

drivers and motor carriers adhere to them. The FMCSA has no control over the manner in which a driver may spend his time off duty, although some of his spare time activities may tire him as much as any work would do. The FMCSA can only emphasize the driver's responsibility to assure himself of adequate rest and sleep, in the time available for this purpose, to insure safety of his driving, and, similarly, the motor carrier's responsibility to see that its drivers report for work in fit condition.

Drivers must manage their off-duty time intelligently if this final rule is to be effective. Some drivers may continue to drive more hours than this final rule allows in order to earn more money. Others may perform non-driving jobs during their off-duty time; commute long distances to and from home; or engage in other pursuits that interfere with their obligation to obtain proper sleep and be prepared to drive safely. Under this final rule, all time spent in any work must be counted as on-duty time, since all work can either induce fatigue or deprive the driver of sleep.

The FMCSA believes this economically significant and major final rule is a reasonable balance of factors because it provides the best combination of increased driver alertness and reduced numbers of fatigue-related incidents, while providing cost effective safety benefits to society.

#### **Changes Compared to May 2, 2000 NPRM**

##### *Categories of Operations*

The NPRM proposed five types of operation. As explained above, the FMCSA has chosen to drop categorization based on comments showing categories created confusion, problems for enforcement, and did not fully meet the objective of accommodating the diversity of the industry.

##### *Passenger Carrier Operations*

The NPRM proposed regulating passenger carriers the same as property carriers. As explained in the discussion of the comments, the FMCSA has decided to retain the existing rules for passenger carriers; those operators will continue to be subject to the rules in effect before this final rule was adopted.

##### *NHS Act Exemptions*

The NPRM proposed to maintain the HOS exemption for groundwater well drillers without change. It would have narrowed the exemptions for agricultural commodities and farmers by

defining certain terms narrowly. Finally, the NPRM would have subjected the construction and utility-service-vehicle exemptions to the proposed off-duty time periods (56 to 32 hours) every seven consecutive days. As explained in the discussion of comments about NHS Act exemptions, the FMCSA has chosen to withdraw these proposals.

The agricultural exemption in effect before this final rule was published will remain in effect. The 24-hour restart provisions applicable to drivers of ground water well drilling rigs and utility service vehicles, and to drivers who transport construction materials and equipment, will also remain in effect. Eligible drivers, however, will now be subject to the new 11-hour driving limit, with no driving after the end of the 14th hour after coming on duty, and will be required to take 10 consecutive hours off duty. Such drivers will also be eligible to take the exemption in § 395.1(o) allowing up to a 16-hour work day, when they meet the conditions in that paragraph.

##### *Sleeper Berth Provision*

The NPRM proposed to eliminate the use of sleeper berths for solo drivers to comply with the HOS rules. It would have allowed team drivers to accumulate 10 hours off duty in two periods in a sleeper berth, one of which would have to be at least 5 hours long. As explained in the discussion of comments on this issue, the FMCSA will maintain the split off-duty period of the current sleeper berth provision. However, the agency is increasing the requirement for cumulative off-duty time to 10 hours for property carriers. Thus, property-carrying drivers who use sleeper berths may take their minimum 10 hours off-duty in two periods, the shorter period must be at least 2 hours. Passenger-carrying drivers who use sleeper berths may take their minimum 8 hours off-duty in two periods, the shorter period must be at least 2 hours.

##### *Carrier Notification of Drivers During Their Off-Duty Hours*

The NPRM proposed a kind of restart that would be triggered by employers or their agents violating the proposed prohibitions against interrupting drivers' off-duty periods. The proposal was designed to address complaints the agency has received over the years regarding unreasonable calls from dispatchers and other carrier employees that caused drivers to lose the opportunity to sleep. As proposed, such an interruption would start the full interrupted off-duty period over again from the time of the interruption. As explained above in the discussion of

this provision, the FMCSA has decided to withdraw the proposal.

##### *Daily Work-Rest Cycle*

The NPRM proposed duty and off-duty periods that would have added up to a regularly recurring 24-hour work day. As explained in the discussion of the relevant comments above, the FMCSA will maintain the current rules for passenger carriers. The rules for property carriers are being modified to reduce the allowable amount of backward rotation of the "daily" schedule.

##### *Daily Off-Duty Time*

The NPRM proposed consecutive daily off-duty periods for obtaining sleep from 9 to 12 hours depending on the category of operation. As explained earlier in this document, the FMCSA has chosen to maintain the rule requiring 8 consecutive hours off-duty for passenger carriers and to increase the minimum daily off-duty period to 10 consecutive hours for property carriers.

##### *Daily On-Duty Time*

The NPRM proposed that drivers could accumulate no more than 12 hours of driving and non-driving duty time (15 hours for "Type 5" drivers) in any 24-hour period. The FMCSA has decided to retain the current HOS rule for passenger-carrying drivers. Property-carrying drivers will have an on-duty limit of 14 hours from the start of each tour of duty to do all work, naps, and meal breaks. Property-carrying drivers must not drive after 11 cumulative hours of driving after starting each tour of duty. Property-carrying drivers who have returned to their normal work reporting location each of the last five work days (short-haul), may be on duty, one day out of each 7-day period, for up to 16 consecutive hours after starting the tour of duty.

##### *Distinctions in Duty Time*

The expert panel assembled by the agency to review the options under consideration before publication of the NPRM recommended eliminating the distinction between on-duty time and driving time. The scientific basis for the recommendation was the conclusion that driving is no more tiring than many of the other tasks a truck driver would be called upon to perform.

In addition to striving for a productivity-neutral outcome, the agency's practical basis for proposing the elimination was to reduce the paperwork burden. Under the existing rules, drivers are required to account for both driving time and non-driving duty time. Eliminating the distinction,