

**Federal Motor Carrier Safety Administration  
Responses to Questions Posed to  
Listening Session Participants  
Hours of Service of Drivers  
(Docket # FMCSA-2004-19608)**

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***Introduction***

The American Trucking Associations, Inc. (ATA) submits the following responses to the Federal Motor Carrier Safety Administration's (FMCSA) Notice of Public Listening Sessions (75 Federal Register page 285) Questions for Discussion (hereinafter "listening session questions").

ATA is the national trade association representing the American trucking industry.<sup>1</sup> ATA is vitally interested in matters affecting the nation's trucking fleet, including requirements regarding compliance with the hours of service (HOS) regulations.

***Overview***

We recognize that FMCSA has committed to take another look at the hours of service regulations as a condition of its settlement of *Public Citizen, et al., Petitioners vs. Federal Motor Carrier Safety Administration*. We also appreciate that this settlement agreement does not, in any way, obligate FMCSA to change the hours of service regulations. So while we understand the reason behind FMCSA's latest evaluation of the hours of service regulations, we strongly believe that the data and analysis that the agency has developed over the past nearly ten years in support of the current rule will be resoundingly confirmed, with one exception. FMCSA should modify the current sleeper berth exemption (49 CFR, 395.1 g) to allow for additional flexibility that will ultimately improve driver alertness and subsequently improve highway safety.

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<sup>1</sup> ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Its membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and indirectly through its affiliated organizations, ATA encompasses over 34,000 companies and every type and class of motor carrier operation.

## **Summary of ATA's Position**

ATA supports:

- Retention of the 11, 14, and the 60/70 hour rules;
- Additional flexibility to the split sleeper berth provision;
- Limited flexibility to the 14 hour rule for drivers taking short rests in the sleeper berth;
- No mandatory rest breaks;
- Limited flexibility to the 14 hour rule if limited rest periods are mandated.

Our position that the current rules should be retained virtually unchanged is based on three primary tenets:

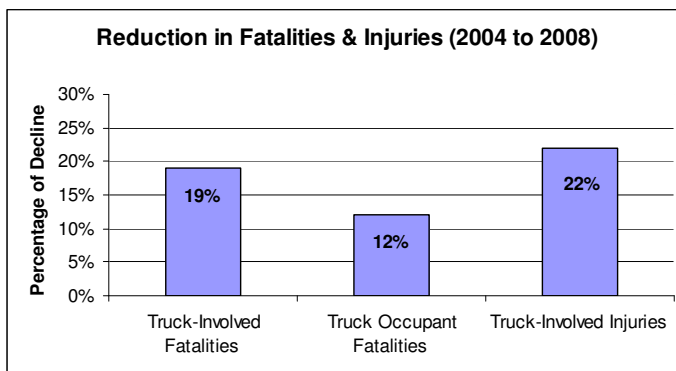
- 1) The current hours of service rules have provided more restorative rest for commercial drivers. This has had a positive impact on highway safety and has improved compliance with the regulations;
- 2) Modifying the interdependent components of the rules in any substantial way would likely negatively impact highway safety by disrupting the circadian sleep patterns the current rule has clearly established; and
- 3) Changes in the rules that reduce productivity would have significant economic consequences, upsetting the crucial equilibrium mandated by Congress and achieved by the current rules.

### **Positive Safety Impact of the Current Regulations**

As we pointed out in our oral testimony at the first hours of service listening session on January 19, 2010, trucking industry safety performance has improved substantially since 2004 when the basic framework for the current hours of service regulations originated. This improvement is evident in extensive data gathered and published by the National Highway Traffic Safety Administration, FMCSA, transportation research groups at universities, the Department of Labor and the states.

For instance, between 2004 and 2008:<sup>2</sup>

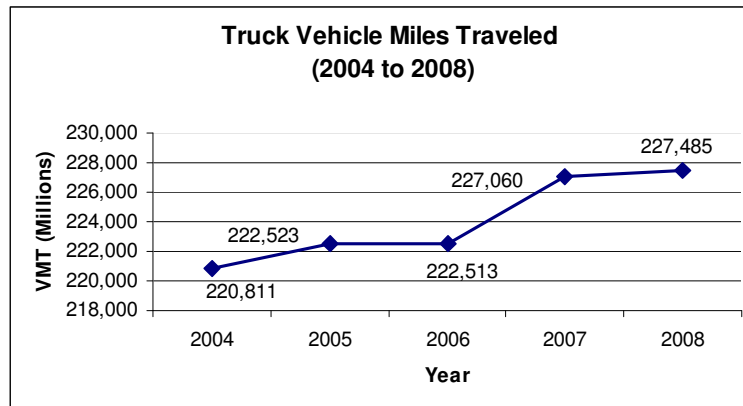
- The number of truck-involved fatalities declined from 5,212 to 4,229 (19%)
- The number of truck occupant fatalities declined from 803 to 677 (16%)
- The number of truck-involved injuries declined from 114,000 to 90,000 (21%)



