

driver's nighttime operations and an increase in time off to compensate for driving at night when the sleep debt accumulates because daytime sleep is inferior to nighttime sleep. It dismissed as purely speculative any impact on safety from displacing many drivers from nighttime to daytime operations and the great number of inexperienced drivers necessary to replace the drivers whose availability would be substantially limited.

The FMCSA initially considered the proposals submitted in the ATA comments and in the petition of the DLTCA the same; however, when the agency began considering whether the ATA recommendation could be potentially effective and reasonably feasible, we found significant differences with the DLTCA proposal that raised serious questions about the effectiveness and reasonableness of both. The ATA asserted that its proposal was based upon research showing that humans function on approximately a 24-hour cycle, and therefore that new rules should promote rest/work cycles synchronous with the body's natural 24-hour biological rhythms.

The so-called circadian cycle or rhythm has two general tendencies on the wake/sleep cycle of humans. During daylight hours, the human body tends to be wakeful, and during nighttime, the human body tends toward sleepiness. Therefore, people would not only tend toward drowsiness during the late night and early morning hours, they would also tend to have more difficulty obtaining restorative sleep during the daylight hours. The latter situation may lead to the accumulation of sleep debt, resulting in increased tendency toward drowsiness not only in subsequent nighttime periods of required wakefulness but at other times as well.

This is not to say there are no safety benefits to be derived from promoting regular work/rest cycles, and industry is to be commended for proposing one. It should be noted, however, that nothing in the current rules would preclude more regular schedules.

The FMCSA believes that allowing one additional hour of driving activity can be safely accommodated within the context of a somewhat reduced overall tour of duty as discussed above. The FMCSA staff alternative selected for evaluation includes no driving after 14 hours from the start of duty tour notwithstanding intermittent breaks off duty for meals, naps, and other rest. In arriving at 14 hours, the agency believes drivers would realistically take some breaks during that time and the work period may well accumulate 12 or 13 hours, with up to 11 hours driving.

The FMCSA relied upon 12 studies to select a 10 consecutive hour off-duty period, a 14-hour tour of duty, and a maximum of 11 hours of driving. The 12 studies are included within the agency's review of all research studies used in the NPRM. The agency's review is by Freund, D.M., November 1999, "An Annotated Literature Review Relating to Proposed Revisions to the Hours-of-Service Regulation for Commercial Motor Vehicle Drivers," that is in the docket. The FMCSA staff alternative concluded that, after 14 hours from the start of the work period, it is time to stop driving, as the risk of fatigue-affected incidents is increasing rapidly.

The PATT alternative would set driving time to no more than 10 cumulative hours. The ATA alternative would allow drivers to drive up to 14 cumulative hours with up to 16 cumulative hours twice per 7-day period. The FMCSA staff alternative would allow driving time up to 11 cumulative hours for long-haul and short-haul drivers. The FMCSA has decided to allow drivers to drive up to 11 cumulative hours for all long-haul and short-haul freight drivers.

Although the agency focused on science in developing the NPRM, it cannot allow science alone to dictate the form or content of a rule, as many safety groups advocate. On the other hand, while reviewing economic, operational, and environmental issues with great care for this final rule, FMCSA has not allowed itself to be bound by those considerations either.

Distinctions in Duty Time

General Concept

The expert panel assembled by the agency to review the options under consideration before publication of the NPRM recommended eliminating the distinction between on-duty time and driving time. The scientific basis for the recommendation is the belief that driving is no more tiring than many of the other tasks a truck driver would be called upon to perform.

The agency's practical basis for the proposed elimination was to reduce the paperwork burden. Under the existing rules, drivers are required to account for both driving time and non-driving duty time. Eliminating the distinction, moreover, would achieve consistency with the terminology used by the Wage and Hour Division of the U.S. Department of Labor (DOL), allowing FMCSA to rely on DOL records in place of driver records of duty status.

ATA Recommendation

When developing its recommendations, the ATA stated it was aware of the expert panel's findings that driving is no more fatiguing than other work. Therefore, it proposed to eliminate the distinction between driving time and other on-duty time as unnecessary, leaving the possibility of 14 consecutive hours of driving. The ATA opined that hours of driving time would always be less than the overall duty time within which the driving takes place. The ATA cited its HOS survey in which commenters reported driving an average of 9.1 driving hours in an 11.4-hour day.

The DLTCA commented that they "went along with ATA" although they wanted a 12-hour limit on driving. They stated that the 12-hour driving limitation was consistent with DOT's proposal and its research, and noted that five states already allow 12 hours of driving (for intrastate trips). The industry petitioners "recognized that the business, operational and safety needs of trucking companies and their customers will continue to consume several hours of a driver's time each day," so that "a limit of driving time to 12 hours would result."

The NPTC alternative was much more direct. With little explanation, the private carriers recommended a maximum of 12 hours driving in a 15-hour on-duty period.

Other Industry Comments

The MFCA made no comment specifically on this issue, because its constant position is that the present rules should remain in force. The fact that the IBT strongly opposed eliminating the distinction seems to support the validity of this assumption.

The NTTCC supported the elimination of any distinction between duty-time and driving-time.

Throughout the public hearings on the NPRM, notwithstanding vocal support for the ATA recommendation, nearly all carriers and most drivers testified that daily driving rarely exceeded 10 hours, and then it was only due to some exigent circumstance. For example, Con-Way surveyed its line-haul drivers, who were described as combination drivers and dock-workers. Most runs are at night and the driver's average duty time was 10.88 hours. Their average driving time, however, was only 6.22 hours and their average load time was 4.5 hours. Con-Way also did a study of all its line-haul operations on one day, which was the last workday of the month and admittedly a worst-case scenario. 3900