

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Docket No. [FMCSA-2020-0098]

Hours of Service of Drivers; Pilot Program to Allow Commercial Drivers to Pause Their 14-Hour Driving Window

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed pilot program; request for comments.

SUMMARY: FMCSA proposes a pilot program to allow temporary regulatory relief from the Agency's hours-of-service (HOS) requirement that all driving by drivers of property-carrying commercial motor vehicles (CMVs) be completed within 14 hours after coming on duty. During the pilot program, known as the Split Duty Period Pilot Program, participating CMV drivers would have the option to pause their 14-hour on-duty period (also called a driving window) with one off-duty period of no less than 30 minutes and no more than 3 hours. Participation would be limited to a certain number of commercial driver's license (CDL) holders who meet the criteria specified for participation. This pilot program seeks to gather statistically reliable evidence whether decisions concerning the timing of such flexibility can be aligned with employers', shippers', and receivers' scheduling preferences to optimize productivity while ensuring safety performance at a level equivalent to or greater than what would be achieved absent the regulatory relief.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. The implementation date of the Pilot Program would be announced in subsequent **Federal Register** notices.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID [FMCSA-2020-0098] using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 1-202-493-2251
- Mail: Send comments to Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building, Ground Floor, Room W12-140, Washington, D.C. 20590-0001.
- Hand Delivery or Courier: Deliver comments to Docket Operations, 1200 New Jersey Avenue, S.E., West Building, Ground Floor, Room W12-140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and the docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>, and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: DOT posts comments submitted to the rulemaking docket, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the “help” section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Nicole Michel, Research Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590-0001, by email at Nicole.michel@dot.gov, or by telephone at 202-366-4354. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826. Further information will be posted at the website for the proposed pilot program: <https://www.fmcsa.dot.gov>.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials. In this notice, FMCSA requests certain information, but comments need not be limited to those requests.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2020-0098), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online, by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing

address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov, put the docket number, "FMCSA-2020-0098" in the "Keyword" box, and click "Search." When the new screen appears, click on the "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this notice as being available in the docket, go to www.regulations.gov and insert the docket number, "FMCSA-2020-0098" in the "Keyword" box and click "Search." Next, click the "Open Docket Folder" button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting Docket Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations.

II. Legal Basis

The FMCSA has authority under 49 U.S.C. 31315(c) to conduct pilot programs. These programs are research studies where one or more exemptions are granted to allow for the testing of innovative alternatives to certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish in the *Federal Register* a detailed description of each pilot program, including the exemptions being considered, and provide such notice and an opportunity for public comment before the effective date of the program. The Agency is required to ensure that the safety measures in the pilot programs are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved through compliance with the safety regulations. Pilot programs are limited to not more than 3 years from the starting date.

At the conclusion of each pilot program, FMCSA must submit a report to Congress concerning the findings, conclusions, and recommendations, including suggested amendments to laws and regulations that would enhance motor carrier, commercial motor vehicle (CMV), and driver safety, and improve compliance with the FMCSRs.

III. Background

HOS Rulemaking – Pause to the 14-Hour Window

On August 22, 2019, FMCSA published a Notice of Proposed Rulemaking (NPRM) concerning drivers' hours of service which proposed certain amendments to provide greater flexibility for drivers, without adversely affecting safety (84 FR 44190). As part of that rulemaking, FMCSA proposed that a single off-duty break of between 30 minutes and 3 consecutive hours may be excluded from the 14-hour driving window, provided the driver has at least 10 consecutive hours off-duty at the end of the work shift. The Agency explained that a single pause of up to 3 hours would provide significantly

more flexibility than is allowed under the current rules. The pause would have allowed drivers to take an off-duty break without fear of exhausting their available hours under the 14-hour clock, which would also have allowed them to get additional rest or avoid traffic congestion.

FMCSA Decision to Exclude the Pause from the Final Rule

After reviewing the public comments to the NPRM, the Agency decided not to include the pause to the 14-hour driving window in the Final Rule, published on June 1, 2020 (85 FR 33396). FMCSA continues to believe that an opportunity for a single off-duty pause in the 14-hour driving window could provide flexibility for drivers without compromising safety, as explained in the NPRM. However, many commenters to the NPRM believed that drivers would be pressured by carriers, shippers, or receivers to use the break to cover detention time, which would not necessarily provide the driver an optimal environment for restorative rest. This suggests that the pause could have unintended consequences that were not adequately evaluated in the development of the NPRM.

