

# Transport Topics **Online**

Updated:

## Trucking Blasts HOS Plan

### Drive Time May Be Cut; Restart Rules Altered

*By Michele Fuetsch, Staff Reporter*

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The Federal Motor Carrier Safety Administration's proposed new hours-of-service rule would cut driving hours, a move that trucking industry leaders said was politically motivated, adding cost and complexity while jeopardizing safety advances made in recent years.

The proposed rule, released Dec. 23, was the result of a settlement FMCSA reached with advocacy groups that have twice sued successfully in federal court to block the safety agency's revision of Depression-Era driving limits.

FMCSA's proposal would restrict drivers' ability to restart their weekly work cycle with a 34-hour rest period, effectively cutting the total work cycle. It also leans toward cutting allowable driving time before a break to 10 hours from the current 11.

"When viewed against trucking's sterling safety record, it's plain that the Obama administration's willingness to break something that's not broken likely has everything to do with politics and little or nothing to do with highway safety or driver health," said Bill Graves, president of American Trucking Associations.

The proposed rule, Graves said, "begs the age-old question: What part of success didn't you like?"

"The current rule has been working quite well by every measure, every assessment," Graves said, referring to federal data showing that truck-involved traffic fatalities have fallen steadily since 2003 when the first HOS rule was adopted.

FMCSA, whose new proposal follows a legal settlement last year between the federal government and a coalition of labor and advocacy groups, will take public comments on the proposal for the next 60 days, with the final rule expected by July 26.

While FMCSA stopped short of proposing a 10-hour driving limit to replace the current 11-hour limit, the agency said it favored 10 hours as the maximum and will make a final decision after it reviews the public commentary.

Graves excoriated what he said was a political agenda behind the proposed HOS changes.

"The most egregious part is the way it was sort of politically orchestrated to basically shake down the Department of Transportation over the confirmation of an [FMCSA] administrator in exchange for reopening a rule," Graves said.

In its push-back against the proposed changes, ATA said the Senate Commerce Committee approved Anne Ferro's confirmation as FMCSA administrator shortly after the federal government agreed to revisit the HOS rule as part of a settlement with those advocacy groups that have repeatedly challenged HOS rule revisions in court.

The nomination of Ferro, former director of the Maryland Motor Truck Association, initially drew criticism from the same groups.

John Conley, president of the National Tank Truck Carriers, also lashed out at the administration, saying the proposed new HOS rules prove that “elections have consequences.”

“This is politics, not safety management based on facts and performance,” said Conley, who also pointed to the declining accident figures as proof the current HOS rule is working.

“This is Washington and facts are not as important as politics,” Conley said. “The DOT had a gun at its head and it caved in to the anti-truck special interests.”

The new rule, Graves said in a written statement issued immediately after the unveiling, is “overly complex, chock full of unnecessary restrictions on truckers” and would reduce trucking’s productivity.

What is more, Graves later told Transport Topics, “I think the law enforcement community is going to be troubled by the complexity of this rule.”

Annette Sandberg, a former FMCSA administrator and a former top state law enforcement officer, echoed Graves, saying she was troubled by the complexity of the proposed new HOS rules that she said should be easily understood by the average trucker.

“I get concerned anytime . . . a rule becomes so complex that neither side really, truly understands it,” said Sandberg. “It almost gets to the point where it’s unenforceable.”

Before heading FMCSA from 2002 to 2006, when the current rule was written, Sandberg served as chief of the Washington State Patrol.

If adopted, the new rule is “certainly going to complicate everyone’s lives, especially drivers,” Graves said.

Even those whose job it is to “understand policy and regulatory issues” are having a difficult time grasping the proposal’s changes, Graves said.

That means people “getting up every morning trying to make a living driving trucks, running, especially small fleets of trucks” will have a difficult time understanding how to comply, he said.

Within the new HOS proposal, for instance, is a provision that would, in most cases, also reduce maximum on-duty time allowed to 13 hours by requiring drivers to take two 30-minute rest breaks during the current 14-hour duty time.

