

sleeper berths, it would have diminished their flexibility by requiring single drivers to have one uninterrupted rest period of at least ten hours duration every 24 hours. As pointed out in the comments, however, the proximity and convenience of the sleeper berth reduces the importance of the length of the uninterrupted period. If a driver obtained seven consecutive hours of sleep immediately in the sleeper berth, it would be unnecessary to require him to remain in that location for an additional three hours. The agency agrees with commenters on these points. This is especially true when those three hours of required rest could be used to better advantage to alleviate fatigue later in the workday. Of course, drivers are free under the rules to take rest breaks at any time, using a sleeper berth or otherwise.

Use of sleeper berths in long-haul operations is firmly entrenched in the practice, culture, and equipment of the trucking industry. This does not mean that the use of sleeper berths should not be reviewed in the interest of safety where a legitimate problem is identified and established as such. It does mean, however, that to do so would require more documented evidence of a safety problem than the agency now has. In light of the agency's recently completed research, the very strong opposition and persuasive arguments presented, the agency will continue to allow single drivers to accumulate their required time off duty in two sleeper berth periods.

The FMCSA has improved the regulatory text to ensure a clear understanding of the sleeper berth rule. The FMCSA has borrowed from and modified the Government of Canada's 1994 Commercial Vehicle Drivers Hours of Service Regulations version of the sleeper berth rule (SOR/94-716, s. 5), because it describes the rule in clearer terms than the wording adopted by the ICC in 1938. Although the Canadian version is clearly better, the FMCSA found that it may prevent a driver from eating in a restaurant either (1) after leaving the sleeper berth and before going on duty, or (2) after going off duty and before entering the sleeper berth. The regulatory text has been modified from the Canadian version to enable a driver to have off-duty time in conjunction with sleeper berth time, which the agency has allowed over the years.

Carrier Notification of Drivers During Their Off-Duty Hours

The NPRM proposed a kind of restart that would be triggered by employers or their agents violating a proposed

prohibition against interrupting drivers' off-duty periods. The NPRM proposal was designed to address complaints the agency has received over the years regarding unreasonable calls from dispatchers and other carrier employees that caused drivers to lose the opportunity to sleep. As proposed, such an interruption would start the full interrupted off-duty period over again from the time of the interruption. Therefore, if a driver were contacted at 3 a.m. at the end of the sixth hour of his 10-hour off-duty period, the required off-duty period would have to be extended by ten full hours, or until 1 p.m. Similarly, if the proposed 32-hour weekly recovery period were in force, and the driver were contacted by the carrier at the end of the 30th hour, the entire 32-hour period would have been required to start over again at that time. This provision was part of the agency's effort to provide a meaningful opportunity for drivers to obtain rest. Although some comments recognized the good intention, most of those commenting on this part of the proposal indicated significant practical and operational problems with such a restriction on communicating with drivers.

Motor Carriers

The ATA recommended that FMCSA retain its current policy allowing brief contacts with drivers during the off-duty period. Under that policy, those contacts are considered *de minimis* interruptions that do not cause a break in the off-duty period.

Con-Way Transportation Services (Con-Way), a large, non-union LTL carrier, described typical LTL hub and spoke operations, *i.e.* both line haul and local pick-up and delivery activities. About 80 percent of all runs are prescheduled, but 20 percent vary based on tonnage expected. Carriers maintain a flex-board for on-call drivers, who perform loading and unloading. On a given day, most flex-board drivers would load/unload, but if a run were not available, they would be sent home after three or four hours. If things picked up, they could be recalled to take a run. If they could not be called for 10 hours, Con-Way stated scheduling would become impossible. It argued there has to be a way of communicating with drivers to reflect changes in freight volume or operating conditions.

The NASTC stated that about 15 to 20 percent of the time, truckload operations rely on the spot market for back-hauls and that requires timely notification to drivers or the day is lost to the driver, and the load to the company.

Large and small freight carriers, both truckload and LTL, local delivery operations and construction companies all agreed the proposed rule was too restrictive for practical application. Many offered examples of damaging outcomes to themselves and drivers if the ability to communicate during off-duty hours were denied them. Utility companies found that such a prohibition could not work when emergency situations arise that need immediate mobilization of employees. The general advice offered was: "Do not try to micro-manage off-duty time, particularly where there's no evidence of a problem."

The IBT saw this not as a driver protection provision, but rather as a potential opportunity for mischief by a dispatcher who is having a problem with a driver. By calling the driver a number of times during his off-duty periods, the dispatcher could significantly curtail that driver's availability to work. The IBT stated that there is a better way to fix the problem, agreeing in part with the ATA suggestion to allow brief contacts. At least one driver, however, commented about what he said was a well-documented unsafe practice of keeping on-call drivers awake to protect and preserve the carriers' irregular work schedules. That practice results in on-call drivers going to work already fatigued.

Safety Advocacy Groups

Although commending the agency for providing a longer daily recovery period and preventing it from being interrupted, the AHAS had concerns that the prohibition would be unenforceable, except perhaps as a result of a complaint investigation.

FMCSA Response

The agency is persuaded that practical enforcement problems preclude moving forward with this element of the proposal. However, as suggested in comments from ATA and AHAS, as well as drivers who have expressed concern in the past, there ought to be a way to deal with unnecessary interruptions. These interruptions while brief in duration have a significant impact on the quality of rest drivers obtain if they occur while the driver is sleeping. Enforcement, however, should always be considered in proposing a prohibition. Communications between a carrier and a driver that causes that driver to lose the opportunity for restorative sleep is a safety issue that falls within the purview of the FMCSA and its state partners. Therefore, FMCSA will continue to gather data to