<sup>2</sup> National Highway Traffic Safety Administration, "Traffic Safety Facts - Large Trucks Factsheets 2004 – 2008," (2009).

Also, the occupational injury and illness recordable incidence rate for truck transportation decreased 15% from 6.1 cases per 100 full time workers in 2004 to 5.2 in 2008, according to the U.S. Bureau of Labor Statistics.<sup>3</sup>

Some may attempt to discount these significant highway and workplace safety improvements by claiming that they are the result of the economic downturn in the U.S. economy. The facts do not support this erroneous claim. One need only look at the increase in miles traveled by large trucks between 2004 and 2008 to see why such misguided reasoning is unsupported.<sup>4</sup>



Not only has safety improved, but the rate of compliance with the hours of service regulations has improved measurably as well. During the period of 2006-2008, the states completed more roadside safety inspections than ever before and the number of compliance reviews reached their highest level. So, as more enforcement effort was expended to monitor the safety of motor carriers in this time period, there was less evidence of hours of service violations. According to FMCSA's website, between 2006 and 2008:<sup>5</sup>

- The number of driving time violations decreased 22% and Out-of-Service (OOS) violations decreased 16%.
- The number of on-duty limit violations decreased 19% and OOS violations decreased 8%.
- The number of workweek limit violations decreased 8% and OOS violations decreased 9%.
- The number of 34-hour restart violations decreased 6% and OOS violations decreased 26%.

<sup>3</sup> U.S. Bureau of Labor Statistics, "Incidence Rates of Nonfatal Occupational Injuries and Illnesses by Case Type and Ownership, Selected Industries, 2004-2008," (2009).

<sup>4</sup> Federal Highway Administration, "Highway Statistics 2008," (2009).

<sup>5</sup> Federal Motor Carrier Safety Administration, "Roadside Inspection Out-Of-Service Rates," Analysis and Information On-line, <http://ai.fmcsa.dot.gov/> (2010).

Category	Reduction in Standard Violations	Reduction in Out-of-Service Violations
Driving time	22%	16%
On-duty time	19%	8%
Work week (60/70 hour rule)	8%	9%
34 hour restart violations	6%	26%

Note: 2004 and 2005 data was not available from the source, so only 2006 and more recent data was used.

Finally, comprehensive data from the 2009 Commercial Vehicle Safety Alliance *Roadcheck* program showed the highest ever overall driver HOS compliance rate — 95.7 percent. This was a 20.4 percent improvement over 2008 totals.<sup>6</sup>

These improvements are attributable to the fact that the rules were carefully developed after a thorough review of available science on fatigue and alertness. In addition, by their very design the rules are easily understood and easy to comply with as well.

While the trucking industry is proud of these accomplishments, we recognize that neither the industry nor FMCSA can be complacent. We must continually strive to find new ways to improve highway safety. Yet, such improvements must be based on sound science and an appropriate analysis of data. Failing to do so could result in the unintended consequence of reversing the recent positive trends in highway safety.

If the agency is committed to finding ways to further improve driver alertness to promote highway safety, it must change its practice of focusing almost exclusively on the hours of service regulations as a means to do so. The continued emphasis on hours of service regulations suggests that there is one correct or perfect solution. There is not. To be even more effective in reducing fatigue related crashes, FMCSA must address screening for sleep disorders, promote far greater use of fatigue risk management programs, and work with the states and the industry to increase the number and availability of truck parking spaces in order for drivers to obtain rest while on the road. Considering the hours of service regulations as the only means to impact fatigue related crashes will yield limited results going forward.

