

listening sessions in March 1997 and placed these comments in the docket. The FHWA recorded more than 1,588 written (paper and electronic submissions) and transcribed oral comments to this docket after the November 1996 ANPRM. The FHWA extended the comment period for the ANPRM once to June 30, 1997.

The ANPRM discussed 33 relevant research studies the FHWA was aware of in 1996. The FHWA requested that the public provide additional research studies it believed to be relevant. The ANPRM comments provided or referenced an additional 30 studies. The FHWA obtained and examined these studies and identified additional research from 1997 through 1999 while developing an NPRM. See the index to all relevant research studies and the annotated literature review. The FHWA began developing a set of alternatives to analyze based on more than 120 research studies included in the docket.

Supporting Documents Notice of Proposed Rulemaking

On April 20, 1998, the FHWA published a notice of proposed rulemaking (NPRM) requesting comments on a proposed definition of "supporting documents" for the HOS regulations (63 FR 19457) in response to the Hazardous Materials Transportation Authorization Act of 1994, Pub. L. 103-311, 108 Stat. 1673 (August 26, 1994) (HMTAA). Section 113 of the Act requires the Secretary of Transportation to prescribe regulations amending 49 CFR Part 395 to improve both (1) compliance by CMV drivers and motor carriers with the HOS requirements, and (2) the effectiveness and efficiency of Federal and State enforcement officers reviewing such compliance.

The April 1998 NPRM proposed that motor carriers develop and maintain effective auditing systems to monitor the accuracy of the drivers' Records of Duty Status and HOS. The NPRM proposed that failure to create and maintain such a system would result in motor carriers being required to retain various types of business documents. The use of electronic recordkeeping methods was also proposed as a preferred alternative to paper records.

Development of the Notice of Proposed Rulemaking

The entire effort to revise the HOS regulations has been based on the concept that new rules would be science-based. This was the theme throughout the development of alternatives leading up to the publication of the May 2000 NPRM. Science was often cited by industry as

the basis upon which the HOS rules should be reformed. Several modal administrations within the DOT, including the FMCSA, had undertaken significant research into fatigue causation and the dynamics of sleep. There was general recognition that the existing rules for the truck and bus industries had been implemented well before there had been a clear scientific understanding of fatigue causal factors (e.g., time of day, amount and timing of sleep, time awake, and time on task). The agency collected many relevant studies by authorities in the area of fatigue. It also completed its own comprehensive *Commercial Motor Vehicle Driver Fatigue And Alertness Study*, a joint undertaking with Canada and the trucking industry. In preparing the May 2000 proposal, the agency assembled an expert panel of recognized authorities on traffic safety, human factors, and fatigue to review the science and evaluate potentially effective and reasonably feasible regulatory alternatives. The resulting agency proposal relied heavily on scientific conclusions based on the research and analysis in Belenky, G., McKnight, A.J., Mitler, M.M., Smiley, A., Tijerina, L., Waller, P., Wierwille, W.W., Willis, D.K., (1998), *Potential Hours-Of-Service Regulations For Commercial Drivers; Report of the Expert Panel on Review of the Federal Highway Administration Candidate Options for Hours of Service Regulations*.

Regulatory reform of drivers' HOS in the truck and bus industries had been the subject of consideration by the agency for close to ten years before publication of the May 2000 NPRM. The FHWA's Office of Motor Carriers maintained an intensive driver fatigue research program starting in 1989. Truck and motorcoach driver fatigue had been identified and discussed by many industry analysts and safety advocates as a significant motor carrier safety issue. Major aspects of the proposal had been the subject of trade journal stories for nearly a year before the NPRM was published.

ATA Recommendation Submitted While NPRM Was Under Review at OMB

On December 3, 1999, the agency submitted the draft NPRM for review to the Office of Management and Budget (OMB) as required by Executive Order 12866.¹ The ATA submitted *Recommendations for Future Hours of Service Rules* to the DOT two weeks later on December 15, 1999. The ATA

proposed that the agency " * * * issue a notice of proposed rulemaking and ultimately a final rule based on the ATA recommendations." The ATA stated that its proposal was based " * * * on sound science, public safety and the needs of the American economy." The 16th item of the ATA recommendation stated that "[u]pon publication of the [FMCSA] proposal, ATA should contract with a firm to analyze the government's cost/benefit analysis, and if warranted, conduct its own cost-benefit analysis for comparison."

The ATA addressed its recommendation both to the Secretary of Transportation and the OMB director. The agency had already considered and analyzed five alternatives it believed were reasonably feasible to implement. The agency chose not to withdraw its draft NPRM from review at OMB to add a sixth ATA alternative and delay the draft NPRM further. The OMB approved the agency's draft NPRM for publication on April 24, 2000.

Notice of Proposed Rulemaking

On May 2, 2000, FMCSA published an NPRM covering a comprehensive revision of the HOS regulations (65 FR 25540). The FMCSA received and transcribed 700 comments at eight nationwide public hearings in May, June, and July 2000 and placed these comments in the docket referenced at the beginning of this document. After holding the first seven public hearings, the agency identified several recurring themes and issues that warranted additional stakeholder and public discussion. The agency conducted three two-day public roundtable discussions in September and October 2000 in Washington, D.C. for that purpose. A transcript of each day of the public roundtable discussions is also in the docket. The FMCSA extended the comment period for the May 2000 NPRM twice, first to October 31, 2000, and then to December 15, 2000. The FMCSA has recorded more than 53,750 written (paper and electronic submissions to the docket) and transcribed oral comments in response to the May 2000 NPRM.

Comments to the NPRM

General Overview

The comments to the May 2000 proposal reflected widespread recognition of the enormity of the undertaking, and many commenters, even those strongly opposed to the NPRM, acknowledged the difficulty in sifting through the data and presenting the issues. The hearings gave many an opportunity to express themselves on a

¹ OMB Office of Information and Regulatory Affairs Internet page for "Regulations Pending and Reviews Completed Last 30 Days" dated 08 Dec 99.