

unnecessary and costly. It contended that breaks occur naturally throughout the workday.

The IBA also stated that flexible rest breaks were already being taken at the driver's discretion.

ARTBA found that the requirements for two hours of uninterrupted breaks and the 5-hour driving limit under Type 5 operations were both too restrictive and unwarranted intrusions by government into employer-employee relationships.

The Institute of Makers of Explosives observed that the Department's own Hazardous Materials Regulations requiring explosives-laden vehicles to be attended at all times precludes the mandatory breaks provided in the proposal.

Intermodal operators stated that mandatory breaks, along with the other proposed requirements, would adversely impact their operations, and probably cause many companies to go out of business.

American Freightways opposed mandatory breaks, believing that drivers should determine if, when, and for how long breaks are necessary.

ABF Freight Systems noted an inconsistency in the proposal. Although the proposal stated that Types 1 and 2 drivers are more likely to be involved in an accident, they are allowed to log breaks off duty, thus preserving on-duty time. Type 4 drivers, who go home and sleep in their own beds every night, are limited to 12 hours per day, including lunch and breaks.

Worldwide Van Lines supported the ATA's 14-10 breakdown so long as the 14 hours are productive hours. It might consider a one-hour break that is currently in vogue in the moving industry. It would prefer to allow carriers and owner-operators the flexibility to schedule rest periods consistent with safety and operational requirements.

#### *Safety Advocacy Groups*

Although supportive of rest breaks, AHAS had some reservations. First, it stated that drivers will abuse them and spend the time on non-driving duties, and second, it was concerned with a driver's post-nap sleep inertia and how it might contribute to a crash before the driver was fully awake after the nap.

#### **FMCSA Response**

With a limitation of 11 hours on daily driving, the FMCSA believes the need for additional break time diminishes. Rest breaks are still a significant tool in combating fatigue and FMCSA will encourage their use. But the difficulty in enforcing required breaks reduces the

likelihood of realizing the benefits intended.

The ATA and PATT alternatives did not incorporate any breaks occurring during a tour of duty. The FMCSA staff alternative provides that any breaks occurring during a tour of duty will not extend the work day.

#### **Economic Impacts**

Perhaps the gravest concern expressed by the motor carrier industry was the projected cost of the proposed rules. Virtually all of the industry commenters took issue with the agency's cost/benefit analysis, believing, for the most part, that the agency exaggerated the benefits in terms of accident avoidance and significantly underestimated the compliance costs.

#### *Proposed Costs*

Comments from the industry side reflected the common theme that the costs associated with the proposed rule were prohibitive, much higher than the costs projected by the agency. Predicted consequences were not limited to individual company failure, but extended to a ruinous impact on the economy. Other commenters lamented the economic condition of the motor freight industry, which they regarded as critical. Operating as they do on thin margins, many companies contended that they could not absorb the increasing price of fuel, let alone the regulatory costs proposed by DOT and OSHA (in its ergonomics rule).

The increased costs were primarily associated with the number of drivers and vehicles required to deliver the same amount of freight with what was perceived to be substantially reduced productive time allowable under the proposal. Estimates varied, but it appeared that most commenters arrived at their conclusions by applying a straight-line comparison of the maximum amount of productive time for each driver allowable under the present rules with the maximum duty hours stated to be allowable under the proposal.

#### *Industry Reaction*

The position of the motor freight industry on the economic impact of the proposal was perhaps best summarized in the DTLCA petition filed on November 29, 2000. This association represents regional less-than-truckload (LTL) carriers engaged in transportation and distribution of LTL freight locally and regionally. The petitioners found the preliminary economic evaluation, particularly the cost/benefit analysis, to be "woefully inadequate." They contrasted this effort with a study

commissioned by the FHWA in 1980-1981 to assess the economic and safety impacts of proposed revisions to the HOS regulations.

Regarding the proposed rules, the DTLCA surveyed 150 LTL carrier members, which concluded the proposal would increase costs by 5 percent. The regional LTL market is \$10 billion and the national LTL market is another \$10 billion. So that industry's estimated costs would be three times what the FMCSA estimated.

The ATA stated that the trucking industry employs 9.7 million people, including three million truck drivers, has annual revenues of \$486 billion (1998 estimates) and logs 414 billion miles on the road each year (110 billion miles by large trucks over 16.5 tons).

The ATA reported the results of a survey it conducted of members, which estimated that the average loss of productivity would be 17 percent. ATA instructed the commenters to compare drivers' logs in actual operation with "what they think could be done under proposed rules."

The ATA also commissioned the National Economic Research Association (NERA) to review the agency's preliminary regulatory evaluation, particularly the cost/benefit analysis. The entire NERA report was submitted to the docket by the ATA, but the primary findings are set forth here for ease of reference:

(1) The FMCSA's economic analysis failed to support the proposed rule. After corrections for what were identified as methodological and mathematical errors and omissions, NERA's economic analysis determined that the cost of the proposed rules were more than five times as large as the benefits—for a net loss of \$15.4 billion over ten years;

(2) The FMCSA's bundling of the rule's components obscured the Administration's own findings. Separating the costs and benefits associated with the paperwork reduction component of the rule revealed that the rule's other components—a reduction in driver's hours and an on-board monitor requirement—failed a cost-benefit test, even based on the FMCSA's own assumptions;

(3) The FMCSA understated the costs of compliance by underestimating the number of new truck drivers required; by ignoring the cost of non-wage benefits, recruiting and training, additional trucks, and supporting personnel and infrastructure; and by underestimating the costs of on-board monitoring equipment. Correcting for these errors increased the cost of the