In considering the initiation of a pilot program, the Agency continues to believe that an off-duty break of up to 3 consecutive hours during a work shift may enable drivers to avoid congestion. The subsequent driving time would then be more productive, as drivers may have a greater opportunity to travel at the posted speed limits rather than at lower speeds through heavy traffic and congestion. It may also reduce the pressure to drive above the posted speed limits because of concerns raised by the 14-hour clock. In addition, drivers could take a rest break to reduce the likelihood of experiencing fatigue while driving. Because drivers would continue to take 10 consecutive hours off-duty at the end of the work shift, exercising the pause option during the work shift would

increase the drivers' off-duty time during the work week. This increased productivity, resulting from an ability to avoid congestion, would be accomplished without altering the maximum amount of on-duty time that could be accumulated before driving is prohibited, or increasing the maximum driving time allowed during a work shift.

FMCSA acknowledges that the potential benefits of increased flexibility could be undermined if the pause is used by carriers, shippers, or receivers for purposes other than the productivity and safety of drivers, especially to compensate for time wasted during the 14-hour driving window due to detention periods. Under such a scenario, the Agency believes that the off-duty period may not provide a meaningful opportunity for drivers to rest. The pilot program is designed, among other things, to discover the extent to which "detention pauses" occur and their effect on drivers, compared to pauses taken under other circumstances.

FMCSA believes a pilot program would provide an innovative, collaborative approach for evaluating concerns about the use of a pause to the 14-hour window. Through the pilot program the Agency could gather data and information concerning real-world actions and decisions among drivers, employers, and shippers and receivers to reach a common understanding of how to give drivers more opportunities for rest and increased efficiency.

With regard to safety impacts, the Agency notes that the additional break of up to 3 consecutive hours would be off-duty. This means the extension of the driving window would not result in drivers working additional hours; the maximum amount of on-duty time that could be accumulated before a driver would be prohibited from driving during a work shift would remain at 14 hours. Furthermore, drivers would still be required to have

10 consecutive hours off-duty at the end of their shift, and would continue to be subject to all of the cumulative limits that normally apply to them.

Applicable Regulations

Under 49 CFR 395.3(a)(2), a driver of a property-carrying CMV may drive only during a period of 14 consecutive hours after coming on duty following 10 consecutive hours off duty. The driver may not drive after the end of the 14-consecutive-hour period without first taking 10 consecutive hours off duty.

The Split Duty Period Pilot Program would offer participating drivers relief from these provisions by allowing one off-duty period of no less than 30 minutes and not more than 3 hours which would not count towards the 14-hour period (also referred to in this notice as the 14-hour on-duty window). Drivers would still be required to take 10 consecutive hours off duty before returning to duty.

Relevant Research

FMCSA will conduct additional research during the refinement of the pilot program design through a literature review of applicable studies regarding safety impacts of allowing a pause in duty status. The Agency believes that the proposal for this pilot program is supported by “The Impact of Driving, Non-Driving Work, and Rest Breaks on Driving Performance in Commercial Motor Vehicle Operations” (Blanco, M., Hanowski, R., Olson, R., Morgan, J., Soccolich, S., Wu, S.C., & Guo, F. (2011)). That study showed that the Safety Critical Event (SCE) rate increased modestly with increasing work and driving hours, up to a 14-hour on-duty period. Blanco also found that breaks can be used to counteract the negative effects of time-on-task. The results from the break analyses indicated that significant safety benefits can be afforded when drivers take breaks from driving. This study data cannot be extrapolated to determine the potential impact of

including up to a 3-hour pause in the 14-hour on-duty period, however. After completion of a thorough literature review, any additional relevant information will be included in subsequent Federal Register notices prior to initiation of the pilot program.

