

construction materials and equipment. This exemption is still in effect.

In 49 CFR 395.3(c) FMCSA added a “restart provision” which allowed any 7- or 8-day period to end with the beginning of any off-duty period of 34 or more consecutive hours. In other words, at any point before exceeding the 60/70-hour limit, a driver may restart the 60/70-hour clock (or calculation) after taking 34 or more consecutive hours off duty. Consistent with previous interpretations of the 60/70-hour rule, FMCSA interprets this provision to mean that if the driver exceeded the 60 or 70 hours on duty, he or she could not

start the 34-hour restart period until enough calendar days had passed to bring the driver within the 60 hours in 7 consecutive days (or 70 hours in 8 days) limitation. The 34-hour restart provides an option that permits the driver to have enough time for two uninterrupted periods of 8 hours sleep before returning to work in a new multi-day duty period. However, it also allows a driver to drive more hours and be on duty more hours before driving is prohibited in a 7- or 8-day period, as shown in the table below.

This table is based on two hypothetical scenarios. The first is a

daily schedule in which the driver drives continuously for the maximum allowable time (11 hours). The second is a daily schedule in which the driver is on-duty/not-driving continuously for the maximum allowable time (14 hours of which 11 are driving). In each case, the driver takes only the minimum required off-duty (10 hours) period and, prior to reaching the 60/70 hour limit, the driver invokes the 34-hour restart provision and resumes the scenario of maximizing driving and on-duty time for the remainder of the 7/8 day period.

MAXIMUM POSSIBLE DRIVING AND ON-DUTY HOURS

(Assuming minimum 10-hour off-duty periods)	Current (2003) rule		Old rule	Available hours off duty	
	34-hour restart	Without restart (note 1)	60/70 rule (note 1)	Current rule (note 2)	Old rule (note 3)
Max. Hours Driving Only in 7 consecutive days, before driving is prohibited	77	60	60	91	108
Max. Hours Driving & On-duty in 7 consecutive days, before driving is prohibited	84	60	60	84	108
Max. Hours Driving Only in 8 consecutive days, before driving is prohibited	88	70	70	104	122
Max. Hours Driving & On-duty in 8 consecutive days, before driving is prohibited	98	70	70	94	122

Note 1: Under the current 2003 rule without imposing the 34-hour restart, and under the old rule, the maximum hours a driver may work and continue to operate a commercial motor vehicle is capped at 60 hours in 7 consecutive days (70 hours in 8 consecutive days).

Note 2: The “available hours off duty” calculation assumes the driver is maximizing the driving and driving and on-duty not driving hours (11/14 hours respectively), coupled with taking only the minimum mandatory off-duty periods (10 hours).

Note 3: The old rules prohibited driving after 60 hours in 7 consecutive days (70 hours in 8 consecutive days). Considering the total hours available within each period, 168 (7 × 24) and 192 (8 × 24) would provide 108 (168 less 60) and 122 (192 less 70) available hours off duty. However, the actual available off-duty hours may vary since the 60/70 hour rule only prohibits driving after the 60- or 70-hour limit, but does not prohibit additional hours on duty, not driving. The figure in the table represents the maximum available hours off duty for a driver not working any additional hours after reaching the 60/70 hour limit.

The 60/70-hour limitation helps prevent a driver from developing severe, cumulative fatigue and sleep deprivation when working and driving the maximum “daily” limits for an extended period. However, at times this provision may require the driver to remain off duty for longer periods of time than necessary to gain adequate restorative sleep. This occurs because the rule refers to the maximum hours on duty in a certain number of “days.” The hours worked in the prior 7 or 8 consecutive days and the hours available to work in a future 7- or 8-consecutive-day period are re-calculated at midnight when a new “day” begins. As noted previously, the restart provision avoids this limitation by permitting the driver to “restart the 60/70 hour clock” after having 34 or more consecutive hours off duty, which would afford two uninterrupted periods of 8 hours sleep before returning to work in a new multi-day duty period.

The D.C. Circuit criticized FMCSA for not even acknowledging, much less justifying, that the new rule “dramatically increases the maximum

permissible hours drivers may work each week” *Public Citizen*, at 1222–1223. As shown in the table above, the restart increases the total hours of permissible on-duty time in a 7-day period, after which a driver may not drive a CMV, from 60 hours to 84 hours. It also increases the maximum driving time permitted in a 7-consecutive-day period (from 60 hours to 77 hours). Also as shown in the table above, the restart increases the total hours of permissible on-duty time in an 8-day period, after which a driver may not drive a CMV, from 70 hours to 98 hours. It also increases the maximum driving time permitted in an 8-consecutive-day period (from 70 hours to 88 hours).

In the 2003 final rule, the agency explained its rationale for the adoption of the 34-hour restart period. In essence, studies indicated that cumulative fatigue and sleep debt can develop over a weekly period, and at least two full periods of sleep are needed to “restore” a driver to full alertness. The agency determined that the 34-hour restart period, based on a full 24-hour period plus an additional 10-hour period

available for sleep, was the minimum restart which would provide adequate restorative rest.

The 34-hour restart was also seen in the 2003 final rule as a flexible alternative to the “mandatory weekend” proposed in the 2000 NPRM. Not all motor carrier operations work on a “fixed and recurring 7-day period,” instead having intense days of work followed by slack times. Other operations can be disrupted by weather. The 34-hour restart allows motor carriers and drivers the option of restorative rest during the times work is not available or is interrupted.

The agency is seeking research and other data to further ascertain the effects of a 34-hour restart period on safety and driver health, and whether 34 hours is the appropriate length of time for a restart, compared to periods ranging from 24 hours (as in the NHS Act) to more than 34 hours. The agency is also reviewing the alternative of eliminating the restart provision, or of implementing it in a different way, such as limiting its use within a given time period, so as to preclude a driver accumulating an