

variety of issues. The roundtable discussions provided an opportunity to focus on the specific major issues mentioned at the hearings and helped some commenters to explain their reasons for opposing or supporting the NPRM. The reactions of many commenters reflected apprehension about the effects on their jobs, earnings, businesses, method of operation, competitive status, and protection from what they perceived to be a drastic change from the status quo.

The generally unfavorable comment and reaction to the NPRM led to expressions of Congressional concern regarding any short-term effort to promulgate a final rule. The FY 2001 DOT Appropriations Act, Pub. L. 106-346, prohibited the agency from moving to a final rule during that year. The FY 2002 DOT Appropriations Act, Pub. L. 107-87, prohibited promulgation of a final rule dealing with any of the HOS exemptions in the National Highway System Designation Act of 1995, Pub. L. 104-59, Sec. 345, 109 Stat. 568, 613 (NHS). This action reflects careful consideration of the concerns expressed by members of Congress as well as the more than 53,000 comments to the docket.

Use of an Independent Consulting Firm

The National Safety Council (NSC), American Bus Association (ABA), American Trucking Associations, Inc., and Distribution and LTL Carriers Association (DLTLCA) petitioned FMCSA to retain an independent consulting firm to study the safety and economic impacts of any next action. The DLTLCA believed "that such an approach, used previously by DOT in the prior proceeding on these hours-of-service rules, is in the interest of all the participants, FMCSA, and the public."

FMCSA Response

The FMCSA has chosen to grant this petition. The agency hired an independent consultant who performed an exhaustive analysis of several regulatory alternatives, described below.

Use of Science

Numerous trucking industry commenters applauded the agency for its attempt to use science as the basis for HOS reform. Although these commenters found little on which to disagree with the agency about the actual research into the science of fatigue, they consistently faulted the agency for the way it applied that science in the real world. They commented that the proposed rules lacked the flexibility necessary to apply the science in an operationally practical

manner. The industry position was perhaps best summed up in the comments of the National Private Truck Council (NPTC). "While the fatigue research may confirm that people do get tired, and that they can become more tired between midnight and 6 a.m., this must be weighed against the result of pushing nighttime runs into daylight hours."

The trucking industry also found much to disagree with regarding the analysis of the accident and compliance data used by the agency to justify many of the provisions of the proposal.

The ATA found little support for the agency's position that the proposed rules would save 755 lives annually once industry adhered to the proposal fully.

The ATA repeatedly cited crash statistics of the National Highway Traffic Safety Administration and FMCSA showing fatigue to be a factor in no more than five percent of fatal accidents involving trucks.

The ATA referred to work done by the Michigan State Police in conjunction with the University of Michigan to try to isolate causes of fatal truck crashes in Michigan. They identified 267 truck-involved fatal crashes from 1966 to 1999, 72 of which were determined to be the fault of the truck driver. They stated only five of those 267 crashes, or 1.8 percent, were attributable to fatigue.

The National Association of Small Trucking Companies (NASTC) commented that fatigue is a "naturally occurring phenomenon" and man has been provided with naturally occurring defenses, which he has to manage. NASTC believes the agency ought to rely on promoting fatigue management alternatives rather than trying to regulate what is probably individual to each person.

The industry was also critical of the FMCSA for failing to do enough research into the safety consequences of shifting considerable nighttime truck traffic to the daytime.

Several enforcement agencies including the New York State Police applauded FMCSA's effort to utilize sleep research data in developing new rules to combat driver fatigue. It cautioned the agency, however, against placing total reliance "on the data obtained through this research since this data is certainly open to interpretation."

The American Automobile Association (AAA) found positive attributes in the proposal. The AAA believed the proposal represented a significant effort to draft science-based HOS regulations. The NPRM, it said, provided a workable framework taking into account science and expert opinion

in areas of sleep research and traffic safety.

The AAA, however, believed the agency had misapplied some of the scientific findings. The AAA also stated the proposal should focus on where "we know we have a problem." The AAA believed long haul, over-the-road drivers face challenges that could benefit from improved work/rest practices. The AAA pointed to the Hanowski, Wierwille, Garness, Dingus study *Impact of Local/Short Haul Operations on Driver Fatigue* (2000), Report No. DOT-MC-00-203, a study that had not been completed before the proposal. This study concluded that fatigue may be less problematic for local/short haul drivers, as they are more like workers in non-driving professions than long haul drivers. The AAA strongly recommended that the agency reconsider those parts of the proposed rulemaking that would apply HOS requirements to industries where there is no demonstrable evidence that driver fatigue results in accidents.

The American College of Occupational and Environmental Medicine (ACOEM) also had a cautionary message. Noting that fatigue is an important issue, not only for safety, but also for productivity, the ACOEM observed that occupational medicine's prime job is matching the interface of the worker with the workplace, and then understanding that interface. There is a tremendous amount of research in this area, but it is relatively young, only 20 to 30 years old. The ACOEM found that taking the science and making it operational, as in scheduling, is quite challenging and questioned the value of regulating driving schedules as the fatigue problem is much more complex. The ACOEM recommended deferring further action on the proposal until more information is available.

The National Sleep Foundation (NSF) was very supportive of the proposal. It cited the three general principles in its Policy Statement of February 2000 anticipating the publication of the proposed rules:

New regulations must be based on current scientific research and understanding regarding fatigue and driver performance.

An effective system to manage fatigue should include prescriptive regulations that can be monitored and enforced by compliance officers and, above all, provide adequate rest periods with reasonable, responsible limits on driving.

HOS rules alone cannot regulate driver fatigue and alertness. Ultimately, it is the shared responsibility of all interested parties to develop a system that helps promote proper fatigue management through education and training.