IV. Pilot Program Requirements

Specific requirements for pilot programs are found in subparts D and E of 49 CFR part 381. A pilot program is a study in which participants are given exemptions from one or more provisions of the FMCSRs for up to 3 years to gather data to evaluate alternatives or innovative approaches to regulations, while ensuring that an equivalent level of safety is maintained.

A pilot program must include a program plan that incorporates the following six elements:

- (1) A scheduled duration of 3 years or less;
- (2) A specific data collection and safety analysis plan that identifies a method of comparing the safety performance of motor carriers, CMVs, and drivers operating under the terms and conditions of the pilot program, with the safety performance of motor carriers, CMVs, and drivers that comply with the regulation;
- (3) A reasonable number of participants necessary to yield statistically valid findings;
- (4) A monitoring plan to ensure that participants comply with the terms and conditions of participation in the pilot program;
- (5) Adequate safeguards to protect the health and safety of study participants and the general public; and

(6) A plan to inform the States and the public about the pilot program and to identify approved participants to enforcement personnel and the general public. (49 CFR 381.500).

At the conclusion of each pilot program, the FMCSA reports to Congress the findings and conclusions of the program and any recommendations it considers appropriate, including suggested amendments to laws and regulations that would enhance motor carrier, CMV, and driver safety and improve compliance with the FMCSRs (49 CFR 381.520).

V. Structure of the Pilot Program

This pilot program seeks to gather statistically reliable evidence on the question whether an optional off-duty period of between 30 minutes and three hours, pausing the 14-hour window, affects safety performance, and what effect scheduling preferences of employers, shippers, and receivers have on safety outcomes. Safety performance would be evaluated through a review of data and information concerning work schedules (including driving time), rest schedules, and driver on-road performance.

Currently, interstate drivers of property-carrying CMVs must complete all driving within 14 hours after coming on duty (49 CFR 395.3(a)(2)). The pilot program would give participating drivers a temporary exemption from this requirement, within parameters specified by the Agency. For study purposes, drivers would be allowed to pause their 14-hour on-duty window by no less than 30 minutes and not more than 3 hours.

FMCSA would recruit CDL drivers who operate a CMV as their primary means of employment. The study group would include drivers from small, medium, and large carriers, as well as independent owner-operators. To ensure that the study will be able to

detect statistically significant differences in the safety performance between drivers utilizing a “pause” and drivers operating under current regulations, FMCSA is estimating the desired sample size in the final study design to be between 200 and 400 drivers over a period of up to 3 years. While the entire study will be limited to a maximum period of 3 years, individual driver participation may also be limited to a period of 6 months or 1 year, depending on final study design.

Participating carriers that meet the eligibility criteria, as described later in this notice, would be able to assist in recruiting study group drivers. Drivers would be enrolled in the study contingent upon approval from their carrier, as applicable. Owner-operators would need to be leased to a single carrier and obtain the carrier’s approval in order to be eligible to participate, to facilitate granting of the exemption and to mitigate data collection privacy concerns. Drivers would need to participate in the study operating under current regulations for a baseline period of 30 days before receiving their exemption.

The pilot program would also collect driver identification details and data on driver schedules, sleep, safety-critical events (SCEs), subjective sleepiness ratings, and behavioral alertness for at least 180 days per driver. The Agency requests comment on the data collection period per driver.

VI. Management of the Pilot Program

FMCSA has designated a project manager for the pilot program. FMCSA would develop the applications, agreements, and forms to be used by interested carriers and potential study group members. Participating carriers would be announced publicly.

Eligibility requirements and procedural matters are discussed in Sections VII and VIII of this notice.

VII. Eligibility Criteria to Participate

A. Motor Carriers

To qualify for participation in the pilot program, motor carriers must meet the following eligibility criteria:

1. Must have proper operating authority and registration;
2. Must have the minimum levels of financial responsibility, if applicable;
3. Must not be a high or moderate risk motor carrier as defined in the Agency's Federal Register notice of ADD;
4. Must not have a conditional or unsatisfactory safety rating;
5. Must not have any enforcement actions within the past 3 years;
6. Must not have a crash rate above the national average;
7. Must not have a driver Out of Service (OOS) rate above the national average; and
8. Must not have a vehicle OOS rate above the national average.

