

stated that the opposite effect is more probable. The proposal, according to NTA, was simply unnecessary and unfair.

The Convention and Visitors Association, which promotes the Washington, DC area as a primary tourism destination, commented that about one-third of all visitors to the Washington, DC area arrive by motorcoach. It estimated that the Washington area would lose 20 percent or 1.5 million visitors because of the inconsistency between the provisions of the proposal and the way the tour bus industry actually operates.

National School Transportation Association (NSTA) members provide transportation services to public school districts and private schools nationwide. Noting the specific exemption from 49 CFR parts 387 and 390 through 399 for transportation of pupils from home to school and school to home, the NSTA observed that school transportation nearly always includes school activity transportation as well. Strict adherence to the proposal would cause a disruption in current operations and could result in a shortage of available drivers. If school bus companies could use their regular route drivers to provide activity transportation, they could not service their contracts, because more drivers are simply not available. The NSTA recommended that all school bus drivers be held to the same standard, whether public or private, because they do the same things. It also recommended a separate category for school bus operations, and suggested that the FMCSA convene a roundtable discussion devoted to this issue. That would allow all issues to be worked out consistent with safety and economic practicality.

CVSA stated the agency must conduct medical and performance research on the bus and motorcoach industry to validate (or invalidate) the position in the proposal. It argued that basing such sweeping rule changes on assumptions that are not substantiated is not prudent public policy.

The NSC stated that the intercity motorcoach industry should be excluded from the HOS proposal. NSC asserted that the statement that the agency has "assumed that bus drivers operate in ways similar to truck drivers" was questionable for a rule purported to be based on "sound science" and underscored the agency's lack of understanding of the motorcoach industry's unique operating characteristics. NSC further stated there is no safety evidence to support

including the motorcoach industry in the proposed changes.

#### FMCSA Response

The FMCSA is persuaded by comments that it does not have enough data to indicate a problem in the motorcoach industry segment and is not adopting any new rules for motorcoach drivers in this final rule. The FMCSA may consider the feasibility of other alternatives to reduce fatigue-related incidents and increase motorcoach driver alertness in the future.

The FMCSA relied on four motorcoach studies in the NPRM, three completed by the FMCSA's predecessor, the FHWA, and one from Australia. See:

(1) *Strategies to Combat Fatigue in the Long Distance Road Transport Industry, The Bus and Coach Perspective*, 1993, Australia Transport and Communications' Federal Office of Road Safety;

(2) *A Study of the Relationships Among Fatigue, HOS, and Safety of Operations of Truck and Bus Drivers*, 1972, Harris, et al.;

(3) *Effects of HOS Regularity of Schedules, and Cargo Loading on Truck and Bus Driver Fatigue*, 1978, Mackie, Robert R., and Miller, James C.; and

(4) *Critical Issues Relating to Acceptance of CVO Services by Interstate Truck and Bus Drivers*, 1995, Penn + Schoen Associates, Inc.

In addition, the FMCSA is nearing completion of the study required by the Conference Report for the 2001 DOT Appropriations Act. The agency is reviewing the draft final report. The FMCSA is not adopting any changes today because: (1) The agency has not yet confirmed that the new study had been designed correctly, that the process used could meet scientific scrutiny, and that the conclusions reached are reasonable; and (2) the public has not had the opportunity to review and comment on the study. When the study is approved, the agency will publish it and consider whether non-regulatory actions or regulatory revisions may be needed.

#### NHS Act Exemptions

The FMCSA hoped that categorizing operations would reduce the continuing demand for exemptions from the HOS regulations. In the NPRM, the agency noted that creating the Type 5 operation, *Primary work not driving*, would remove the need for special exemptions. This category was intended to include the various utility service workers, construction equipment operators, environmental remediation specialists, oilfield service workers, water well drilling operations, mobile

medical equipment drivers, driver-salespeople, as well as other specialized driving operations.

Congress became involved in the consideration of exemptions, culminating in Sec. 345 of the NHS Act where it mandated exemptions from all of the HOS provisions of the Federal Motor Carrier Safety Regulations (FMCSR) for those individuals transporting crops and farm supplies during planting and harvesting seasons and partial relief from the 7 or 8 day HOS limit for groundwater well drilling, construction, and utility service vehicle operations of motor carriers. A fifth provision allowed States to exempt from the commercial driver's license (CDL) regulations employees of towns with a population of 3,000 or less who are called to drive snow plows or salting/sanding vehicles when the regular CDL holder is unavailable or needs assistance. With respect to all, except the groundwater well drilling exemption, the Secretary was authorized to prevent, modify, or revoke each exemption after a rulemaking proceeding upon a determination that the exemption was not in the public interest and would have a significant adverse impact upon the safety of commercial motor vehicles. Under the terms of the statute, two of the exemptions were to take effect immediately, and the other three within 180 days of the date of enactment.

On April 3, 1996, the agency published a final rule codifying the NHS Act exemptions [61 FR 14677]. This rule deferred any rulemaking action concerning whether to modify or revoke any exemption.

The FHWA received a petition on July 3, 1996, from the Advocates for Highway and Auto Safety (AHAS), which, citing the statement in the April 3 notice that the agency had "decided not to proceed with such a rulemaking proceeding at this time," sought to have the agency reconsider the exemptions. The FMCSA granted the AHAS petition.

The FMCSA noted its intention to modify 3 of the 4 NHS-legislated HOS exemptions in the NPRM. In addition, the FMCSA proposed narrow definitions for terms used in the legislation that Congress had not defined. The FMCSA had been interpreting the terms narrowly since April 1996. The NPRM was intended to assist law enforcement officers by explaining exactly what the definitions were for certain terms, such as "agricultural commodities" and "farm supplies," based on the agency's narrow interpretations of the terms used.

Except for the agricultural exemption, which was a general exemption from all