

drivers were dispatched and 42 percent exceeded 12 hours on duty, but none exceeded ten hours of driving.

The IBT maintained a consistent position throughout the proceedings, dating back to its initial response to the ANPRM in June of 1997. One of the four elements of a rule that IBT could support was maintaining the distinction between driving and non-driving duty. The IBT observed that the agency's proposal failed three of its tests, including this one. It argued that eliminating the distinction is what permits driving time to be extended, and agreed with the safety advocates that some drivers would push the envelope and drive 14 hours a day. The IBT noted that the union is successful in getting driving limitations into contracts because of the DOT rules.

The Snack Food Association, the National Soft Drink Association, and the PMAA all reported that drivers in these segments of the industry are also salespeople and customer service representatives. They spend considerable portions of their daily duty time in non-driving activities, and actual driving time would not exceed 10 hours.

The construction industry's recommendation to create another category—"construction industry driver" within a 100 mile radius of operation—would continue a distinction between driving time and on-duty time. Because of the seasonal and weather-dependent nature of the industry, the proposal, supported by AGC and ARTBA, would:

- (1) Extend limits to 12 hours of driving and 16 hours of duty during a 24-hour period;
- (2) Extend weekly limits to 72 hours driving and 80 hours on duty;
- (3) Average driving and duty time over 14 days;
- (4) Allow 90 hours of driving during the first 8 days, a 34-hour restart, and a 45-hour driving limit over the remaining 4½ days, followed by a 24-hour restart; and
- (5) Provide for a 24-hour restart of time accumulation at any time, presumably even to avoid the 34-restart.

The need for such increased driving time is not apparent from testimony and comments regarding industry practices. An alternative suggested by the AGC sheds some light. In construction, most drivers have no responsibility for loading and unloading. Mostly, they wait in line for loads and then wait in lines at sites to unload. Therefore, AGC would retain the distinction between driving and non-driving duties, but change what is meant by on-duty time

to exclude time waiting in lines to load and unload.

The American Moving and Storage Association (AMSA), which also claims that its operations are unique, reported that drivers do not really spend the majority of their on duty hours behind the wheel, averaging about 75,000 miles a year. AMSA claims most of the driver's on duty hours are spent loading and unloading.

The Institute of Makers of Explosives (IME) complained that the 12-hour on-duty restriction for Type 4 drivers will severely impact on "shot service," which entails loading "shot" holes with explosives, setting the charge, and initiating the shot. The operators for IME members apparently need at least a 14-hour day to provide the flexibility needed for that activity, but not to accommodate more driving.

Small truckload carriers, represented by NASTC, opposed both reducing daily on-duty time and removing the distinction between driving and non-driving time. They stated that, under the present rules, a driver can drive up to 15 hours in any given 24-hour period, giving a range of 750 miles. Under the proposed rule, the range would be reduced to 600 miles.

The OOIDA's survey, on the other hand, found its members spend an average of 10 hours per day driving and 2.4 hours per day loading and unloading. An average of 10 hours of driving per day, of course, would mean that on some days the 10 hours would be exceeded.

Private carriers, according to NPTC, advocated a limit of 12 driving hours within a maximum of 15 duty hours daily. The need for this increase in driving time was unexplained except that the NPTC stated it was consistent with safe operating practices. Wal-Mart, moreover, stated the 12-hour on-duty limitation within 14 consecutive hours is more restrictive than the 10-hour driving limitation and 15 hours on duty. Under the proposal, drivers would have to drive more within a smaller window to maximize earnings.

Safety Advocacy Groups

Safety advocates contended that failure to distinguish on-duty time from driving time would increase violations of HOS regulations.

The AHAS asserted that pay-per-mile practices would cause drivers to continue to maximize driving time at the expense of the required ten consecutive hours off duty and two hours of rest periods. It argued that because drivers can presently use non-driving duty time each day to perform non-driving tasks, this "has helped" to

limit even more flagrant abuses that would occur if there were no non-driving hours available in the regulations. The principal concern of the safety advocates was the belief that allowing 12 hours of unspecified "duty time" would necessarily translate into 12 consecutive hours of driving. They cited numerous studies finding that risk dramatically increased during 10th and 11th hours, and predicted that pressures from efficiency-minded schedulers would assure that the industry would fully exploit this additional driving time.

CRASH stated that eliminating the distinction between driving time and other on-duty time would result in motor carriers squeezing drivers for every possible minute of driving time, and carriers would pressure drivers to work during rest periods.

The IIHS commented that the safety community would prefer a driving limit of eight to nine hours in a 24-hour period. They are realistic enough to know that they should be content with keeping close to the status quo.

The NIOSH, agreeing that most provisions in the proposal would produce a beneficial safety outcome, recommended limiting driving to ten hours within a 24-hour work/rest cycle of 12 hours of duty and 12 hours free. It also stated, however, that the agency should consider allowing up to 12 hours of driving per day on rare occasions as required by emergencies or other unusual circumstances where continued driving would be safer than stopping.

FMCSA Response

The FMCSA and PATT alternatives distinguished between duty and driving time, the ATA's did not. The FMCSA has decided to retain the distinction between driving and on-duty-not-driving time. Each driver required to prepare records of duty status must continue to record all driving time separately from all time on-duty.

The paperwork reductions sought by the agency in eliminating the distinctions in drivers' work hours received little support. That objective even drew some criticism because the proposed substitute for the paper log, the EOBR, is incapable of directly monitoring non-driving duty time. The ATA opposed the use of DOL records, as did the MFCA, which contends that few motor carriers are even aware of their responsibility under the DOL regulations.

The ATA recommendation would eliminate the distinction between driving and other on-duty time, ostensibly securing a more favorable work/rest cycle for drivers. The ATA