

Type 5 more accommodating but could not fit because of an unexplained exclusion of for-hire carriers.

Comments from the enforcement community stated that classification by type would only create confusion and make their jobs at the roadside more difficult and time-consuming.

Public interest groups gave little attention to the general concept of classification and focused rather on the particular restrictions and obligations that were tied to each of the operations.

#### FMCSA Response

This final rule establishes a uniform set of regulations for all cargo-carrying operations while allowing passenger-carrying operations to continue under the current rules. In addition, Congressionally-mandated and historical exemptions and exceptions are retained. The final rule will not categorize any segment of the industry in the manner that the NPRM proposed. The agency believes the rule strikes a balance between uniform, consistent enforcement and the need for operational flexibility.

The FMCSA developed the categorization proposal to improve safety based on calculated risk, to respond to "one size fits all" criticism, and to reflect the diversity of the industry. The primary purpose for the categories was to address the highest risk, long-haul operations, so that those operations with the least risk of serious crashes would not be required to alter their operations.

Comments from across a spectrum of stakeholders found the proposed categorization did not work for a multitude of reasons. The comments have shown that the categories created confusion, problems for enforcement, and did not fully meet the objective of accommodating the diversity of the industry. The distinction between an over-the-road truck driver and a local truck driver, however, had fairly broad acceptance among the motor carrier commenters using trucks. The agency's own research associated a significant portion of the fatigued commercial driver problem with the long-haul operation of tractor-trailer or tractor-semi-trailer combinations. For these reasons, FMCSA has decided to drop the categories proposed in the NPRM.

#### Passenger Carrier Operations

The proposal made no separate provisions for operators engaged in the transportation of passengers. The current rule also makes no separate provisions for such operators. The FMCSA had no basis to conclude that fatigue affects passenger carrier drivers

differently than truck drivers. Thus, the agency believed the same HOS rules should apply. The NPRM recognized certain distinct characteristics in motorcoach operations by proposing different types of trips for which various restrictions would apply. The Type 3 category was meant to accommodate some tour operations and commuter bus services. Motorcoach industry associations, individual carriers and the Amalgamated Transit Union (ATU), representing intercity bus drivers, filed extensive comments, and participated actively in the public hearings and roundtable discussions. The reaction from the motorcoach industry to the proposal was disappointment with the proposed rules in general and more particularly with the agency's failure to recognize the difference between driving a bus and driving a truck.

The Conference Report for the 2001 DOT Appropriations Act contains the following reference to this issue:

*Motorcoach driver fatigue.* The conferees note that the agency acknowledged in its NPRM on hours-of-service that little is known about the operations of over-the-road buses and motorcoaches. The conferees state that there should be additional study of the operations, driver practices and driver fatigue issues specific to over-the-road buses before any revisions to the existing trucking hours-of-service rules are finalized, and encourage the Secretary to conduct such studies to inform additional regulatory proposals in this area. See H. Conf. Rept. No. 106-940, 106th Cong., 2d Sess., p. 113 (2000).

The American Bus Association (ABA), the United Motorcoach Association (UMA), and other motorcoach, convention, and tour associations, ATU, NSC, and CVSA urged the agency to not subject passenger transportation to the proposed rules, thus allowing them to continue to operate under the currently existing rules. Among the reasons given for their request taken from the ABA comment:

(1) There is no scientific, statistical, or other evidence to support changes for bus drivers;

(2) Commercial passenger vehicles are operated in an environment entirely different from commercial freight carriers;

(3) The exemplary safety record of the industry will be compromised by the proposed rules; and

(4) The economic impact will be devastating.

The ABA agreed with other critics questioning the agency's estimate that 15 percent of truck-involved fatalities are caused by the fatigue of the commercial vehicle driver.

However, the ABA asked what part of that 15 percent was supposed to be

related to bus transportation. According to the ABA's review of the Fatality Analysis Reporting System (FARS), an annual average of 42.5 fatalities was attributable to crashes involving intercity buses, which the ABA disputed due to definitional problems. Even taking these data, ABA stated that 15 percent of 42.5 amounts to less than 7 fatalities per year. The ABA argued the commercial passenger carrier industry averaged 0.01 passenger fatalities per 100 million passenger miles for 1995 through 1997 and asserted that this ranked well below the rate for rail and air passenger transportation at 0.04 passenger fatalities per 100 million passenger miles (from *Industry Facts 1999*, NSC, p. 122.)

The ABA also pointed out the significant differences, both operational and mechanical, between buses and trucks that would undermine the agency's basis for the proposed revisions.

In its comments, the ABA pointed out that all intercity bus drivers are paid by the hour and run on preset schedules, thereby eliminating any incentives to violate the present HOS restrictions.

The ABA cited section 408 of the ICCTA for the proposition that DOT is required to consider the economic vitality of the motor carrier industry in its regulation of motor carriers, drivers, and CMVs. The ABA claimed that FMCSA had made no attempt to assess the cost of this proposal to the motorcoach industry and asserts FMCSA had failed to meet its obligations under controlling law and policies.

The ABA reiterated most of the ATA and other commercial freight carrier associations' criticisms of the agency's cost/benefit analysis. It cited the ATA's submission to the docket of the Center for Regulatory Effectiveness' (CRE's) *The CRE Report Card on DOT's Proposed Rule on Hours of Service For The Motor Carrier Industry*, listing 62 legal and other procedural requirements that it believes the FMCSA must use.

The National Tour Association claimed that never in 20 years have its members experienced so much as a minor injury due to a motorcoach accident. Motorcoach travel, in their opinion, is the safest form of commercial passenger travel, and the NTA argues there is no justification for regulating bus and truck operations together. Of the 150 studies cited in the preamble, NTA argued that none deal with bus drivers. The NTA stated the proposal would only cause increased costs and heartache for the bus industry with no safety benefit; in fact, they