

Federal Motor Carrier Safety Administration

49 CFR Part 395

Docket No. [TBD]

Hours of Service of Drivers; Pilot Program to Allow Commercial Drivers to Split Sleeper Berth Time

AGENCY: Federal Mot

or 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 rules for a limited number of commercial motor vehicle drivers who have a valid commercial driver's license, and who regularly use a sleeper berth to accumulate their required 10 hours of off-duty time. Interested carriers and drivers would need to meet certain criteria to be eligible for participation (see Section VII for more details on proposed eligibility criteria and Section VIII for more details on the proposed process for carriers and drivers to apply to the program). The pilot program would be structured in a naturalistic manner, where participating drivers would operate for a baseline period (proposed as 90 days) under current hours of service regulations and with the option to split their sleeper berth time utilizing expanded parameters specified by FMCSA (i.e. 6/4 and 5/5 splits only). The Agency would collect driver metrics (e.g., crashes, safety critical events, fatigue levels, caffeine consumption, duty status; see Section X for more details) for the duration of the study and analyze participants' safety performance and fatigue levels. This pilot program would seek to produce statistically reliable evidence as to whether additional split sleeper berth flexibility accommodates

employers' and drivers' scheduling preferences while optimizing driver productivity and maintaining safety performance at a level equivalent to, or greater than, that which 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 a subsequent **Federal Register** notice.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2016-0260 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: Dockets 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: 1200 New Jersey Avenue, S.E., West Building, Ground Floor, Room W12-140, Washington, D.C. 20590 between 9:00 a.m. and 5:00 p.m., 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 Dockets Operations.
- 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: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, 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: Ms. 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 Dockets Operations Services at (202) 366-9826. Further information will be posted at the Agency’s web site: <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 (TBD), 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, “[TBD]” 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.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA, 5 U.S.C. 552), CBI is exempt from public disclosure. If your comments contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket for this notice.

Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue S.E., Washington D.C. 20590. Any comments FMCSA receives which are not specifically designated as CBI will be placed in the public docket for this notice.

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, “[TBD]” 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 the Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590, between 9:00 a.m. and 5:00 p.m., 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 Dockets 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

Earlier Proposals

In December 2013, the American Trucking Associations, Inc., and the Minnesota Trucking Association submitted a joint proposal for a split sleeper berth pilot program. FMCSA's proposal is based, in part, on that joint proposal for a pilot program.

On June 6, 2017, FMCSA proposed a similar pilot program to allow temporary regulatory relief from the Agency's current sleeper berth regulation (82 FR 26232). FMCSA obtained approval from the Office of Management and Budget (OMB) to collect the information necessary to conduct this study on June 13, 2018 (Control Number 216-0066). In developing the August 22, 2019 (84 FR 44190) hours of service (HOS) notice of proposed rulemaking (NPRM), FMCSA determined that additional data collection on the question of allowing drivers who use sleeper berths to split their required 10 hours of off-duty time into two periods, one of which involved 7 consecutive hours in the berth (the 7/3 split) was unnecessary, as there existed sufficient literature and data to include this flexibility in the HOS rulemaking. Over 5,200 public comments were submitted in response to the HOS advance notice of proposed rulemaking (ANPRM) (83 FR 42631). Many of the comments and input received in other forums asked for additional flexibilities beyond a 7/3 split. However, FMCSA decided to not pursue a flexible sleeper berth pilot program at that time, instead using the HOS NPRM to ask the public whether data already existed on the 6/4 or 5/5 splits. No data was produced as a result of the NPRM, and therefore FMCSA is moving forward with a revised pilot program to collect this data.

Applicable Regulations

As described in 49 CFR 395.1(g)(1), a driver who operates a property-carrying commercial motor vehicle (CMV) equipped with a sleeper berth¹ and who uses the sleeper berth provision must take 10 hours off duty, which can be accomplished in several ways: a single consolidated period; or a sleeper berth period of at least 7

¹ A "sleeper berth" is a sleeping compartment installed on a CMV that complies with the specifications in 49 CFR 393.76.

consecutive hours, paired with another period of 3 or 2 hours, either in the sleeper berth, off duty, or any combination of the two, before returning to on-duty status (i.e., a 7/3 or 8/2 split). The two periods must equal at least 10 hours.

The Flexible Sleeper Berth Pilot Program would offer participating drivers additional flexibility from the currently allowed 8/2 and 7/3 sleeper berth splits.

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 Federal Motor Carrier Safety Regulations (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 for 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 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 public (49 CFR 381.500).