**Potential Economic and Safety Impacts of Any Change**

We are also concerned that any changes to the hours of service regulations could have a profound economic impact. For instance, the regulatory impact analysis conducted by FMCSA in 2005 showed that reducing driving time by an hour and eliminating the 34-hour restart would come at a net cost of \$2.2 billion.<sup>7</sup>

Ironically, the most comprehensive data available for large truck crashes reveals that such a reduction in driving time would not bring about an offsetting improvement in highway safety. According to the recently released *Trucks Involved in Fatal Accidents*

<sup>6</sup> Commercial Vehicle Safety Alliance, “CVSA’s Roadcheck Reinforces The Adage It Pays To Be Safe,” Press Release on Roadcheck 2009, CVSA Website, [www.CVSA.org](http://www.CVSA.org), (2009).

<sup>7</sup> See 72 Federal Register 71267, December 17, 2007

(TIFA) *Factbook 2007*, the large majority of fatigue related crashes occur in the first 8 hours of driving and very few crashes (as little as 1%) caused by any reason occur in the 11<sup>th</sup> hour of driving.<sup>8</sup> TIFA further underscores the fact that only a small percentage of accidents can reasonably be attributed to truck driver error, and an even smaller number can be attributed to truck driver fatigue. The TIFA database and the *Large Truck Crash Causation Study* estimate that truck driver fatigue is a factor in between 1.8% and 7.5% of all truck crashes.<sup>9</sup>

Moreover, neither the TIFA data nor other accident information support the view that driving time alone is a reliable predictor of fatigue. It is important for FMCSA to continue to recognize and communicate that time on task is not the primary contributor to driver fatigue. Instead, the number of waking hours, the body's circadian rhythm, the length and quality of a person's most recent sleep period, and individual differences and susceptibility to fatigue have a much greater influence on human alertness and fatigue. Therefore, focusing on the regulations aimed largely at limiting time on task as the primary means of impacting fatigue-related crashes is misdirected.

Even renowned expert and researcher in human fatigue, and current Member of the National Transportation Safety Board, Dr. Mark Rosekind, in a 2005 white paper did not note that time on task was one of the three primary factors in contributing to alertness, performance and safety. He cited as the three predominant factors; 1) sleep (recurrent and cumulative), 2) hours of continuous wakefulness, and 3) circadian rhythm. Dr. Rosekind also referenced individual differences in fatigue susceptibility and sleep disorders that lead to fatigue vulnerability.<sup>10</sup>

Changing an already proven rule under which the industry has achieved strong safety gains could also trigger the inverse: an increase in crashes, injuries and fatalities. A reduction in working hours of the existing driver workforce would force the industry to hire a significant number of new, inexperienced drivers. As the agency is no doubt aware, inexperienced drivers have higher crash rates. In fact, one study of 1,300 drivers found that inexperienced drivers are three times more likely than an experienced driver to have an accident.<sup>11</sup>

It is not surprising that the industry's safety performance and compliance rates have significantly improved since the current hours of service rules were originally implemented. These rules were drafted after a long and extensive review of available studies on human alertness, driver fatigue and crashes. Accordingly, any changes to the regulations made simply on assumptions, or based on misconceptions of entities wholly unfamiliar with how trucking actually operates, would be akin to a "roll of the dice." At the same time, such changes could have a profound negative impact on the nation's economy.

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<sup>8</sup> University of Michigan Transportation Research Institute, "Trucks Involved in Fatal Accidents Factbook 2007," (2010).

<sup>9</sup> FMCSA, "Large Truck Crash Causation Study", (2007).

<sup>10</sup> Rosekind, M.R., "Managing Safety, Alertness and Performance through Federal Hours-of-Service Regulations: Opportunities and Challenges," Alertness Solutions, FMCSA rulemaking docket #FMCSA-2004-19608. (2005).

<sup>11</sup> Regular Common Carrier Conference, "Motor Carrier Safety Survey," Dr. Richard Beilock, (1989).

### **Regulatory Obligations**

While we don't agree that a substantial regulatory change of the hours of service rules is needed, ATA is aware that FMCSA needs to evaluate the current hours of service rules quickly in order to meet the conditions of the settlement of *Public Citizen, et al., Petitioners, vs. Federal Motor Carrier Safety Administration*. However, we note that even an expedited review must specifically address the dozens of Congressional mandates and executive orders that are intended to be an integral part of any rulemaking process.

While the mandates and orders are too numerous to name here, they fall into one or more of these four broad categories:

- 1) Identification of the relative costs and benefits of the proposal;
- 2) Compliance with federal rules regarding the rulemaking process;
- 3) Evaluation of alternatives to the proposed regulation; and
- 4) Collection of accurate data to assess the proposal.

