



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA--2016-0394]**

**Agency Information Collection Activities; Approval of a New Information**

**Collection Request: Flexible Sleeper Berth Pilot Program**

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow for 30 days of public comment.

FMCSA proposes a pilot program to allow temporary regulatory relief from the Agency's sleeper berth regulation for a limited number of commercial drivers who have a valid commercial driver's license (CDL), and who regularly use a sleeper berth to accumulate their required 10 hours of non-duty work status. During the pilot program, participating drivers would have the option to split their sleeper berth time within parameters specified by FMCSA. Driver metrics would be collected for the duration of the study, and participants' safety performance and fatigue levels would be analyzed. This pilot program seeks to produce statistically reliable evidence on the question as to whether split sleeper berth time affects driver safety performance and fatigue levels.

**DATES:** Please send your comments by **[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER]**.

OMB must receive your comments by this date in order to act quickly on the ICR.

**ADDRESSES:** All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA-2016-0394. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov), or faxed to (202) 395-6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17<sup>th</sup> Street, N.W., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Nicole Michel, Research Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, by email at [nicole.michel@dot.gov](mailto:nicole.michel@dot.gov), or by telephone at (202) 366-4354. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

**SUPPLEMENTARY INFORMATION:**

**Title:** Flexible Sleeper Berth Pilot Program

**OMB Control Number:** 2126-00XX.

**Type of Request:** New information collection.

**Respondents:** Large, medium, and small motor carriers; independent owner-operators; and commercial motor vehicle (CMV) drivers who regularly use a sleeper berth.

**Estimated Number of Respondents:** 10 motor carrier responses; 1,000 CMV driver applications, with 240 drivers being accepted for participation in the pilot program.

**Estimated Time per Response:** Motor carriers: 1 hour (one-time response).

Drivers: online application—15 minutes (one-time response); background questionnaire and tax form—30 minutes (one-time response); daily field study data collection—30 minutes (daily, for a maximum of 90 days); weekly phone briefings—10 minutes (once weekly, for a maximum of 13 weeks); debriefing questionnaire—15 minutes (one-time response).

**Expiration Date:** N/A. This is a new information collection.

**Frequency of Response:** Motor carriers: one-time response. Drivers: one-time application; during the study, data collection occurs 3 to 4 times per day for a maximum of 90 days (see “Estimated Time per Response” for more details).

**Estimated Total Annual Burden:** 4,423 hours (7 hours for carrier tasks and 4,416 hours for driver tasks). The total annual number of carrier responses is seven. Reviewing the study materials and granting permission for drivers to participate is estimated to take 1 hour per carrier. Participating driver burden is associated with completing the online application, background questionnaire, daily data collection during the field study period, weekly phone briefings, and debriefing questionnaire. The online application is estimated to take 15 minutes, the background questionnaire and tax form (completed together) is estimated to take 30 minutes, and the debriefing questionnaire is estimated to take 15 minutes. Daily data collection during the field study is estimated to take 30 minutes per day, for up to 90 days. Weekly phone briefings are estimated to take 10 minutes per week. It is estimated that 40 drivers will participate for 14 days, 75 drivers will participate for 30 days, 75 drivers will participate for 60 days, and 50 drivers will participate for the maximum 90 days.

## **BACKGROUND:**

### **I. Project Summary**

As described in 49 CFR 395.1(g)(1), a driver who operates a property-carrying CMV equipped with a sleeper berth<sup>1</sup> and who uses the sleeper berth provision must take at least 8 consecutive hours in the sleeper berth, plus a separate 2 consecutive hours either in the sleeper berth, off duty, or any combination of the two, before returning to on-duty status.

During listening sessions for the hours-of-service (HOS) rulemaking, the Agency heard from many drivers that they would like some regulatory flexibility to be able to sleep when they get tired or as a countermeasure to traffic congestion (i.e., an exemption from the requirement for consolidated sleeper berth time). FMCSA has reviewed the literature and conducted its own laboratory studies on the subject. The majority of sleep studies to date demonstrate that well-timed split sleep has either a positive or no effect on subsequent neurobehavioral performance. To determine whether split sleeper berth time affects driver safety performance and fatigue levels, FMCSA is introducing a pilot program to allow temporary regulatory relief from 49 CFR 395.1(g)(1) (the sleeper berth provision) for a limited number of commercial drivers who have valid commercial driver's licenses (CDLs) and who regularly use sleeper berths.

