

Enforcement Policy – Court Decision on the 30-Minute Rest Break Provision

BACKGROUND:

HOS Final Rule

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its hours-of-service (HOS) regulations for drivers of property-carrying commercial motor vehicles (CMVs). The final rule adopted several changes to the HOS regulations, including a new provision requiring drivers to take a rest break during the work day under certain circumstances. Drivers may drive a CMV only if 8 hours or less have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes. FMCSA did not specify when drivers must take the 30-minute break, but the rule requires that they wait no longer than 8 hours after the last off-duty or sleeper-berth period of that length or longer to take the break. Drivers who already take shorter breaks during the work day could comply with the rule by taking one of the shorter breaks and extending it to 30 minutes. The new requirement took effect on July 1, 2013.

Court Decision

On August 2, 2013, the U.S. Court of Appeals for the District of Columbia Circuit issued its ruling on the Hours of Service litigation brought by the American Trucking Associations and Public Citizen. The Court upheld the 2011 Hours of Service regulations in all aspects except for the 30-minute break provision *as it applies to short haul drivers.* While the decision does not officially take effect until the mandate is issued 52 days after the decision (unless a party files a petition for rehearing, either by the panel or en banc, or moves to stay the mandate pending the filing of a petition for certiorari in the Supreme Court), FMCSA announces the Agency will immediately cease enforcement of the 30-minute rest break provision of the HOS rule against short-haul operations.

The Agency requests that its State enforcement partners also cease enforcement of this provision. States that do so will not be found in violation of the Motor Carrier Safety Assistance Program (MCSAP).

ENFORCEMENT POLICY

Effective **August 2, 2013**, FMCSA will no longer enforce 49 CFR 395.3(a)(3)(ii) against any driver that qualifies for either of the "short haul operations" exceptions outlined in 49 CFR 395.1(e)(1) or (2). The Agency requests that State and local enforcement agencies also refrain from enforcing the 30-minute rest break against these drivers. Specifically, the following drivers would not be subject to the 30-minute break requirement:

- All drivers (CDL and non-CDL) that operate within 100 air-miles of their normal work reporting location and satisfy the time limitations and recordkeeping requirements of 395.1(e)(1).
- Non-CDL drivers that operate within a 150 air-mile radius of the location where the driver reports for duty and satisfy the time limitations and recordkeeping requirements of 395.1(e)(2).

FMCSA will also be initiating a rulemaking to include text in the HOS regulations noting that the 30 minute break provisions do not apply to short haul drivers.