In addition, unpaid civil penalties may be grounds to be disapproved from participating in the pilot program.

In addition, motor carriers participating in the pilot program would be required to meet the following requirements:

- Grant permission for drivers to participate in the Split Duty Period Pilot Program;
- Agree to comply with all pilot program procedures;

- Grant permission for researchers to install a video-based onboard monitoring system (OBMS) and gather records of duty status (RODS) information for each participating driver throughout the study duration; and
- Grant permission for drivers participating in the study to operate under the 14-hour on-duty window exemption.

B. Study Group Drivers

A motor carrier may not approve a driver for participation in the pilot program if during the 2-year period immediately preceding the date of participation, the covered driver:

1. Had his or her license suspended, revoked, cancelled or has been disqualified for a conviction of one of the disqualifying offenses listed in to 49 CFR 383.51; or
2. Had any conviction for a violation of State or local law relating to motor vehicle traffic control (other than parking violation) arising in connection with any traffic crash and have no record of a crash in which he/she was determined to be at fault.

In addition, drivers would be required to:

- Operate a CMV as their main source of employment;
- Have a valid CDL;
- Maintain a valid medical certificate from a healthcare professional on the Agency's National Registry of Certified Medical Examiners while participating in the pilot program;
- Have the employer's approval for participation in the study;
- Operate a property-carrying vehicle, not a passenger-carrying vehicle;

- Agree to the release of specific information to FMCSA for purposes of the pilot; and
- Agree to study procedures, including the use of actigraphs, RODS, and video-based OBMS.

VIII. Process to Apply to Participate

A. Motor Carriers

- Visit the pilot program web site and complete an electronic application with screening questionnaire, which will request the following details, at a minimum: name, job title, carrier information, company name, and carrier size. The carrier must grant permission for OBMS equipment to be temporarily installed in the vehicles of participating drivers, and for drivers to use the study-provided system for recording HOS during the data collection period.
- The carrier's representative must acknowledge that all driver data, to include OBMS video, driving data, sleep data, and performance data, must remain confidential and will not be shared with the company. The exception to this is RODS data for properly recording a driver's HOS.

B. Study Group Drivers

- Visit the pilot program web site and complete an electronic application and screening questionnaire, which will request the following details, at a minimum: name, contact information, Medical Certification expiration date, CDL status, typical operation type (solo, team, or slip seat), location of their home terminal, type of truck they regularly drive, and whether they currently use paper or electronic HOS logs.

- Participate in a phone call with a member of the research team to confirm interest and eligibility.
- Obtain carrier permission to participate (unless the individual is an independent owner operator).
- Provide written, informed consent after a briefing session on data collection techniques and methods.

IX. Data Collection Plan

Details of the data collection plan for this pilot program are subject to change based on comments to the docket and further review by analysts. Information to be collected from each participating carrier and driver before the pilot program begins (during the application phase) are discussed in Section VIII of this notice. Participating drivers will drive an instrumented vehicle (instrumented by the research team with a study-provided OBMS) for up to 90 days. During a pre-study briefing, participants will receive a study-provided smartphone (installed with a variety of data collection applications), as well as a wrist actigraphy device.¹ Participants whose vehicles are not already equipped with a compatible electronic logging device (ELD) will be provided with an approved ELD application (installed on study-provided equipment). At a minimum, FMCSA will gather the following data during the study:

- RODS data, to evaluate duty hours and timing, driving hours and timing, rest breaks, off-duty time, and restart breaks.

¹ Participants will wear wrist actigraphy devices (similar to commercially available smart fitness watches) throughout their time in the study. Actigraphy is a minimally obtrusive, validated approach to assessing sleep/wake patterns.