The Flexible Sleeper Berth Pilot Program requires that participating drivers be provided relief from Part 395 concerning consolidated sleeper berth time requirements. Participating drivers will be asked if they have completed the Driver Education Module of the North American Fatigue Management Program (NAFMP) prior to study

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

enrollment. If drivers have not completed the program, they will be given information on the program and encouraged, but not required, to complete these modules prior to participation in the study. During the pilot program, participating drivers will have the option to split their sleeper berth time, within parameters specified by FMCSA (i.e., participants will have exemption from the requirement for consolidated sleeper berth time). Driver metrics will be collected for the duration of the study, as discussed in Section III of this notice. Upon completion of the program, participants' safety performance and fatigue levels will be analyzed, according to provision use, using a "within-subject and between-subject" study design. In this analysis, drivers will be compared among themselves and against other participating drivers. This pilot program seeks to produce statistically reliable evidence of the relationship between the degree of HOS flexibility and safety outcomes.

## **II. 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. Participating drivers will drive an instrumented vehicle for up to 3 consecutive months. At a minimum, FMCSA will gather the following data during the study:

- Electronic logging device (ELD) data, to evaluate duty hours and timing, driving hours and timing, rest breaks, off-duty time, and restart breaks.
- Onboard monitoring system (OBMS) data, to evaluate driving behaviors, safety-critical events (or SCEs, which include crashes, near-crashes, and other safety-related events), reaction time, fatigue, lane deviations, and traffic density, road curvature, and speed variability.

- Roadside violation data (from carriers and drivers), including vehicle, duty status, hazardous materials, and cargo-related violations (contingent upon inspections).
- Wrist actigraphy data,<sup>2</sup> to evaluate total sleep time, time of day sleep was taken, sleep latency, and intermittent wakefulness.
- Psychomotor Vigilance Test (PVT)<sup>3</sup> data, to evaluate drivers' behavioral alertness based on reaction times.
- Subjective sleepiness ratings, using the Karolinska Sleepiness Scale (KSS),<sup>4</sup> 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, such as vehicle miles traveled (VMT), 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.

### **III. Paperwork Reduction Act**

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

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<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

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 OMB as a formal ICR; the Agency cannot conduct the information collection until OMB approves the ICR.

#### **IV. Summary of Public Comments Received**

On June 27, 2017, FMCSA published a notice in the Federal Register (82 FR 29145) with a 60-day public comment period to announce this proposed information collection. As of the closing date of August 28, 2017, the agency received five comments in response to this notice.

One comment questioned the need for a pilot program given that the proposal is similar to the HOS rules prior to 2003. This commenter expressed an opinion that the HOS rules should just be reverted to the prior to 2003 HOS rules. While FMCSA understands the commenter's frustration with the process, our commitment to public safety requires us to conduct a pilot program to collect scientific data and achieve statistically significant findings before considering any revision to our current regulations.

Another commenter expressed a similar opinion regarding the HOS rules, which he felt should never have been changed in 2003. He felt that the HOS needed to be changed and re-evaluated for every different division of CMVs, but did express support of flexibility in sleeper berth times. FMCSA appreciates this commenter taking the time to provide feedback on the HOS rules, but felt that this comment went beyond the scope of this pilot program; however, the Agency appreciates his support of allowing a flexible sleeper berth pilot program to move forward.

The remaining three commenters were supportive of the proposed Pilot Program and proposed information collection, and expressed an opinion that this would make the roads safer and allow drivers to manage their duty hours more efficiently and use common sense to not drive when tired. FMCSA appreciates this support for the program, and has not made any changes or revisions to the design of the study based on these comments.

Additionally, a Federal Register notice announcing the Pilot Program was published on June 6, 2017, to allow for 60-days of public comment regarding the proposed program. The comment period closed on August 7, 2017, and has received 232 unique (233 total, one duplicate) public comments to date. The vast majority (over 175) of these comments were positive in nature. Several commenters expressed a desire to participate in the study, and several wanted the study expanded to incorporate other exemptions. While FMCSA understands the desire from drivers to re-open the HOS rules, specifically the 14-hour rule, the Pilot Program is designed to look at only Flexible Sleeper Berth times in order to achieve statistically significant results without the potential for introducing confounding variables into the study.

Approximately 40 commenters responded in a negative manner to the 14-hour rule, or having too many regulations in place, but were not specific to the Flexible Sleeper Berth Program. The majority of commenters who responded agreed that the NAFMP should be recommended, not mandatory. One commenter felt the NAFMP should be mandatory; however, FMCSA felt that the majority of commenters agreeing with the current study design showed that we should move forward without changing the design. One commenter felt that the cameras in the vehicle were too burdensome,



however, several others expressed that the data collection was reasonable for the scope of the study.

**PUBLIC COMMENTS INVITED:** You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: October 20, 2017.

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G. Kelly Regal,  
Associate Administrator for Office of  
Research and Information Technology.

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