hours of drive time? If so, would you take that break on-duty or off-duty?

56% of OOIDA members said they still expect to take a 30-minute break if they have less than 8 hours of drive time, with 76% stating that the break would be off-duty.

3.3 If you no longer need to take a 30-minute break, how do you expect to spend this additional time?

⁴ These findings come from Dr. Ron Knipling, who has done extensive work on the use of SCEs as a proxy for crashes. He has kindly allowed us to use his research and materials to point out the flaws in the methodology and the subsequent regulations that are based on that flawed research. Dr. Knipling has more than 30 years' experience in large truck safety research and development. He is the author of the first and only comprehensive textbook on large truck safety, entitled *Safety for the Long Haul; Large Truck Crash Risk, Causation, & Prevention*.

The majority of members stated that they expect to spend their additional time driving in order to efficiently utilize their on-duty time. While they indicated their miles might increase on a given day, it would not increase their daily driving time as they are still restricted to the 11-hour rule. However, many expressed that more flexibility would allow them to complete their day more often and get home sooner.

Nevertheless, many stated that they would continue to take a 30-minute break regardless. “I’ve been doing this “30-minute break” almost my entire 32-year career. I’ve never felt like it was physically or mentally a good thing to drive for more than 6 to 8 hours without a break of some sort. I’ve always used it to get something to eat, check out my equipment, and just take a break from the windshield.” Ultimately, as one member commented, “Each day is different, we need flexibility,” and providing that flexibility will ease a lot of stress from drivers, thereby increasing safety on the roadways.

3.4 How will this provision change your scheduling and planning?

The modification of the 30-minute break requirement will help drivers stay on schedule and help them better plan their routes and trips. Giving drivers the choice to take the break in the sleeper-berth or on-duty not-driving will allow them to fulfill the break during the normal course of their day when they are inspecting their cargo, fueling the truck, or stopping to eat. The provision will also help eliminate instances where drivers are compelled to make unnecessary stops or forced to pull over in unsafe locations.

3.5 Do you expect to drive more miles or hours based on this change? Do you expect to be able to complete additional “runs”?

With additional flexibility, drivers would be able to drive more efficiently. This would likely allow them to drive more miles, but not more hours. Some drivers will be able to complete slightly more runs over the course of a year. However, 59% of OOIDA members said they did not expect to complete more trips under this provision.

Additionally, the Agency acknowledges that many commenters specifically asked that the 30-minute break requirement be eliminated, and has considered that as an alternative under E.O. 12866. However, without the benefit of further information in this regard, it would not be appropriate to entirely eliminate the rule. Given that the flexibility allowed in today's proposal would alleviate many of the concerns expressed by commenters, FMCSA seeks further information on the effect of eliminating the break requirement altogether.

3.6 What would be the safety impact of eliminating the required break, potentially allowing up to 11 consecutive hours of driving?

If eliminated, drivers would not have to arbitrarily stop when it is unsafe to do so or when they don’t otherwise need to. To satisfy the existing requirement, drivers stop on highway shoulders to wait out their break because it’s their only option to be compliant. In other instances, drivers

feel forced to occasionally park on the shoulder of the road, or unsafe locations, simply to comply with the rule.

3.7 What has been the cost to your company of complying with the 30-minute break rule since the compliance date for that rule, July 1, 2013?

For many, the mandatory 30-minute rest break provision has resulted in lost revenue and miles. While the cost is difficult to quantify monetarily, some OOIDA members estimated the cost to be a mile a minute. Thus, the 30-minute break would cost a driver 30 miles. If a driver was forced to take two breaks depending on their hours of operation, then the cost would be 60 miles a work shift. Other costs include longer days, late deliveries, missed appointment times, fatigue, and emotional stress. One member stated that the 30-minute break essentially keeps them on the road an extra day per week.

For some drivers, the shorter work time and the rigid structure of a mandatory off-duty break has increased pressure and stress, which has resulted in unsafe driving conditions. One member expressed that the 30-minute break has forced them to “Driv[e] faster than I would normally to make it to a more desirable location in time, or to the other side of a city so the break doesn't put me into rush hour traffic.” However, there were others who commented that the rest break has not affected them.

3.8 How often do work shifts require an individual to drive more than 8 hours without at least a 30-minute change in duty status?