At the conclusion of each pilot program, the FMCSA will report 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. Proposed Structure of the Pilot Program

The purpose of this pilot program would be to examine whether regulatory flexibility related to the sleeper berth provision could be used to improve driver rest and alertness. Currently, any interstate driver who (1) operates a property-carrying CMV equipped with a sleeper berth, and (2) uses the sleeper berth provision, has the option to split the required 10 hours of non-duty time into two periods, either an 8/2 or 7/3 split, with neither period counting against the driver's 14-hour driving window, before returning to on-duty status.

The pilot program would be structured in a naturalistic manner, where data would be collected for a baseline period (proposed as a 90-day period) of drivers operating under the current HOS regulations. After this period, participating drivers would receive a temporary exemption from current sleeper berth requirements to allow drivers the additional flexibility to split their off-duty time into a 6/4 or 5/5 split. Drivers operating under the exemption for this study would be allowed to use any combination of split

sleeper periods totaling 10 hours, with neither period being less than 4 hours (i.e., both periods are 4 hours or more),² allowing for the driver to use splits of 4 and 6 hours, or two 5 hour periods. A driver who chooses to use the additional flexibilities under this pilot program exemption has several options: a single consolidated period; or a sleeper berth period of at least 4 consecutive hours, paired with another period of 6 or 5 hours, either in the sleeper berth, off duty, or any combination of the two, to ensure restorative rest before returning to on-duty status (i.e., a 6/4 or 5/5 split). The two periods must equal at least 10 hours. The Agency is proposing that drivers be allowed to participate for between 6 and 12 months and will finalize these details in future notices. Following study enrollment, drivers would be able to use split or consolidated sleep schedules as they choose (within study parameters), but they must still abide by all other regulations.

This pilot program would recruit motor carriers and commercial driver's license (CDL) holders who operate CMVs equipped with sleeper berths and who regularly use the sleeper berth provision. The study group would seek to include drivers from small, medium, and large carriers, as well as team drivers and owner-operators. To ensure statistical significance, FMCSA estimates a sample design of between 200 and 400 study group participants.

Participating carriers that meet the eligibility criteria, as described later in this notice (see Section VII), may assist in recruiting study group drivers. Drivers would be enrolled in the study contingent upon approval from their carrier, as applicable (owner-operators will not need to meet this requirement).

² Note that if a driver has one period less than 4 hours, the driver is in compliance with current rules and therefore not driving under the exemption.

The pilot program would collect driver identification details and data on sleep, safety-critical events (SCEs), subjective sleepiness ratings, and behavioral alertness throughout driver participation in the study. The Agency proposes that drivers participate for a period of at least 6 to 12 months and 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 will develop the applications, agreements, and forms to be used by interested carriers and potential study group members. Participating carriers will be publicly announced.

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

VII. Proposed Eligibility Criteria to Participate

A. Motor Carriers

The Agency proposes that, 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 carrier, as defined in the Agency's Federal Register notice titled "Notification of Changes to the Definition of a High Risk Motor Carrier and Associated Investigation Procedures" (81 FR 11875);
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 driver Out of Service (OOS) rate above the National average;
and
7. 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.

Motor carriers participating in the pilot program would be required to meet the following requirements:

- Grant permission for drivers to participate in the Flexible Sleeper Berth Pilot Program.
- Agree to comply with all pilot program procedures, which will be established and made available in written form to carrier-applicants prior to initiation of the pilot program.
- Grant permission for researchers to install a video-based onboard monitoring system (OBMS), or to utilize an existing video-based OBMS for data collection, and gather records of duty status (RODS) information for each participating driver throughout the study duration.

B. Study Group Drivers

The Agency proposes the following eligibility criteria for a driver to participate in the Flexible Sleeper Berth pilot program. A driver would not be eligible for participation in the pilot program if, during the two-year period immediately preceding the date of participation, the driver had his or her license suspended, revoked, cancelled, or had been disqualified for a conviction of one of the disqualifying offenses listed in 49 CFR 383.51.

In addition, drivers would be required to:

- Operate the same CMV (equipped with a sleeper berth) as their main source of employment and regularly use the sleeper berth;
- 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;
- Be employed by an approved motor carrier or certify as an owner-operator;
- Agree to the release of specific information³ to FMCSA for purposes of the pilot; and
- Agree to study procedures,⁴ including the use of RODS, video-based OBMSs, and actigraphs, which are worn like a watch on the wrist of the non-dominant hand to measure activity through light and movement to quantify and assess sleep/wake patterns of the wearer.

Additionally, drivers may not be slip-seat drivers who share use of the same truck or truck-tractor with another driver(s) during separate periods, such as shifts, days, or weeks, due to installed study equipment.

VIII. Proposed Process to Apply to Participate

A. Motor Carriers

- Would visit the pilot program website and complete an electronic application with screening questionnaire, which will request the following details, at a

³ Information will be specified by the time drivers apply to participate. Collection of specified information must be approved prior to initiation of pilot program.

