

alternatives would have a significant impact on full employment or the creation of productive jobs. The FMCSA also does not believe that the proposal would have any significant impact on international competitiveness.

Prior Consultations With Elected Representatives of Any Affected State, Local, or Tribal Governments

This rule does not require action by State, local, or tribal governments. Therefore, no prior consultations with elected representatives of these governments were initiated.

Decision To Impose an Unfunded Mandate

When Congress created FMCSA, it provided that, “[i]n carrying out its duties the Administration shall consider the assignment and maintenance of safety as the highest priority * * *” [49 U.S.C. 113(b)]. As indicated above, Sec. 408 of the ICCTA directed the agency—then part of the FHWA—to begin rulemaking dealing with a variety of fatigue-related safety issues, including “8 hours of continuous sleep after 10 hours of driving, loading and unloading operations, automated and tamper-proof recording devices, rest and recovery cycles, fatigue and stress in longer combination vehicles, fitness for duty, and other appropriate regulatory and enforcement countermeasures for reducing fatigue-related incidents and increasing driver alertness) * * *” [109 Stat. 958]. The agency’s statutory focus on safety and the specific mandate of Sec. 408 both demand that this rulemaking improve CMV safety.

The FMCSA analyzed three alternative regulatory proposals in depth. Compared to the *status quo*, which includes a degree of non-compliance with the current HOS rules, the option proposed by the ATA would have marginally reduced fatigue-related fatalities and somewhat increased the cost of regulatory compliance. This results in a negative cost/benefit ratio. The option suggested by PATT would have reduced fatalities far more than the ATA option, but would have generated significant increases in compliance and operational expenses. This results in a cost/benefit ratio far more negative than the ATA option.

The third alternative was proposed by the FMCSA staff. The analysis shows that this option would save many more lives than the ATA alternative, though not quite as many as the PATT option. While it would cost more than the ATA option, it would be much cheaper than the PATT alternative. The net result is a cost/benefit ratio slightly more

negative than the ATA option but not nearly as negative as the PATT option.

The FMCSA has adopted the third alternative for this final rule. The rule represents a substantial improvement in addressing driver fatigue over the current regulation. Among other things, it increases required time off duty from 8 to 10 consecutive hours; prohibits driving after the end of the 14th hour after the driver began work; allows an increase in driving time from 10 to 11 hours; and allows drivers to restart the 60-or 70-hour clock after taking 34 hours off duty. Together, these provisions (and others discussed in detail below) are expected to reduce the effect of cumulative fatigue and prevent many of the accidents and fatalities to which fatigue is a contributing factor. Because the agency’s statutory priority is safety, we have adopted a rule that is marginally more expensive than the ATA option but which will reduce fatigue-related accidents and fatalities more substantially than that option. The FMCSA believes that the rule represents the best combination of safety improvements and cost containment that can realistically be achieved, even though it imposes an unfunded mandate.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information (IC) they conduct, sponsor, or require through regulations. The FMCSA has determined that this final rule will affect a currently approved information clearance for OMB Control Number 2126–0001, titled “Record of Duty Status (RODS).” The OMB approved this information collection on March 4, 2002, at a revised total of 161,364,492 burden hours, with an expiration date of March 31, 2005.

Comments received on the information collection proposed in the NPRM are discussed above under the heading “Electronic On-board Recorders (EOBRs).” The NPRM proposed that the title of this information collection be changed to “Hours of Service of Drivers Regulations.” The FMCSA believes that this title is more appropriate. The FMCSA did not receive any comments on the change of title for this IC. Therefore, today the supporting statement sent to OMB will bear the revised title change.

The PRA requires agencies to provide a specific, objectively supported estimate of burden that will be imposed by the information collection. See 5 CFR 1320.8. The paperwork burden imposed

by the FMCSA’s RODS requirement is set forth at 49 CFR 395.8. Paragraph (a)(1) requires drivers to record their duty status. Paragraph (f)(8)(i) requires them to submit the RODS to their motor carrier. Paragraph (k) requires motor carriers to maintain the RODS and all supporting documents for each driver it employs for a period of six months from the date of receipt. The currently-approved information collection for RODS does not include time and cost burdens associated with the collection and retention of supporting documents because these costs were calculated into past paperwork burdens (See 47 FR 53383, 53389 (Nov. 26, 1982) and 63 FR 19464).

As noted in the preamble to this rule, under the above heading “Compliance and Enforcement,” the FMCSA collects this information to ensure motor carriers comply with the HOS regulations. The HOS regulations require motor carriers be responsible for and police the actions of its employees, including the actions of independent contractors and owner operators they use. Likewise, each motor carrier must have a system in place that allows it to effectively monitor compliance with the FMCSRs, especially those aimed at the issue of this final rule—HOS to increase driver alertness and reduce fatigue-related incidents.

This final rule does not amend the language of section 395.8. The new HOS rule, like the current rule, does not limit the length of time a person can be on duty. The current rule states that a driver cannot drive after being on duty for 15 hours, but the driver could remain on duty indefinitely. This aspect of the current rule will continue to be applicable to drivers of passenger-carrying CMVs. This final rule, however, will *not* enable a driver of a property-carrying CMV to drive after being on duty after the end of the 14th hour after coming on duty, but such a driver also can remain on duty indefinitely. Because there will be a requirement for 10 consecutive hours off duty, most property-carrying CMV drivers will usually go off duty after 14 hours (at worst) under this final rule, not after 15 hours, as often happened under the current rule and will continue to happen for drivers of passenger-carrying CMVs. But property-carrying CMV drivers will now be allowed to drive up to 11 hours, not the 10 hours of the current rule that will be applicable to passenger-carrying CMV drivers only. Thus, this final rule will allow property-carrying CMV drivers shorter on-duty time, generally, but longer driving time.