We also remind the agency of the Department of Transportation's own *National Freight Transportation Policy* which obligates FMCSA to evaluate actions:

*...not only for their short-term impacts but for their longer-term consequences for maintaining viable, competitive, multimodal freight transportation to serve the Nation. Therefore, freight regulatory and investment policies must take into account the linkages between freight transportation performance and economic performance at the local, regional, national, and international levels both today and in the future.*<sup>12</sup>

Of course, the hours of service rules have been the subject of numerous legal challenges over the past decade. Any failure to carefully meet the many Congressional mandates and executive orders mentioned above will almost certainly doom the rules to yet another round of litigation.

### **Question Posed to Listening Session Participants**

In addition to ATA's call for retention of the core elements of the current regulations, these comments specifically address each of the questions posed to participants in the recent HOS listening sessions.

#### **A. Rest and On-Duty Time**

1. *Would mandatory short rest periods during the work day improve driver alertness in the operation of a CMV? How long should these rest periods be?*

Rest breaks, especially ones that involve naps, can be an effective fatigue countermeasure under certain circumstances. However, making them mandatory would

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<sup>12</sup> 62 Federal Register: Number 3, Page 785, Department of Transportation, Office of the Secretary of Transportation, Docket No. OST-96-1188 January 6, 1997.

further reduce the ability of drivers to choose when to rest and for how long, which could have other deleterious effects which are discussed below.

*At what point in the duty cycle or drive-time would short rest periods provide the greatest benefit?*

Generally speaking, research has shown that rest breaks would have the most benefit to drivers during common circadian lows which are between 3 and 5 a.m. and again between about 3 and 5 p.m.<sup>13</sup> However, mandating breaks during these specific periods could have negative consequences, as discussed below.

*What are the unintended consequences if these short rest periods are mandatory?*

Mandating rest periods, particularly during certain times of day, could have a negative impact on highway safety and driver health. In short, restricting driver flexibility will force some drivers to take rest when they are not tired and then place them in a situation where they may drive at times when doing so would compromise safety (e.g., when fatigued or when roadways are more congested).

*2. Should the on-duty period be extended to allow for mandatory rest periods?*

If a short rest break is mandated, then the on-duty period must be extended accordingly. Failure to do so would effectively reduce the current 14-hour workday. This change would be disruptive in a number of ways.

First, it would reduce industry productivity which, in turn, would have a certain negative economic impact. Second, the productivity loss would trigger the need for additional, less experienced drivers. As discussed above, less experienced drivers are known to be more accident prone. It would also substantially impact a supply chain system constructed around the full utilization of the current 14-hour workday. As a result, just in time delivery systems, facility locations, software and other components would all suffer a ripple effect that would require costly adjustments.

*3. If rest or other breaks from driving improve alertness, could a driver who chooses to take specified minimum breaks be given scheduling flexibility - the ability to borrow an hour from another driving day once a week, for example - if that flexibility would not increase safety risks or adversely impact driver health?*

Giving drivers some limited flexibility based on their use of the sleeper berth would give them a useful tool to manage fatigue, avoid times of congestion, rest when they feel tired, and otherwise take actions that would improve the quality of the driving job. ATA firmly believes that limited flexibility would ultimately further improve highway safety. However, FMCSA should not complicate compliance and the enforcement community's job by allowing drivers to borrow time from another driving day. Simplicity in the rules makes them easier to comply with and easier to enforce.

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<sup>13</sup> Alertness Solutions, "Managing Safety, Alertness and Performance Through Federal Hours of Service Regulations: Opportunities and Challenges," Mark R. Rosekind, Ph.D., (2005).

4. *How many hours per day and per week would be safe and healthy for a truck driver to work?*

Every person is different and no set of one-size fits all rules will work for millions of the nation's commercial drivers. However, FMCSA's current rules strike a very good balance between maximum daily and weekly working hours allowed, and the increased amount of required time off-duty before work may be resumed. And, as so many professional drivers have communicated to FMCSA and ATA in the last 6 years, not only does the 34-hour restart provision simplify logbook computation and thus compliance with the rules, it also provides drivers with the restorative rest they need after completing their weekly tours of duty. As ATA and the industry have said repeatedly during the public listening sessions, the current rules are working, as demonstrated by the improvement in the industry's safety performance since the rules were first implemented.

