

United States. ATC estimates it delivered approximately 75 percent of those vehicles. The vehicles are usually delivered in saddle-mounted combinations with a to-be-delivered truck as the power unit. Upon reaching his delivery destination, a driver typically removes the temporary identification devices and proceeds by public transportation to his next pick-up point.

State trucking associations generally concluded that the proposal did not account for significant costs.

The U.S. Chamber of Commerce believed the FMCSA's estimate of costs per driver was unrealistically low.

The Intermodal Association of North America's (IANA) survey reported direct operating cost increases of 20 to 30 percent, primarily from the reduction of on-duty time limits from 15 to 12 hours a day and the mandatory off-duty periods when shifting from one type to another.

Advocacy Groups

The Mercatus Center of George Mason University conducts a Regulatory Studies Program (RSP) dedicated to advancing knowledge of the impact of regulations on society. The proposed HOS rulemaking for truckers was chosen for such an assessment, and the resultant report was submitted as a comment to the docket. It concluded "the DOT and FMCSA estimates of the likely effects of the proposed regulation are tenuous if not faulty on a number of bases."

The RSP recommended better enforcement of current rules. Built-in flexibility and common sense rules appeared to RSP to present a better field for improving highway safety.

The National Sleep Foundation described the NERA study submitted by ATA as nothing more than an advocacy piece that failed to look at alternative scenarios. The NSF considered the analysis in the report to be a series of conclusions and self-serving narrative with no quantification.

Safety advocates and other public interest groups faulted some of the methodology used by industry to compute expenses and were critical of industry's lack of foresight in adapting to change and in confronting the inefficiencies they state are so prevalent in dealing with shippers and receivers.

Proposed Benefits

In addition to criticizing the NPRM's cost calculations, many commenters also found fault with the allegedly overestimated benefits. The industry in general took issue with the figures used by the agency in projecting the safety

benefits to be gained from the proposal. Although acknowledging that there is a serious fatigue-related safety problem, they stated that it does not approach the magnitude assumed by the agency to justify the draconian solutions proposed.

A basic reaction to the proposal was the issue of problem identification, and many distanced themselves from what they said was the core problem group: long-haul, for-hire freight carriers. The motorcoach industry was particularly adamant about the elemental differences between hauling freight and transporting passengers. They did not argue, as others did, for an exemption from regulation, rather they insisted that no evidence had been developed or presented indicating there was any safety problem arising from bus industry performance under the existing regulations. Therefore, in their view disruptive change was totally unwarranted.

Short-haul distributors of wholesale and retail commodities distinguished themselves from long-haul carriers and cited the agency's own studies showing a lesser safety problem in their operations. The construction industry, for example, noted that its truck operations are short-haul, sporadic, and incidental to other functions, and therefore are not at risk to accumulate fatigue while driving. Construction industry commenters also stated that the NPRM would actually impede safety by extending the time construction zones remain open and delaying the completion of safety improvements being made to the highways.

Utility companies strongly contend that the nature of their work and services warranted total exclusion from HOS regulations. Limiting the ability of utilities to respond to service interruptions would be much more likely to create other safety problems than to prevent crashes involving responding vehicles, they stated.

LTL carriers, where union representation is more prevalent, commented their drivers' schedules conform to the existing rules. The carriers believe these schedules, negotiated with the drivers through the IBT, eliminate many of the fatigue-inducing factors while preserving the needed flexibility that they find so lacking in the proposal.

The LTL industry believes that if particular segments of the regulated community are already performing safety at or close to the maximum allowable hours under the existing rules, there could be no benefits from changing the rules applicable to them, only costs.

As noted above by the NERA and RSP analyses, as well as other commenters, most of the benefits cited by the NPRM involved paperwork savings, which are not safety improvements. Virtually every commenter who noted the understated costs of increased drivers and equipment needed to implement the proposed rules also noted that the NPRM did not account for the safety impact of more trucks and more inexperienced drivers on the highway at more congested hours of the day.

Industry commenters cited studies done by and for the DOT showing fatigue to be a factor noted in police reports in only 1.5 to 3.0 percent of all truck-involved fatalities. The ATA and others pointed out what they considered a basic flaw in the agency's calculation of lives saved by the proposal, *i.e.*, 20 percent of the fatalities attributable to fatigue. Some commenters noted that, even using what they considered an inflated attribution, other agency studies show the truck driver to be *at fault* in no more than 30 percent of truck-involved crashes. Therefore, instead of using 775 fatalities resulting from fatigue related crashes as the basis for arriving at 155 lives saved (20 percent), the agency should have used only 30 percent of the 775 figure, or 233. Computing its stated 20 percent reduction from that figure produces a maximum of about 47 lives saved.

The ATA pointed out what it considered additional flaws in the FMCSA's computation of projected benefits, including these four:

(1) FMCSA overestimated the role of fatigue in truck crashes. The agency estimated 15 percent of all truck-involved fatal crashes were "fatigue-relevant," a new, non-scientific term coined by FMCSA for this rule. The 15 percent figure combined the 4.5 percent of those crashes where fatigue was the primary cause with another 10.5 percent where fatigue was assumed to have contributed to mental lapses that caused the crash. Citing several studies in the DOT database, the ATA believed the range is 2.8 to 6.1 percent, 4 percent on average, but strenuously objects to inflating that figure by including fatigue involvement in mental lapses, inattention and distraction.

(2) FMCSA failed to use the proper baseline number of fatalities in its cost/benefit analysis. The agency used 5,035 (average of all truck-involved fatalities from 1991-96) as the basis for its estimates of crash elimination benefits. However, driver error is not the cause of all fatal crashes (maybe 90 percent), nor is the truck driver at fault in more than 30 percent of multi-vehicle truck-involved fatalities. Citing FMCSA and