§ 395.3(a)(3)(ii) requires drivers to take a 30-minute off-duty break if more than 8 hours have passed since the end of their last off-duty or sleeper-berth period.

3.9 Would eliminating the break requirement result in greater cost savings than the current proposal? If so, what would be the amount of these cost savings?

Yes, eliminating the break requirement outright would result in greater cost savings and safety benefits than the current proposal. The cost savings equate to roughly one mile per minute of lost time. However, while we think the 30-minute break should be eliminated entirely, we still support FMCSA’s proposed change.

4. Split Sleeper-Berth Requirements - FMCSA also proposes to 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 in § 395.3(a)(2).

OOIDA supports the Agency’s modification of the split sleeper-berth provision 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. This additional flexibility would improve drivers’ rest and alertness. It makes far more sense to allow alert drivers to leave the sleeper-berth and begin to

drive with the option to obtain additional rest later in the day, rather than forcing drivers to idly wait for their driving clock to begin again, which can essentially cause a trucker to drive when tired and rest when alert.

Beyond expanding the split sleeper provision to 7/3, FMCSA should also include 6/4 and 5/5 splits in any final rulemaking. 85% of OOIDA members favored a possible 6/4 or 5/5 split in the 2019 survey. Drivers said they would use the 5/5 split an average of 2.02 times per week and the 6/4 split an average of 1.86 times per week. These splits would increase flexibility, allowing drivers to increase their productivity without comprising safety. In fact, these splits would help to increase both safety and health and wellness. The truth is that not all drivers are able to sleep 8 or 10 hours at a time. Several members stated that they struggle to sleep more than 6 hours. Thus, allowing them to split their sleeper time more efficiently will allow them to gain more adequate rest, resulting in increased alertness and better driver performance. Additional splits could also help alleviate the truck parking crisis by providing more flexibility to drive at times when parking is in higher demand. According to a study conducted by the U.S. Department of Transportation, more than 75 percent of truck drivers regularly experience problems finding a safe parking location when rest is needed, with 90 percent struggling to find parking during night hours, when demand is highest.⁵ A final HOS rule that includes 6/4 and 5/5 splits could help reduce the amount of drivers looking for parking spots during night hours.

Prior to 2005, drivers could split their off-duty time into two 5-hour periods. 45% of survey respondents said that they personally operated under this provision when it was allowed. Members agreed that the 5/5 split was preferable to the current 8/2 rule. The 5/5 split was more safe and more efficient, not only for team driving operations, but for single truck drivers as well. Many expressed how they are more stressed under the current 8/2 split as it limits flexibility. One driver said, “8/2 is not flexible enough for me to be efficient. If I was tired or didn't want to get stuck in rush hour traffic [under the 5/5 split], I would stop and sleep. I could then get up and still get to my destination on time. I was refreshed, had less traffic congestion, and had less stress fighting a time clock.”

Several members stated that the 5/5 split not only helped them to avoid congestion, as it allowed them to better plan their day around rush hour traffic, but it also decreased fatigue by allowing them to separate their drive time into shorter shifts. One member commented, “The 5/5 was great, especially for teams, but even as a single it is how I operated most of the time. It allowed me to avoid traffic, so I was able to accomplish more with fewer hours worked. Since it was taken away, I have stopped team driving. I find it impossible to drive 8-10 hours at a time and certainly can't spend 10 hours in the sleeper getting meaningful rest.”

There have been various studies concluding that truck drivers should be permitted to split their off-duty time in order to “sleep when sleepy and drive when alert.” Included within the findings of FMCSA’s 2012 study entitled *Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health*⁶ were:

⁵ https://ops.fhwa.dot.gov/freight/infrastructure/truck_parking/jasons_law/truckparkingsurvey/index.htm

⁶ Federal Motor Carrier Safety Administration (FMCSA), *Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health*. Report Number FMCSA-RRR-12-003. December 2012.