5. *Would an hours-of-service rule that allows drivers to drive an hour less when driving overnight improve driver alertness and improve safety?*

No. This approach would focus on the wrong issue: time on task. As we have said previously, imposing such a restriction without a thorough analysis of nighttime trucking operational data, and without a very good understanding of the consequences, would clearly be a roll of the dice. It is very likely that a nighttime driving restriction would force drivers to shift some driving to daytime hours, which would upset their normal work/rest cycles. This would be especially problematic for drivers who normally drive at night and rest during the day. Such a shift is tantamount to self-induced "jet-lag." Though intended to improve alertness, restricting nighttime driving could, ironically, have the reverse effect. There are a host of other safety concerns with placing restrictions on nighttime truck traffic, many of which involve greater interaction between cars and trucks during daylight hours.

It is also important to note that restricting nighttime driving would trigger an increased demand for the use of rest areas. As the agency is aware, the nation already suffers from an acute shortage of truck parking areas. Heightening demand would simply exacerbate the problem.

6. *Are there any adverse consequences that could arise from the implementation of a separate night time hours of service regulation?*

Yes. A nighttime driving restriction would force more commercial motor vehicles onto the roadways during daytime hours when they are more likely to interact with passenger vehicles. As demonstrated in a recent Virginia Tech Transportation Institute study, this interaction is a principal factor that contributes to truck crashes.<sup>14</sup> Further, shifting truck traffic to daytime hours would exacerbate traffic congestion, especially in and around major metropolitan areas. Naturally, added congestion is undesirable for all motorists and has a deleterious effect on economic productivity. ATA firmly believes empirically derived data should serve as the basis for any rulemaking. The paucity of such data to support a regulatory focus in this area would be misguided.

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14 Virginia Tech Transportation Institute, "A Descriptive Analysis Of Light Vehicle-Heavy Vehicle Interactions Using In Situ Driving Data," Hanowski, Hickman, Wierwille, & Keisler; (2006).

## B. Restart to the 60- and 70-Hour Rule

### 1. *Is a 34-consecutive-hour off-duty period long enough to provide restorative sleep regardless of the number of hours worked prior to the restart?*

As FMCSA heard repeatedly from both drivers and motor carriers during the recent hours of service listening sessions, the 34-hour restart has played a pivotal role in improving the quality of life for many truck drivers. For instance, the provision permits drivers to obtain two lengthy sleep periods and, if used as a minimum, begin driving again at approximately the same time they began their previous work shift. As such, it helps drivers avoid shifting their circadian rest cycles, which is critical fatigue countermeasure. Further, the provision provides a rest period that is sufficient to adequately recover from accumulated fatigue before returning to work.

Research confirms these findings. For instance, a study by O'Neill, et. al., concluded that drivers who worked a schedule of 14 hours on-duty followed by 10 hours off-duty for five days recovered baseline performance within 24 hours of the end of a driving week.<sup>15</sup> The researchers reasoned that drivers should be fit to resume duty after 36 hours. These presumed safety benefits of the 34-restart provision, as predicted by researchers, have been realized and demonstrated through real world experience over the course of the past 6 years.

Also, longer periods could cause drivers to be stranded at truck stops, which would trigger other negative consequences such as:

- Further limiting long-term parking spaces in many truck stops;
- Greater security risks for drivers and equipment and an increase in freight theft;
- A decrease in driver productivity and a corresponding decrease in driver wages;
- An increase in the number of drivers needed to move the same volume of freight;
- An increase in driver costs for parking and meals;
- A decrease in revenue per truck per year;
- A decrease in job satisfaction with a resulting shortage of drivers in the industry.

### 2. *Is the answer different for a driver working a night or irregular schedule?*

There is no reason to believe drivers working nights or irregular schedules present a safety concern. New research conducted for FMCSA by Washington State University has shown that such a restart period for regular route drivers is effective in maintaining alertness. Specifically, the study said:

*The key findings of this laboratory research study was that the 34-hour restart provision in the hours of service regulations governing property-carrying CMV drivers was sufficiently effective (and perhaps even unnecessary) for maintaining optimal performance in subjects randomized to a daytime wake/work schedule.<sup>16</sup>*

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15 Office of Motor Carrier and Highway Safety, Federal Highway Administration, Washington, D.C. "Effects of Operating Practices on Commercial Driver Alertness," Rep. No. FHWA-MC-99-140, O'Neill, T.R., Kruegar, G.P., Van Hemel, S.B., and McGowan, A.L. (1999).

