

Thus, the new rules in § 395.3 would allow a driver of a property-carrying vehicle, who is working under the 70-hour-in-8-day rule, to start an 8-day period at 7 a.m. on Monday and remain on duty for 14 hours each day (11 hours of which could be driving time). If the driver reached the 70-hour limit at 9 p.m. Friday (14 hours/day \times 5 days = 70 hours), he would not be able to drive again until 7 a.m. on the following Tuesday (8 days after the start of the period) unless he immediately began an off-duty period of 34 consecutive hours, in which case he could begin driving again at 7 a.m. Sunday, which would be the start of a new 70-hour-in-8-day period.

Likewise, a short-haul driver of a property-carrying vehicle who is working under the 60-hour-in-7-day rule could start a 7-day period at 6 a.m. on Monday and remain on duty for 14 hours per day (11 hours of which could be driving time) Monday through Wednesday, for a total of 42 on-duty hours. If the driver invoked the 16-hour exception in § 395.1(o) on Thursday and returned to his work reporting location at 10 p.m., having been on duty for 15 of those 16 hours, he would have 3 on-duty hours left (42 hours + 15 hours = 57 hours). In addition, the driver could not return to duty for 10 consecutive hours, *i.e.*, until 8 a.m. Friday morning. The driver could then drive from 8 a.m. until 11 a.m. on Friday, but could not drive again until 6 a.m. the following Monday (7 days after the start of the period) unless he took 34 consecutive hours off duty starting at 11 a.m., in which case he could begin a new 60-hour-in-7-day period at 9 p.m. Saturday.

Section 395.5 Maximum Driving Time for Passenger-Carrying Vehicles

Section 395.5 moves the current rules in § 395.3 to this new section exclusively for drivers of, and carriers using, passenger-carrying vehicles. The current rules in § 395.3 have been moved here verbatim, though the agency has added the qualifying phrase of “a driver of a passenger-carrying vehicle” since only these drivers may use the current rules after this rule’s effective date.

A driver of a passenger-carrying vehicle that does not use a sleeper berth must not drive more than 10 hours following 8 hours off duty. Such a driver also must not drive after having been on duty 15 hours following 8 hours off duty. This rule allows drivers to extend the work day by taking off-duty time, including meal stops and other rest breaks, of less than 8 hours duration other than sleeper berth time. This rule retains the current 60 hours in 7

consecutive day and 70 hours in any period of 8 consecutive day rules.

Section 395.13 Drivers Declared Out of Service

The agency is revising § 395.13 paragraphs (c)(1)(ii) and (d)(2) to use the new off-duty, on-duty, and driving limits for drivers of property-carrying vehicles, while maintaining the current off-duty, on-duty, and driving limits for drivers of passenger-carrying vehicles.

Section 395.15 Automatic on-Board Recording Devices

The agency is revising § 395.15 paragraph (j)(2)(ii) to also use the new off-duty, on-duty, and driving limits for drivers of property-carrying vehicles, while maintaining the current off-duty, on-duty, and driving limits for drivers of passenger-carrying vehicles.

Rulemaking Analysis and Notices

Executive Order 12866

(Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this document contains an economically significant regulatory action under Executive Order 12866 because the FMCSA estimates this action will have an annual effect on the economy of \$100 million or more. The agency completed an RIA for this final rule that projects net benefits of \$1.1 billion per year to society relative to the current rules with full compliance.

The FMCSA has also determined that this regulatory action is significant under the regulatory policies and procedures of the DOT because of the high level of interest concerning motor carrier safety issues expressed by Congress, motor carriers, their drivers and other employees, State governments, safety advocates, and members of the traveling public.

Finally, the FMCSA has determined that this regulatory action is a major rule under the Congressional Review Act, 5 U.S.C. 801 *et seq.* The FMCSA discussed the RIA earlier in this document under the heading Regulatory Impact Analysis.

Regulatory Flexibility Act

The ICCTA requirement for an ANPRM also began a review in compliance with the Regulatory Flexibility Act’s requirement under 5 U.S.C. 610 to determine whether the HOS rules should be continued without change, should be amended, or should be rescinded, consistent with the stated objectives of the applicable statutes, to minimize any significant economic

impact of the rules upon a substantial number of small entities.

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FMCSA has evaluated the effects of this proposed rule on small entities, including small businesses, small non-profit organizations, and small governmental entities with populations under 50,000. Many of these small entities operate as motor carriers of passengers or property in interstate or intrastate commerce.

Of the three alternatives evaluated in the RIA, only the PATT alternative would result in significant, adverse financial impacts (reduced profits) on most carriers. Although both the ATA alternative and the FMCSA alternative affect carrier finances, the resulting impacts generally would be favorable to carriers—that is, most carriers could experience reduced costs under either alternative. Also, all carriers would be impacted more favorably under the ATA alternative than under the FMCSA alternative. These findings are consistent with the cost results presented in Section 9 of the RIA. (See section 10.2 of the RIA for further discussion of the results by alternative.)

In general, smaller firms are hurt more (under the PATT alternative) or helped less (under either the ATA alternative or the FMCSA alternative) than are larger firms. Nevertheless, the RIA finds that the FMCSA alternative will result in favorable impacts on all carriers (including owner/operators with one tractor) *except for* firms in the 2–9 tractor size category. Firms in the 2–9 tractor size category are initially expected to lose approximately 8 percent of their net income, compared to the current rules with full compliance. For the median firm in this category, this results from a loss of approximately 0.5 of revenue per carrier, about \$2,700. Revenue will fall from about \$534,000 to about \$531,000.

This reduction is based on industry-wide adjustments, as the wage rate and price of trucking are both expected to drop when compared to the current rules with full compliance. Wages will decline somewhat less than trucking rates. The analysis used several conservative assumptions in estimating the impact on these small carriers. Specifically, the agency assumed that shipping prices drop immediately (lowering revenue to carriers), while shipments grow more slowly (delaying carriers revenue growth). Realistically, both these adjustments are likely to take some time, so that the overall impact on these carriers is likely to be smaller than estimated in our analysis. As soon as carriers increase shipments to take