- The research states “if consolidated nighttime sleep is not possible, a split sleep opportunity appears to be a better choice with respect to effects on sleep than a consolidated daytime sleep opportunity. While any single study is not definitive, the present study is congruent with the literature on shift work and provides support for allowing greater flexibility in the sleeper-berth rule for CMV drivers, including permitting CMV drivers to split their sleep more evenly than the currently permitted 8/2 split of off-duty time.”
- “Results of the present study suggest that when consolidated night sleep is not possible, split sleep is preferable to consolidated daytime sleep in that split sleep yields more total sleep time and less subjective sleepiness. The study looked for but did not find strong support for differential effects of nighttime versus split versus daytime sleep on performance, mood, and blood pressure.”
- “With respect to the FMCSA regulations pertaining to CMV driver use of sleeper-berths, the study findings suggest possible benefits—in the form of increased total sleep time and decreased sleepiness—of a more flexible sleeper-berth rule, allowing for a greater splitting of sleep opportunity than is currently permitted.”

The 2012 report was authored by Dr. Gregory Belenky. In another study performed by Dr. Belenky, the conclusion was similar. “Performance is a function of total sleep in 24 hours, regardless of whether the sleep is consolidated or split and irrespective of sleep stages. It does not matter whether sleep is obtained in a single, consolidated sleep bout or distributed in two or three bouts over 24 hours, this is called Split Sleep.”⁷

Other studies have confirmed that there is no one-size-fits-all prescription for restorative sleep. Sleep requirements are highly individualized and depend on age, weight, physiology, genetic makeup, driver health, eating habits, activity levels during waking hours, and quality of the sleep.⁸ This should result in a rule that recognizes this reality and allows individual drivers to structure their sleep time to effectively satisfy their particular needs without an arbitrary mandate.

4.1 How often do you use the sleeper-berth provision under the current regulations? Will you use the sleeper-berth provision more or less if the proposed changes are finalized?

OOIDA members stated that they use the sleeper-berth provision under the current regulations an average of 2.18 times per week. 40% of OOIDA members said they would use the provision more if the proposed changes are finalized, while 54% said they would use it the same amount.

4.2 Would you expect to get the same amount of sleep in the 7-hour period than the current 8 hours?

The amount of sleep will vary among individual drivers, but certainly many drivers do not sleep for the entirety of the 8 hours currently required. Expanding split sleeper-berth options to 7/3,

⁷ Belenky, Gregory & Wu, Lora & Jackson, Melinda. Occupational sleep medicine: Practice and promise. Progress in brain research.190.189-203 (2011)

⁸ Aeschbach, D., et al., A Longer Biological Night in Long Sleepers Than in Short Sleepers, Journal of Clinical Endocrinology & Metabolism 88, pp. 26-30 (2003); www.sleepfoundation.org/article/how-sleep-works/how-much-sleep-do-we-really-need.

6/4/, or 5/5 will allow drivers to get the most beneficial sleep for their individual needs and circadian rhythms.

4.3 How will this provision change your scheduling and planning?

OOIDA members suggested the split sleeper-berth provision would be a major benefit to them, as it would permit them to rest when needed without being penalized by the HOS regulations. The additional split sleeper option would allow drivers to operate more safely and economically. OOIDA members also felt that the change would produce environmental benefits, as they would be able to avoid operating in rush hour traffic, thereby increasing fuel efficiency, while cutting back on emissions and incurring less wear and tear on their equipment, including maintenance on brakes and clutches. OOIDA members stated that they would also feel less pressured to operate while tired under the change, not to mention a reduction in stress by knowing that they have the option to rest in the sleeper and would still have available hours left to drive and work. Thus, changing the split sleeper rule would give them more power to choose how they would complete their driving time and still make their appointments.

4.4 How often would you utilize the 7/3 hour split during an average week?

OOIDA members stated that they would use the 7/3 hour split an average of 1.85 times per week.

4.5 Do you expect to drive more miles or hours based on this change? Do you expect to be able to complete additional “runs”?

Again, with additional flexibility, drivers would be able to drive more efficiently. This would likely allow them to drive more miles, but not more hours. 42% of drivers responded that they would be able to complete additional runs with this flexibility.

5. Split-Duty Period - FMCSA proposes to add a new option under § 395.3(a)(3)(iii) that would allow 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 drivers take at least 10 consecutive hours off duty at the end of the work shift.

Allowing drivers to pause their 14-hour clock would give truckers greater flexibility to rest when tired, as well as avoid congestion, adverse weather conditions, or other factors that make driving unsafe. Drivers would still need to log 10 consecutive hours off-duty before the start of their next work shift. This provision does not increase maximum driving time, maximum on-duty time, or decrease minimum off-duty rest periods between shifts. Drivers would have more chances to get sufficient rest and would not be as stressed to “beat the 14-hour clock.” This would result in positive benefits for driver health and highway safety.