16 U.S. Department of Transportation, Federal Motor Carrier Safety Administration, "Investigation into Motor Carrier Practices to Achieve Optimal Commercial Motor Vehicle Driver Performance: Phase I," (2009).

The study acknowledges that this is may not be the case for drivers in the worst case scenario (irregular route drivers with shifting sleep/wake cycles) and that additional research is needed. Specifically, the study makes recommendations for follow-up items that should be explored in Phase II of the research. Hence, it would be extremely premature to change the 34-hour restart for a subset of the driver population until the relationship between the 34-hour restart, the circadian aspects of scheduling, and the work/rest cycle are more fully known.

3. *What would be the impact of mandating two overnight off-duty periods, e.g., from midnight to 6 a.m., as a component of a restart period?*

Mandating two overnight off-duty periods would have negative safety implications for two reasons.

First, requiring drivers to take two rest periods during overnight periods would shift more truck traffic into the daytime hours. In other words, this type of requirement would mean that hundreds of thousands (and perhaps millions) of drivers would begin their driving shift on the morning after their second overnight off-duty period. Such a shift would cause hundreds of thousands of trucks to encounter more congestion and interact more with passenger vehicles during commuting hours. And, as research has demonstrated, interaction with passenger vehicles is a leading cause of truck crashes.<sup>17</sup>

Second, requiring two overnight rest periods could cause some drivers to change their work/rest cycles. In other terms, drivers who normally rest during the day and drive at night would be required to do the opposite during their restart periods. Research has repeatedly demonstrated that adhering to regular work/rest cycles is a primary component of managing driver fatigue. Requiring drivers to change their cycles as often as once a week will result in self-induced “jet lag.”<sup>18</sup> In contrast, because the current rules are based on a 24-hour cycle (24 hours off after the driver’s standard 10 hour off-duty period) they allow drivers to take adequate rest and remain on their normal work/rest cycles.

Also, at least one international study pointed out that although consecutive night driving shifts made drivers feel more tired than daytime driving, such shifts did not necessarily produce significantly poorer levels of performance in drivers who are accustomed to night work.<sup>19</sup> During prior rulemakings, in consideration of such findings, FMCSA wisely decided that nighttime driving must be considered as necessary to assure a national transportation network as free as possible from accident potential. The agency recognized that moving additional CMV traffic to the more-congested daytime hours could increase accidents, because of the greater opportunity for interaction between trucks and passenger vehicles.

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<sup>17</sup> Virginia Tech Transportation Institute, “A Descriptive Analysis Of Light Vehicle–Heavy Vehicle Interactions Using In Situ Driving Data,” Hanowski, Hickman, Wierwille, & Keisler; (2006).

<sup>18</sup> Encyclopedia of Mental Disorders, “Circadian Rhythm Sleep Disorder,” Encyclopedia of Mental Disorders Website, <http://www.minddisorders.com/Br-Del/Circadian-rhythm-sleep-disorder.html>, (2010).

<sup>19</sup> National Transport Commission Australia “Fatigue Performance in Heavy Truck Drivers Working Day Shift, Night Shift or Rotating Shifts”, Williamson, A., et. al., (2004).

Specifically, in the 2003 Final Rule on Hours of Service, the agency acknowledged that:

*“Comment after comment stated how requiring two consecutive nights’ rest off would wreak havoc on the already overcrowded highways in the daylight hours.”<sup>20</sup>*

The agency went on to say that it selected a 34-hour restart, in lieu of specifically requiring two nighttime sleep periods, because it would:

*“...avoid the shifting of daytime to nighttime schedules which research indicates can disturb the circadian rhythm and decrease alertness. This allows drivers to get at least two sleep periods, without restraining the driver by the unworkable midnight-to-6 a.m. period from the NPRM.”<sup>21</sup>*

4. *Would such a rule present additional enforcement challenges?*

Yes. The 34-hour restart has simplified HOS compliance since drivers begin driving again at approximately the same time of day when they began their previous work shift, if drivers take the minimum time off under the rule. Requiring a longer restart for any driver who has driven between the hours of midnight and 6 a.m. (at any time in the prior 7 day period) would complicate compliance and make enforcement - especially roadside enforcement - exponentially more complex.

As the Commercial Vehicle Safety Alliance pointed out in their testimony at the first of the recent HOS listening sessions, complexity negatively affects enforcement in a number of ways. It creates difficulty and variation in application and interpretation, challenges harmonization between jurisdictions, causes frustrations and misunderstandings, and creates difficulty in the training and educational process. Together these problems form an environment of subjectivity in enforcement. Such an environment naturally leads to compliance problems.