And the rule changes how many off-hours team drivers can sit in the cab rather than spend in the sleeper berth.

One of the most troubling provisions, said trucking representatives, is a complicated change in the 34-hour reset time for drivers.

Although FMCSA said that under the new rule, the reset — which enables drivers to restart their weekly cycle after a 34-hour break — would not change, in fact it is dramatically changed, trucking experts said.

Under the new proposal, the 34-hour reset break must include two six-hour rest periods between midnight and 6 a.m.

“I happen to find the suggestion that the 34-hour restart was retained is borderline on being a fairy tale,” said Graves. He said the new reset provision is impossible to meet within a 34-hour time line.

“It hasn’t been retained,” Graves said. “It’s been dramatically changed and what it will contribute to is a tremendous loss in

driver productivity.”

The new rule will push the reset time up to nearly 48 hours of off-duty time for drivers, according to Graves.

Rob Abbot, vice president for safety operations in ATA's law department, said, “What you're talking about is industry capacity, and so by reducing industry capacity, you're reducing supply, you're increasing costs and you're going to have a ripple effect on the entire economy.”

“Everybody in the supply chain has an interest in this,” said Sandberg, “because any loss in productivity does impact the supply chain and in turn impacts the cost of goods.”

The proposal is expected to generate intense debate between the trucking industry and the coalition of labor and highway safety advocates that has been jockeying over HOS since Congress created FMCSA in 1999, directing the nascent agency to rewrite driver rules that dated back to the 1930s.

The first HOS rule to be written was scrapped as too complex and twice advocacy groups successfully argued in court against FMCSA's attempts to write HOS rules.

Although truckers were upset by the proposed HOS rule, those pressing for fewer driver hours also said they were disappointed by the proposal.

“Although the agency says it is considering 10 hours, even maybe leaning that way, it's still considering 11 hours,” said Henry Jasney, counsel for Advocates for Highway and Auto Safety. That group is one of several that have sued FMCSA and the Department of Transportation in an effort to reduce drivers' hours on the road.

“We have always felt that the data and research and studies are pretty clear, and their findings in the past are pretty clear, that more hours of driving is less safe,” said Jasney. “So we're somewhat disappointed that they didn't just come out and say it should be 10 hours.”

While ATA officials pointed to federal traffic accident data that showed a dramatic decrease in the number of truck accidents and fatalities since 2003 under the current HOS rule, Jasney said the issue is not the number of accidents but accident rates.

More accidents occur during the first eight hours of an 11-hour shift on the road because more truckers drive for eight hours than drive for 11 hours Jasney said. But he said the accident rate is higher for the last three hours of a shift than it is for the first eight hours.

Jasney said the groups he works with believe that an 8-hour driving rule would be ideal.

Sandberg said she hoped that the new rule was not a back-door way for FMCSA to compel trucking to adopt electronic onboard recorders that would allow law enforcement officers to track driver hours.

ATA's Graves and Abbot, as well as Sandberg, said they were bothered by what they perceived as an attempt within the new rule to affect driver health. There is an implication within the rule, Graves said, that with more time off, drivers will adopt habits that make them healthier.

Sandberg, who supervised FMCSA's current HOS rule, said it was odd that FMCSA didn't specify a 10-hour limit in the proposed rule, given FMCSA's stated preference.

She said she wondered whether the lack of a 10-hour provision means the government does not have the evidence it needs to justify changing the current 11-hour rule.

“I haven't seen any new science, and I guess that's what I'm looking for is new science and new data,” Sandberg said.

Graves and others said that in at least one way, the proposed rule was at odds with other public-policy initiatives that are encouraging truck traffic to shift to nighttime deliveries.

The required rest times contained in the proposed rule, they said, mean drivers would have to work more daytime hours, which means more trucks on the road during peak daytime traffic hours.

Editor's Note: FMCSA [published the proposed hours-of-service rule](#) in the Dec. 29 Federal Register.