Limiting the flexibility of a driver from choosing when they should stop the truck to attain rest is counterproductive to highway safety. The 14-hour clock looms over drivers when considering whether to stop for a break, or to continue driving. If the driver has only limited hours left in their 14-hour window, the choice to stop for a break is likely to be ignored because of the

impending expiration of the clock. Giving the driver flexibility to stop the 14-hour clock would permit a greater window in which to finish the remaining driving and on-duty time for that duty period.

5.1 How will this provision impact the number of driving hours during a single driving window? How will this provision impact your total driving hours during a given week or year?

The provision could lessen total driving hours because it will allow drivers to complete trips more efficiently. The provision would not increase driving hours because it does not increase the available amount of driving time. Truckers generally do not want to drive more hours, but would rather use their hours more efficiently. The provision will allow drivers to productively maximize their driving time.

5.2 How would this provision impact your regular schedule? How often would you expect to take advantage of this provision in a given work week? Why?

Survey respondents said that they would use the split-duty period an average of 2.55 times per week. OOIDA members have voiced that their operations would be more productive if the 14-hour on-duty period offered additional flexibility. They communicated that their operations would be less stressful, as they would have the flexibility to not only avoid adverse driving conditions, but to address other issues outside of their control. Hence, drivers would feel less pressured to speed or to operate when they are fatigued. One driver said, “If you need a nap, you could take it without losing work or drive time.” Several drivers commented that they would be less agitated and more relaxed while driving, less worried about making appointment times, and able to simply pause their day in order to have a healthy meal.

One member stated, “This would make a dramatic difference in my operations. I could now stop to take a nap and let traffic reduce in cities, which in turn can improve my safety and the safety of people who are just trying to get home or to work.”

Another driver said, “This would drastically change everything about our business and the safety of our nation’s highways. Too many drivers are driving because they are forced to drive by a useless 14-hour rule. They are driving even when they are tired because the law forces them to work within that 14-hour rule. Adding the flexibility to the rule would allow drivers to stop and take a nap for up to 3 hours, wake up feeling refreshed and more able to operate safely.”

5.3 What are the expected benefits from utilizing the 3-hour pause?

The additional flexibility from the 3-hour pause will allow drivers to be better rested, to stay off the road during unsafe conditions, and use their on-duty time more efficiently. This will result in improved highway safety, more completed trips, and less wasted hours.

5.4 Do you expect to use this provision to account for uncertainty such that trips could be finished on their scheduled completion day? How often do uncertain factors impact your schedule such that you are unable to complete a trip during the expected driving window and must delay delivery until after a 10 hour off-duty period?

The provision would certainly give drivers more flexibility to account for uncertainty during their work days. In many cases, this would help drivers finish trips on their scheduled completion days. Under the current HOS rules, it is a common occurrence for uncertain factors to prevent drivers from completing trips during the expected driving window.

5.5 Do you expect to be able to complete more trips due to this provision (i.e., schedule additional freight movement)? How many additional trips would you expect to plan during a given week or year?

58% of survey respondents replied that they would not complete more trips due to this provision; 42% said that they would be able to complete more trips. For those that said they would complete more trips, they expected an average of 1.60 more trips would be completed during a given week.

5.6 Would you expect to be able to utilize more of the 11 hours of drive time currently available due to the 3-hour pause?

OOIDA expects that drivers would be able to utilize the 11 hours of drive time more efficiently with the option of a 3-hour pause.

5.7 Do you expect this provision to impact drivers' sleep schedule? How so?

74% of survey participants answered that the provision would not impact their sleep schedule. 72% of those who stated the split-duty provision would impact their sleep schedule said that it would affect them positively because it would provide additional opportunities to rest as needed.

5.8 Will this provision allow for drivers to shift off their circadian rhythm more easily than under current rules?

No, the provision will not allow drivers to shift off their circadian rhythms more easily than the current rules. In fact, the provision will provide drivers more opportunities to rest when they feel tired. Rather than push through heavy congestion or hazardous weather, a driver could pull over to take a break or sleep without penalty of their on-duty clock expiring.

5.9 In a full year, would this provision lead to additional driving miles and/or driving time?

Again, this provision could lead to additional driving miles, but will not lead to additional driving time and in many cases would likely decrease total driving time.