5. *How is the current restart provision being used by drivers? Do drivers restart their calculations after 34 consecutive hours or do drivers take longer periods of time for the restart?*

As discussed above, most drivers use the restart provision to gain adequate hours to complete their runs and get back to their principal place of domicile. Once there, drivers typically take longer than 34 hours to rest. Truck drivers are no different from the rest of us in that they want to take extended off-duty periods at home.

As FMCSA has stated on prior occasions, the “evidence available indicates that drivers value the 34-hour restart because it gives them more, not less, rest and time off duty, including more time at home, than the pre-2003 rule...” Information ATA has received from its members clearly indicates that drivers use the restart provision to take extended off-duty periods, typically more than 34 consecutive hours, and typically at home. FMCSA survey data collected by agency personnel during a prior hours of service rulemaking has also shown this to be the case.

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<sup>20</sup> 68 Federal Register, page 22477, April 28, 2003,

<sup>21</sup> 68 Federal Register, page 22479, April 28, 2003,

### C. Sleeper Berth Use

1. *If sleeper-berth time were split into two periods, what is the minimum time in each period necessary to provide restorative sleep?*

Since the current rules were developed, new research has suggested that the length of any single sleep period may not be as important as: 1) the amount of total sleep time in each 24 hour period, and 2) the placement of sleep times relative to the circadian rhythm. In light of this new research, ATA believes that FMCSA should reevaluate the current requirement that time in the sleeper berth be taken in no more than two periods and that one period be at least 8 hours in length.

In particular, we point to the *Executive Summary* of this study which said:

*“Within the 10 hours off duty, drivers should be allowed the flexibility to split their 10 hour sleep opportunity into 2 or 3 sleep periods in order to sleep when sleepy and drive when alert.”*

The study went on to say:

*“...the time is ripe for the development and promulgation of more flexible, circadian-smart sleeper berth rules. These would allow more flexibility than the current rule and take into account not only sufficient opportunities for sleep but also the placement of these sleep opportunities relative to the circadian rhythm to better sustain the performance and safety of commercial drivers.”<sup>22</sup>*

We recognize that FMCSA may feel compelled to require that at least one period be of a minimum duration (e.g., 5 or 6 hours). However, if such is the case we strongly encourage the agency to allow drivers to obtain the balance of their required rest in shorter segments of no minimum duration. In doing so, the agency will promote the use of short, beneficial naps which can be particularly effective in combating fatigue.

As another recent study put it:

*“Strategic napping is a particularly powerful fatigue countermeasure approach, and adapting HOS regulations to allow for greater flexibility in split sleep schedules should be considered.”<sup>23</sup>*

Additional research has also shown that the benefits of afternoon naps on nighttime driving performance included significantly fewer crashes, shorter run completion times,

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<sup>22</sup> Sleep and Performance Research Center, Washington State University, “A Review of the Literature and Application of a Mathematical Model Predicting Performance from Sleep/Wake History and Circadian Phase,” Gregory Belenky, M.D., Steven R. Hursh, Ph.D., James Fitzpatrick, and Hans P. A. Van Dongen, Ph.D., (2007).

<sup>23</sup> U.S. Department of Transportation, Federal Motor Carrier Safety Administration, “Investigation into Motor Carrier Practices to Achieve Optimal Commercial Motor Vehicle Driver Performance: Phase I,” (2009).

and smaller standard deviations of lane position (a common measure of driver alertness).<sup>24</sup>

Under the current regulations, team drivers who seek to operate most efficiently are required to spend at least 8 full hours driving so that their co-drivers can get a rest period meeting the minimum required duration. Under the prior rules, team drivers often chose to split their time into two shorter periods (e.g., 5 hours) on a regular rotation. Ironically, even though the new sleeper berth requirement was designed to increase rest and alertness, for team drivers it results in a longer consecutive driving period (e.g., 8 hours) than the prior rule. This is a classic unintended consequence and one that can be remedied with additional flexibility in the sleeper berth provision.

Moreover, allowing shorter documented sleeper berth periods would promote safety and health by:

- Encouraging circadian friendly naps;
- Promoting shorter continuous driving periods;
- Helping to reduce highway congestion; and
- Increasing operational flexibility.

