

their return journey, there could be no violation of the 70-hours-in-8-day rule. However, if the drivers exceeded the 70-hour limit on the home trip, they would be required to take a minimum of 56 hours off.

OOIDA took the position that requiring 10 hours off and limiting available duty time to 14 hours daily is sufficient regulation to assure opportunity to rest for drivers throughout the industry. Any further limitations should be entirely at the driver's discretion.

The NPTC pointed out a concern in the proposal's fixed workweek. Its reading of the proposal is that it would force drivers into a "fixed seven-day workweek" with the two consecutive days off at the end, regardless of how many hours they worked during the week. Therefore, "a driver could apparently work 24 hours over three days, take two days off and then be required to take *another* two days off at the end of the 'workweek.' Since the driver clearly would have adequate rest by any standard, there is no possible safety rationale for this requirement." The NPTC recommends retaining the current cumulative 7- and 8-day on-duty limits.

Wal-Mart, on the other hand, preferred the ATA recommendation's workweek of 70 hours in 7 days. This would allow Wal-Mart to maintain the flexibility of its 7 days on, 7 days off schedule and actually enhance safety.

The PMAA sought clarification of the proposal's "workweek," and offered an example. Driver A starts work at 8 a.m. Sunday and quits at 8 p.m. He continues this for 5 days, ending at 8 p.m. Thursday. After the mandatory 56-hour weekend, he could start a new week at 8 a.m. Saturday, but would he be violating a "seven consecutive days" provision.

The moving industry and the construction industry, each contending for a sixth category that would better address their unique needs, had problems with the proposed workweek. The moving industry comments indicated it needs more flexibility because movers could not operate on a fixed 7-day schedule.

The logging industry also pleaded a hardship because it can only transport tree-length loads in daylight hours under State size and weight laws, which severely restricts operations in the winter months. Their problem dealt more with the fixed nature of a "workweek" as defined in the proposal, and presented an example of losing the first two days of a workweek to rain and the inability to restart a new workweek as defined.

The oil and gas drillers stated that their industry is a 7-day/24-hour operation, so workweeks have little meaning. In some cases drivers are scheduled on rotations of 9 days on and 3 days off to provide full coverage.

Safety Advocacy Groups

Advocates stated that the proposed workweeks were too long, focusing on the possibility that an entire 60-hour workweek could be spent behind the wheel. It also stated that a 60-hour workweek would cause a build up of sleep debt because longer daily shifts adversely affect the ability to obtain restorative sleep. The AHAS objected to the NPRM's allowance of alternating long and short workweeks and weekends, claiming that this only promotes fatigue, primarily because the long workweek is followed by the short weekend under the proposal. They also objected to the liberal allowances proposed for long work schedules for Type 5 drivers (whose driving duties, limited to five hours a day, are only incidental to their primary duties). AHAS recommended extending the minimum recovery period by 24 hours to 56 hours, including three periods from 11 p.m. to 7 a.m. and reversing the alternating weekends so that long follows long, etc.

CRASH was pleased the agency was proposing to retain the 60-hours-in-7 day limitation, but stated that allowing incidental drivers to work up to 78 hours in a week was a grave mistake.

PATT recommended limiting driving to 10 hours out of allowable 12 hours on duty each 24 hours, and also put it another way, no more than 50 hours driving in 60 duty hours per week.

The NSC recognized the issue of cumulative fatigue and supported required time off after 7 days.

FMCSA Response

The agency agrees with industry commenters' concerns that the proposed "fixed and recurring 7-day periods," within which duty limitations would apply, is simply not practical. The clear inference to be drawn from the "workweek" definition is that once a driver begins a workweek, for example, at 7 a.m. on a Monday, the next workweek would also have to start at 7 a.m. on the following Monday. When coupled with the required "weekend," carriers saw this as a huge infringement on their ability to maintain productivity. A driver in a weather-sensitive occupation could start work on Monday after a weekend off, then be idle for Tuesday and Wednesday due to rain, return on Thursday to resume the

workweek with no credit for the Tuesday-Wednesday "weekend."

The flaws and unintended consequences in the proposed fixed workweek are undeniable. A strictly fixed workweek was what the agency intended, to be consistent with DOL regulations. Throughout the freight industry, particularly but not limited to the truckload sector, established workweeks are rare. Any attempt to "shoehorn" existing operations into some concept of what ought to be, as at least one commenter observed, is "fraught with peril." The resulting costs in lost productivity would probably outweigh benefits.

The NPRM did propose to place limits on on-duty time over the course of a seven-day period to prevent accumulation of sleep debt. Abandoning the idea of a fixed workweek means that an alternative must be found, and at least three are readily available. The first is to define the workweek in terms of time between "weekends." In other words, the so-called week would start to run after the accumulation of a stated period of consecutive off-duty time.

In terms of the NPRM, one alternative would allow the 32-hour period containing two periods between midnight and 6 a.m. to be used as a restart provision. In seeking clarification, the representative from the DTLCA had pointed out that the proposal's "weekend" provision only made sense if it were treated as a restart. Whether the proposed "weekend" could survive as a restart mechanism, or whether another period would be preferable, are discussed elsewhere in this document.

The second alternative is to retain the limitations in the existing rules with adjustments, in order to redirect the restriction toward duty time rather than driving time. This option is similar to what private carriers proposed. The current rules restrict any further *driving* after a driver accumulates 60 hours on duty in a seven-day period or 70 hours on duty in an eight-day period. If the focus were to be on *duty time*, the restriction would simply limit drivers to 60 hours of any duty in a seven-day period and 70 hours in an eight-day period. This is the most neutral alternative. It would provide a floating block of time, as in the existing rules.

The availability for duty would be determined by looking back over the immediately preceding seven or eight days, similar to the way availability for driving is determined under current rules. Fortunately, potential negative impacts on productivity did not materialize. FMCSA found that in the 7-day option, for example, an LTL driver