

proposed rule by \$15.7 billion over the next 10 years. NERA considered this to be a conservative estimate, as many other costs, which are difficult to quantify but which could be substantial, were not included;

(4) The FMCSA overstated benefits by overestimating the number of fatal crashes attributable to truck driver fatigue. Once the baseline was adjusted for crashes from other causes, benefits fell by \$3.1 billion over 10 years. NERA estimated that the proposed rule would lead to approximately 19 avoided fatalities per year, compared to the FMCSA's finding of 115 per year;

(5) The FMCSA failed to substantiate the rule's potential effectiveness. The Administration stated the number of fatigue-related fatalities would fall by 20 percent—without reference to any specific studies or statistical support. In fact, available crash statistics indicate that only 3 percent of fatigue-related fatalities can be attributed to drivers driving more than 12 hours; and

(6) The FMCSA failed to recognize the negative consequences of the rule for small regional and long haul trucking companies. Many of these companies operate on thin profit margins and face competition from other modes unaffected by the proposed rule. These companies also face increased costs from other proposed regulations, such as OSHA's ergonomics rule. Consequently, they could not readily absorb additional costs or easily pass additional costs through to their customers.

The ATA argued that the agency ignored numerous factors when conducting its benefit-cost analysis, including the number of new drivers, additional wages, driver non-wage benefits, recruiting costs, additional equipment, supporting infrastructure costs, additional maintenance, insurance premiums, LTL restructuring, electronic on-board recorder (EOBR) purchase and maintenance, and increased inventory carrying costs. The ATA did not rely exclusively on the NERA report for this criticism, particularized in its comments, and was even critical of NERA for being too conservative.

Other Industry Comments

Although many motor carriers estimated substantial costs arising from various aspects of the proposal, their computation methods were not always clearly articulated.

Covenant Transportation, a truckload carrier, shed some light on the methodology used by many carriers to estimate the costs of the proposal on their operations. Covenant compared

the number of productive hours per month available to a driver under the existing rules (280) with the number of productive hours it stated would be available under the proposed rules (240) and arrived at a difference of 17 percent. It did the same comparison for vehicles and concluded that 17 percent more trucks would be needed. Covenant opined that converting to relay operations would not work. The loads do not match up. It stated the trucking "industry is very, very sick." The new rules would drive the small operators out of business. The main cause of sickness, according to Covenant, is driver pay. The company increased pay four times in the last four years so that the average at the time it submitted comments was about \$42,000 per annum, which it said was not enough. Whatever enough may be, "until you reach that magic number, turnover will continue to kill you."

J.B. Hunt Transport, Inc., a carrier with one of the largest truckload operations, found that if the proposal were not amended, productivity would decrease 2 percent on face value. That estimate was based on comparing 61.25 hours a week permitted under the present 70-hours-in-8-days limit with 60 hours in 7 days as proposed, but noted that this was only the surface. The biggest negative impact would come from the rigidity of the proposal. The loss of flexibility, if not corrected, would cost Hunt an estimated \$250 million per year and increase rates to customers by an estimated 20 percent.

Contract Freight, Inc. (CFI), a large truckload carrier, did an analysis by mile, which it noted is the bottom line in trucking. Comparing logbooks of current drivers with what CFI could project under the proposed rules showed a 13 percent reduction in miles. CFI also included logistics costs, relocating facilities, positioning drivers, etc. that would add another 7 percent reduction in miles. To move the same amount of freight that it does with 2100 tractors, CFI estimated that it would need 400 more, and with a ratio of 2.9 trailers to each tractor, CFI would need almost 1200 more trailers. CFI stated that it used to do the most relays of any trucking company, but believed that it would not be possible to do the same volume of relays under the NPRM. CFI calculated average driver trips for one of its "priority teams," which runs about 18,000–19,000 miles per month. An average single CFI driver runs about 10,500 miles per month, while a low producing single CFI driver will run about 9,000.

Schneider National, Inc. with its affiliated companies employ in excess of

15,000 drivers with a fleet of over 13,000 tractors and 34,000 trailers. Schneider stated that the FMCSA dramatically underestimated the financial costs of its proposal and, by focusing only on fatigue-related crashes, FMCSA also failed to recognize that the proposal might result in an increase in the number and severity of other accidents if the proposal were implemented as drafted. The limitation of 12 hours on duty in any 24-hour period, together with the "weekend," will reduce productivity by 25–30 percent and require an additional 100,000 inexperienced drivers and vehicles to move the same amount of freight.

Werner Enterprises, Inc. operated 7,425 trucks, 6,225 of which are company-owned and 1,200 of which are independent contractors. Werner stated that the proposal was at best safety neutral, but extremely costly. It supported ATA's analysis of the proposed rule and did provide some detailed analysis of the economic impact of the proposal on Werner and its drivers. Arriving at a 20 percent productivity decrease, meaning also that drivers would lose 20 percent of their income, Werner projected an annual operating cost increase of \$290 million. If Werner were to stay in business, these costs would have to be passed on to shippers and consumers.

Bestway Express, employing 325 drivers, cited the U.S. Chamber of Commerce's crediting of trucking for the sustained economic boom through calendar year 2000, noting that efficient transportation took 5 percent off the cost of consumer goods. For the industry as a whole, Bestway stated that the proposal would add \$100 billion for inventory costs, \$50 billion for additional trucking services, \$25 billion for inventory carrying costs and that it would cause U.S. jobs to be lost to Mexico.

NASTC stated that under current rules, a driver could drive up to 15 hours in any given 24-hour period, giving him a range of 750 miles. Under the proposed rule, his range would be reduced to 600 miles. Because of a "pay-to-wait" provision, a requirement in the proposal to log waiting time as on-duty time, NASTC predicted the productivity loss could go to 25 to 33 percent.

The ATC Leasing Company stated that it represents a majority portion of the truck transport industry in the country. It involves the drive-away operation of newly manufactured trucks from factories to dealers or to intermediary facilities for modification. In 1999, ATC reports that 540,443 Class 5 through Class 8 vehicles were produced in the