For these reasons, even if FMCSA is compelled to retain a minimum prescribed sleeper berth period of significant duration (e.g., 5 hours), the agency should allow drivers to extend the 14-hour period by the amount of time spent in the shorter sleeper berth period(s). In doing so, the agency would promote the use of the sleeper berth for beneficial rest breaks.

- 2. Could the 14-hour on-duty limitation be extended by the amount of some additional sleeper-berth time without a detrimental effect on highway safety? What would be the appropriate length of such a limited sleeper-berth rest period?*

Yes, drivers should be able to extend the 14 hour window by taking time off-duty in the sleeper berth. Refusing to allow drivers to extend the 14 hour limit by spending time in the sleeper berth would have the effect of discouraging use of the sleeper berth. Though drivers may recognize the need to obtain rest, they also need to complete runs within the 14 hour time-frame. Accordingly, absent the ability to take short rests in the sleeper berth, drivers would face a productivity disincentive for taking a rest break.

At the very minimum, as a part of the upcoming Notice of Proposed Rulemaking FMCSA should propose to allow that short sleep berth periods (2 -3 hours) stop the 14 hour clock and solicit industry and research-based feedback on this potentially beneficial provision.

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<sup>24</sup> Federal Highway Administration Office of Motor Carrier Research & Standards Trucking Research Institute, "Ocular Dynamics as Predictors of Alertness and Prophylactic Napping as a Fatigue Countermeasure". Report No.FHWA-MC-99-028, (1999).

## **D. Loading and Unloading Time**

- 1. What effect has the fixed 14-hour driving "window" had on the time drivers spend waiting to load or unload? Have shippers and receivers changed their practices to reduce the amount of time drivers spend waiting to load or unload?*

ATA's members have indicated that the 14 hour "window" has, at times, reduced the amount of time drivers have had to wait to load or unload. Specifically, the 14-hour on-duty limit produced better cooperation between trucking companies and their shipper customers in performing loading and unloading operations more expeditiously. We are aware that the General Accounting Office is currently studying the impact and prevalence of shipper detention time. We encourage the agency to consider the resulting findings as a part of this rulemaking when they are available.

## **E. General**

- 1. Are there aspects of the current rule that do not increase safety risks or adversely impact driver health and that should be preserved?*

Yes. With the exception of the sleeper-berth modification discussed above, FMCSA should retain all aspects of the current rules. Actual real-world performance has demonstrated that the current regulations have played a role in the marked improvement in truck and driver safety over the past six years. Also, the rules – and the restart provision in particular - have had a positive impact on driver health by providing for more time at home, rather than long recovery periods in truck stops. In addition, the rules have had a positive impact on the most important driver health issue – driver injuries and fatalities resulting from truck crashes.

It is important to note that the current regulations are comprised of mutually interdependent provisions. These provisions ensure that drivers obtain adequate rest and recovery time, while at the same time ensuring that drivers can better manage a regular work/rest cycle based on a 24-hour clock.

### ***Conclusion***

The current rules have clearly played a role in improving safety on the nation's highways and providing for the safety and health of drivers, while at the same time allowing for efficient freight transportation. In short, the agency struck an appropriate balance in developing these rules. Any substantive change to these rules jeopardizes the safety achievements of the past six years while at the same time threatens harmful impacts on efficiency and the nation's economy.

The current rule, contrary to what some improperly claim - that the rule creates longer working and driving hours - provides for a better quality of life for drivers, gives them a shortened work day and requires two more hours of rest before resuming their next work shift than they had prior to the existing rule.

The existing hours of service requirements, more than at any time since the 1930's, provide truck drivers with improved restorative rest opportunities. The corresponding safety gains that have been facilitated by the existing hours of service regulation may be strengthened as FMCSA and the states begin implementation of the EOBR final rule recently published by FMCSA. As enforcement strategically focuses its limited resources on carriers and drivers intent on violating any hours of service rule, monitoring their compliance with EOBRs should help to further improve highway safety. FMCSA should not rewrite a rule that will yield unnecessary costs to a troubled economy.

FMCSA should end the cycle of rewriting these rules and focus its resources on (1) sleep disorder awareness, training and screening, (2) promoting the use of fatigue risk management programs, (3) continue evaluating the use of fatigue detection devices, (4) increasing the availability of truck parking on important freight corridors, and (5) partnering with the trucking and shipping communities to develop an educational process that identifies for drivers the location of available truck parking. Considering a broader array of solutions to promote driver alertness will ensure that the agency will be even more effective in achieving its objective.