5.10 How often would you take advantage of the full 3-hour pause as compared to shorter amount of times? Why?

This will vary depending on the conditions that necessitated the pause. Each day can bring different challenges and scenarios that will determine if and how long drivers would use the split-duty provision.

5.11 How would you plan to utilize the off-duty time spent during the 3-hour pause? Would you utilize the time sleeping in a truck cab more often or other leisure activities more often?

27% said they would utilize time sleeping in the cab, while 6% said personal time. 55% said both sleep and personal time, while 12% responded with other.

5.12 Do you anticipate any fatigue impacts on driving up to the 17th hour of a duty day? How would the up to 3-hour break impact that fatigue level?

79% of survey respondents said they did not anticipate any fatigue impacts on driving up to the 17th hour of a duty day. The split-duty break would lessen fatigue by providing drivers more time to rest, thus reducing stress and increasing vigilance according to feedback from OOIDA members. One member wrote, “Being able to “pause” the workday would eliminate “mental anxiety” by not allowing “unexpected circumstances” or the necessity to conduct “personal business” during a time when driving hours might be negatively impacted.”

FMCSA seeks additional information on whether the pause should be allowed to be divided and total up to 3 hours.

OOIDA believes the split-duty provision would be best utilized as 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. At this time, the pause should not be allowed to be divided up.

In response to the NPRM, some industry stakeholders have cautioned that shippers and receivers will use the provision to further exploit drivers. Rather than taking away flexibility from drivers, the Agency and the industry should work to address the underlying issues with detention time. Detention time is both a safety and financial concern for small-business truckers and professional drivers. In addition to the lost hours and wages, there are other hidden costs throughout the supply chain that are detrimental to highway safety and the economics of the profession. Logistical uncertainties from detention time prevent drivers from accurately planning trips, finding safe places to park, and making it in time to pick-up their next load. This contributes to increased driver dissatisfaction and turnover which undermines the overall safety and efficiency of the industry.

OOIDA recommends the Agency take the following actions to ensure that the split-duty provision is not used to exacerbate detention times currently experienced by drivers. FMCSA should allocate additional resources towards the National Consumer Complaint Database (NCCDB). As currently administered, the NCCDB is an inadequate outlet for drivers to report harassment and coercion, including concerns regarding detention time. Typically, drivers do not receive a satisfactory response when they call the NCCDB hotline or submit their complaint via the online portal. The lack of response from the Agency results in many unresolved complaints and also discourages drivers from using the NCCDB to report unsafe practices. The NCCDB could be an outlet to systematically track instances of shippers, receivers, or carriers taking advantage of drivers. Additionally, any final HOS rulemaking should clearly emphasize that discretion of the split-duty provision belongs to the driver and any attempts made by shippers, receivers, or carriers to coerce drivers into using the off-duty pause in an inappropriate manner will be considered unlawful.

6. Compliance Date for Rulemaking - *The Agency seeks comment on whether a 6- month or 12-month timeframe would provide sufficient time for ELD manufacturers and the motor carrier industry to conform to the proposed changes.*

OOIDA believes a 6-month timeframe would provide sufficient time for the industry as well as ELD manufacturers to conform to the proposed changes. The provisions included in the NPRM will unquestionably improve highway safety. As such, the Agency and the industry should finalize and implement these proposed changes as soon as possible.

Conclusion

The proposed changes will provide drivers more opportunities to rest when they are tired, to stay off the road during adverse driving conditions, and to maintain greater control over their own schedules. Considering that crash rates have steadily increased since some of the current HOS regulations have been in place, the need to give drivers more flexibility and control over their schedules is clearer than ever. OOIDA believes that the NPRM is a practical step in reforming the current HOS regulations, but that any final rulemaking should entirely eliminate the currently required 30-minute break and should expand the split sleeper-berth options beyond just 7/3.

Together, these important improvements will help reverse the rising crash rates highway users have experienced since the inception of existing HOS standards. However, in order for these changes to result in the most safety benefits, the discretion on if and when to use these provisions should always be up to the driver. The driver has the best understanding of when they should take a break, when road conditions are too dangerous, and when they should rest. We believe that these proposals, if implemented, will not only help the trucking industry and benefit highway safety, but can drive economic growth across the country, creating new opportunities and greater job security for millions of hard-working Americans.

Thank you,



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