⁴ Procedures will be specified by the time drivers apply to participate. Specific procedures must be established and approved prior to initiation of the pilot program.

minimum: name, job title, carrier information, company name, and carrier size.

The carrier must grant permission for video-based OBMS equipment to be temporarily installed in the vehicles of participating drivers or for the release of videos and other data from any existing OBMS equipment, and for drivers to use the study-provided system for recording HOS during the period of data collection.

- The carrier's representative must acknowledge that all driver data, to include OBMS video, driving data, sleep data, performance data, and caffeine 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

- Would visit the pilot program website 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, whether they regularly drive a truck equipped with a sleeper berth, whether they regularly use their sleeper berth, whether they have previously completed any modules of the North American Fatigue Management Program, 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.
- Identify their current employer to ensure the motor carrier is an approved motor carrier (unless the individual is an independent owner operator).

- Provide written, informed consent after a briefing session on data collection techniques and methods.

IX. Equivalent Level of Safety

FMCSA has evaluated the research cited in the Final Rule (Hours of Service of Drivers, 85 FR 33396, 33401 (June 1, 2020)) and determined that there is evidence that allowing drivers to utilize a 6/4 or 5/5 sleeper berth split for their 10-hour rest requirement is not likely to provide adverse safety outcomes as compared to current regulations. Furthermore, FMCSA will implement strict guidelines for who may participate in the pilot and what participants must do during the pilot to ensure the ability to adequately monitor their performance throughout the study.

FMCSA will ensure an equivalent level of safety by reserving the right to remove any participant who is not adequately completing data collection tasks and uploading their data in a timely manner or demonstrates increased crash risk or increased fatigue levels such that FMCSA has determined the driver could present a safety hazard to the motoring public.

Additionally, data collected will be monitored daily by the research team. The research team will be required to inform FMCSA within 24 hours if a participating driver is involved in a crash resulting in injury or fatality. Should there be any adverse outcomes identified, FMCSA may end the pilot program or remove a participating carrier to maintain equivalent safety levels.

X. Proposed 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. Proposed factors to be

collected from each participating carrier and driver before the pilot program begins (i.e., during the application phase) are discussed in Section VIII of this notice. Participating drivers would drive an instrumented vehicle (instrumented by the research team with a study-provided OBMS and custom ELD) throughout their participation (tentatively designed as a baseline period of up to 90 days operating under current HOS regulations, followed by a period of naturalistic driving under the exemption for a period of at least 6 to 12 months). During a pre-study briefing, participants would receive a study-provided smartphone or tablet (installed with a variety of data collection applications), as well as a wrist actigraphy device.⁵ Participants whose vehicles are not already equipped with a compatible RODS recording device and video-based OBMS would be provided with approved equipment. At a minimum, FMCSA would 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.
- Video-based 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).

⁵ 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.

- Wrist actigraphy data, to evaluate total sleep time, time of day sleep was taken, sleep latency, and intermittent wakefulness.
- Psychomotor Vigilance Test (PVT)⁶ data, to evaluate drivers' behavioral alertness based on reaction times.
- Subjective sleepiness ratings, using the Karolinska Sleepiness Scale,⁷ 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. For split-sleep days, drivers will record how and why they chose to split their sleep.

Other information that may be needed would 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.

XI. Paperwork Reduction Act

The pilot program would 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

⁶ 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.

⁷ 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.

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 posting possible IC burden data at this time. Once developed, a separate Federal Register Notice will be posted taking additional comments on the ICR.

XII. Removal from the Program

FMCSA would reserve the right to remove any motor carrier or driver from the pilot program for reasons related, but not limited to, failure to meet all program requirements or a determination of increased safety concerns. FMCSA would reserve 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.

XIII. 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 requirements for participating carriers and drivers needed to ensure that the pilot program provides a level of safety equivalent to that without the exemption for additional sleeper berth flexibility?

2. What safeguards should be considered to ensure that drivers are not forced to use the split sleeper berth provision at times and locations that the drivers believe are not conducive to obtaining a meaningful rest break?
3. Would the proposed data collection efforts for carriers and drivers discourage participation?
4. How should data collection efforts differ for team drivers?
5. 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?
6. Is the estimated sample size of 200-400 drivers sufficient to gain statistically significant findings?
7. Is 6 to 12 months' participation by an individual driver sufficient for data collection? Would a shorter period of data collection suffice?
8. Is a 90-day baseline period sufficient for comparison of driver performance between participating drivers operating under the current regulations against participating drivers operating with the exemption to allow additional sleeper berth flexibility?
9. 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?

10. Should FMCSA consider additional metrics other than crashes, safety critical events (e.g., speeding, lane deviation, hard braking), fatigue levels, driver distraction, or vehicle miles traveled?

Issued on:

James W. Deck
Deputy Administrator