- OBMS data, to evaluate driving behaviors, SCEs (crashes, near-crashes, and other safety-related events), reaction time, fatigue, lane deviations, and traffic density (as discerned from viewpoints of the multiple cameras), road curvature, and speed variability.
- Roadside violation data (from carriers and drivers, as well as the Commercial Driver's License Information System (CDLIS)), including vehicle, duty status, hazardous materials, and cargo-related violations (contingent upon inspections).
- Wrist actigraphy data, to evaluate total sleep time, time of day sleep was taken, sleep latency, and intermittent wakefulness.
- Psychomotor Vigilance Test (PVT)² data, to evaluate drivers' behavioral alertness based on reaction times.
- Subjective sleepiness ratings, using the Karolinska Sleepiness Scale (KSS),³ to measure drivers' perceptions of their fatigue levels.
- Sleep logs, in which drivers will document when they are going to sleep, when they wake up, and whether they are using the sleeper berth.
- Pause logs, in which drivers will document their reason for pausing their 14-hour on-duty window (e.g., driver felt fatigued, driver encountered traffic, driver encountered detention delay) and their activities during their pause (e.g., sleeping, exercising, eating, leisure).

² For this study, drivers will be required to complete daily iterations of a brief PVT, a 3-minute behavioral alertness test which measures drivers' alertness levels by timing their reactions to visual stimuli.

³ The KSS is a 9-point Likert-type scale ranging from "extremely alert" to "extremely sleepy" and has been widely used in the literature as a subjective assessment of alertness.

Other information that may be needed will also be collected through the participating carrier. Every effort will be made to reduce the burden on the carrier in collecting and reporting this data.

X. Paperwork Reduction Act

The pilot program will require participating motor carriers to collect, maintain, and report to FMCSA certain information about their drivers who are participating in the pilot program. This will include identifying information and safety performance data for use in analyzing the drivers' safety history. The Agency will develop forms to promote uniformity in the data collected by the pilot carriers.

The Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501-3520) prohibits agencies from conducting information collection (IC) activities until they analyze the need for the collection of information and how the collected data will be managed. Agencies must also analyze whether technology could be used to reduce the burden imposed on those providing the data. The Agency must estimate the time burden required to respond to the IC requirements, such as the time required to complete a particular form. The Agency submits its IC analysis and burden estimate to the Office of Management and Budget (OMB) as a formal information collection request (ICR); the Agency cannot conduct the information collection until OMB approves the ICR.

Because certain aspects of this pilot program—such as the content of forms and reports—have not been finalized, the Agency is not publishing possible IC burden data at this time. A separate Federal Register Notice will be posted taking additional comments on the ICR, once developed.

X. Removal from the Program

FMCSA reserves the right to remove any motor carrier or driver from the pilot program for reasons related to, but not limited to, the failure to meet all program requirements or a determination of increased safety concerns. FMCSA reserves the right to terminate the pilot program at any time if there is evidence of increased safety risk by carriers and/or drivers participating in the pilot program.

XI. Request for Public Comments

Instructions for filing comments to the public docket are included earlier in this notice. FMCSA seeks information in the following areas, but responses need not be limited to these questions:

1. Are any additional safeguards needed to ensure that the pilot program provides a level of safety equivalent to that without the 14-hour on-duty window pause exemption?
2. Are the data collection efforts proposed for carriers and drivers so burdensome as to discourage participation?
3. Should team drivers be allowed to participate in the pilot program? Would there be additional considerations for team drivers?
4. What additional factors, such as gender, geographic location, age, operating types, or driver experience, should be considered when selecting participants to ensure a representative sample is achieved?
5. Is the estimated sample size of 200-400 drivers sufficient to gain statistically significant findings over a period of up to 3-years? Is a 6 to 12-month period of participation by individual drivers sufficient to collect data?
6. Is a 180-day baseline period sufficient for comparison of driver performance between participating drivers in a control group operating under the current

regulations against individuals operating with the exemption allowing the split duty option?

7. Would there need to be considerations for carriers currently utilizing OBMS or other safety systems that may involve coaching? For example, should a participating carrier be required to halt utilization of coaching techniques for drivers participating in the pilot program to ensure bias is minimized across the sample?
8. Should FMCSA consider metrics other than the following when developing the data collection plan: crashes, safety critical events (e.g., speeding, lane deviation, hard braking), fatigue levels, driver distraction, vehicle miles traveled?
9. What other potential data collection tools should FMCSA use for the pilot program in addition to video-based onboard monitoring systems, actigraphs, PVTs, sleep logs, and driver health/background information?

Issued on: August 21, 2020



James A. Mullen,
Deputy Administrator.