

DC Circuit upholds majority of Hours of Service Rules for Truck Drivers

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The U.S. Court of Appeals for the District of Columbia Circuit recently issued an opinion regarding the validity of the Hours of Service (HOS) Final Rule passed by the Federal Motor Carrier Safety Administration (FMCSA) in 2011. *Am. Trucking Associations, Inc. v Fed. Motor Carrier Safety Admin.*, 12-1092, 2013 WL 3956992 (D.C. Cir. Aug. 2, 2013)

The 2011 HOS Final Rule for truck drivers added the following three key provisions to the content of prior versions of the rule:

- *30-Minute Off-Duty Break.* The 2011 Final Rule bars truck drivers from driving past eight hours at a time unless they have an off-duty break of at least 30 minutes.
- *Once-Per-Week 34-Hour Restart Restriction.* To prevent drivers from abusing the 34-hour restart, the 2011 Final Rule allows truckers to invoke the provision only once every 168 hours (or seven days).
- *Two-Night Requirement for the 34-Hour Restart Restriction.* To ensure that drivers using the 34-hour restart have an opportunity to get two nights of rest, the 2011 Final Rule also mandates that the restart include two blocks of time from 1 a.m. to 5 a.m.

See 2011 Final Rule at 81, 135-36.

The American Trucking Associations, Inc. petitioned the District of Columbia Circuit Court, against, among others, the FMCSA, asserting that the 2011 HOS Final Rule is overly restrictive and costly, procedurally invalid, and that the FMCSA acted arbitrarily and capriciously, without explaining or providing proof that off-duty breaks provide a higher reduction of crash risk than on-duty breaks.

By contrast, various public interest organizations and individual truck drivers argued that the rules do not go far enough for public safety.

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The FMCSA argued that it got everything “just right,” and that the three provisions were added to “promote driver safety, enhance driver safety, prevent drivers from abusing the 34-hour restart by strategically employing the restarts to increase driving/on-duty time, and ensure that drivers using the 34-hour restart have an opportunity to get two nights rest.” Moreover, the FMCSA argued that the 2011 HOS Final Rule “reflect[s] its changed understanding of how the 34-hour restart was previously being used in practice by truck drivers” to maximize driving time.

The court upheld the “Once-Per-Week 34-Hour Restart Restriction” and the “Two-Night Requirement for the 34-Hour Restart Restriction.” The court also upheld the “30-Minute Off-Duty Break” provision as it applies to long-haul drivers, which means that over-the-road drivers still may not drive more than eight hours at a time, unless they take the mandatory 30-minute off-duty break.

However, the court vacated the provision of the “30-Minute Off-Duty Break” provision as it applies to short-haul drivers. Therefore, drivers who operate locally (typically within a 150-mile radius of their reporting location and who are released after each shift) are no longer subject to the “30-Minute Off-Duty Break” provision. The court reasoned that the FMCSA acted arbitrarily where it did not provide an explanation as to its applicability to short-haul drivers.

While this was a long anticipated decision, the court upheld the majority of the 2011 HOS Final Rule.