[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA-2025-0193]

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

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

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

SUMMARY: FMCSA proposes a pilot program allowing temporary regulatory relief from the Agency's regulation requiring one rest period of at least 7 consecutive hours in the sleeper berth for drivers who elect to split their time in the sleeper berth. Participation in the pilot program would be limited to approximately 256 drivers of commercial motor vehicles (CMVs) who possess a valid commercial driver's license (CDL) and regularly utilize the sleeper berth. Both drivers who wish to participate in the pilot and their employing motor carriers would be required to meet specific eligibility criteria to participate. Drivers selected for participation would provide FMCSA with data for a 4-month period, divided into a "baseline" period of 1 month, during which they would comply with the current sleeper berth regulations, and another period of 3 months, during which they would operate under an exemption allowing additional flexibility in how they may split their sleeper berth time. The Agency would use the data collected to compare drivers' safety performance and fatigue levels between the baseline and exemption periods. The goal of the analysis would be to assess whether additional flexibility in how sleeper berth time may be split achieves a level of safety equivalent to that which would be achieved absent the regulatory relief.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES:

You may submit comments identified by Docket Number FMCSA-2025-0193 using any of the following methods:

- Federal eRulemaking Portal: Go to https://www.regulations.gov/docket/FMCSA-2025-0193/document. Follow the online instructions for submitting comments.
- Mail: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001, between 9 a.m. and 5 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.
- Fax: (202) 493-2251.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel White, Applied Research Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001; Samuel.White@dot.gov; (202) 875-1029. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2025-0193), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may

submit your comments and material online or 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 email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to https://www.regulations.gov/docket/FMCSA-2025-0193/document, click on this notice, click "Comment," and type your comment into the text box on the following screen.

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.

FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice 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 Freedom of Information Act, and they will not be placed in the public docket of the notice. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001 or via email at brian.g.dahlin@dot.gov. At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA

headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this notice.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to https://www.regulations.gov/docket/FMCSA-2025-0193/document and choose the document to review. To view comments, click this notice, then click "Browse Comments." If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 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.

C. Privacy

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, including any personal information the commenter provides, to www.regulations.gov as described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed at https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices. The comments are posted without edits and are searchable by the name of the submitter.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31315(c) to conduct pilot programs. These programs are research studies where one or more temporary exemptions are granted to a person or class of persons subject to certain Federal Motor Carrier Safety Regulations (FMCSRs), to allow for the testing of innovative alternatives to those regulations. (49 U.S.C. 31315(c)(1); see also 49 CFR 381.400). 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. (49 U.S.C. 31315(c)(2)). The requirements in 49 CFR part 395 – Hours of Service of Drivers, are eligible for pilot program exemptions. (49 CFR 381.400(f)(8)).

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, CMV, and driver safety, and improve compliance with the FMCSRs (49 U.S.C. 31315(e)).

III. Background

Earlier Proposals

In December 2013, the American Trucking Associations, Inc., and the Minnesota Trucking Association submitted a joint proposal[1] for a "flexible sleeper-berth pilot program." FMCSA's current proposal is based, in part, on that joint proposal for a pilot program. To reduce the potential for negative impacts on safety and ensure the collection of high-quality data, FMCSA also considered past research on sleep.

On June 6, 2017, FMCSA proposed a pilot program allowing temporary regulatory relief from the Agency's then-current sleeper berth regulations and permitting a variety of sleeper berth "splits" (82 FR 26232), as shown in the following table:

TABLE 1. EXAMPLES OF SLEEPER BERTH "SPLITS"

Examples of Sleeper Berth "Splits"				
Type of Split	Period I (Sleeper Berth)	Period II (Sleeper Berth, Off Duty, or Combination)	Allowed Under Current Regulations	Allowed Under Proposed Pilot Program
None	≥ 10 Hours	N/A	Yes	Yes
"8/2"	≥ 8 Hours	≥ 2 Hours	Yes	Yes

[1] A copy of the proposal is available in the docket for this notice.

“7/3”	≥ 7 Hours	≥ 3 Hours	Yes	Yes
“6/4”	≥ 6 Hours	≥ 4 Hours	No	Yes
“5/5”	≥ 5 Hours	≥ 5 Hours	No	Yes

However, when developing the August 22, 2019, hours of service (HOS) notice of proposed rulemaking (NPRM), FMCSA determined that additional data collection on the “7/3” split was unnecessary, as there existed sufficient literature and data supporting the inclusion of this flexibility in the HOS rulemaking (84 FR 44190). Consequently, FMCSA elected to not pursue the “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 provided in response to the NPRM, but the need remains for additional flexibility in how drivers may comply with the hours-of-service regulations. Therefore, FMCSA has decided to move forward with a revised version of the previously proposed pilot program to collect data on the safety impacts of allowing drivers to utilize “6/4” and “5/5” splits.

Applicable Regulations

As described in 49 CFR 395.1(g)(1), a driver who operates a property-carrying CMV who uses the sleeper berth to obtain the off-duty time required by § 395.3(a)(1) must accumulate at least 10 hours of off-duty time before starting a work shift.[2] The 10 hours may either be accumulated consecutively, or alternatively, split into 1 consecutive period of at least 7 hours in the sleeper berth and a second period of at least 2 consecutive hours of time in the sleeper berth, off duty time, or any combination thereof, provided that the total of the periods is at least 10 hours. In practice, this allows drivers to utilize any split of sleeper berth time including and between a “7/3” split and an “8/2” split.

In comparison, the Flexible Sleeper Berth Pilot Program would reduce the minimum length of the required sleeper berth period from 7 hours to 5 hours. In practice,

[2]A “sleeper berth” is a sleeping compartment installed on a CMV that complies with the specifications in § 393.76.

this would allow participating drivers to utilize additional splits, including, for example, a "6/4" split or a "5/5" split.

Previous Research

In 2010, the Agency held three listening sessions intended to solicit comments and information on potential HOS regulations (see 75 FR 285 (Jan. 5, 2010), 75 FR 2467 (Jan. 15, 2010), and 75 FR 9376 (Mar. 10, 2010)). Many drivers said they would like some regulatory flexibility (i.e., an exemption from consolidated sleeper berth time) to be able to sleep when they get tired or as a countermeasure to traffic congestion. Although the Agency's 2011 final rule (76 FR 81134 (Dec. 27, 2011)) did not include a provision allowing sleeper berth time to be taken non-consecutively ("split"), FMCSA determined that the issue should be explored in greater depth to determine whether additional flexibility achieves an equivalent or improved level of safety relative to compliance with the current regulations.

The Agency conducted a literature review on the topic of split sleep in 2015, the results of which suggested that sleep split into multiple segments is restorative,[3] and when implemented strategically, does not negatively impact performance.[4,5] Further, split sleep does not negatively affect daytime "neurobehavioral performance" when compared to a consolidated sleep period of the same total duration. Table 2 provides a list of selected studies that support the safety benefits of split sleep for transportation operators.

TABLE 2. SELECTED STUDIES SUPPORTING THE BENEFITS OF SPLIT SLEEP FOR TRANSPORTATION OPERATORS

Reference	Description
Thomas G. Raslear, Judith Gertler, and Amanda DiFiore (2013): "Work schedules, sleep, fatigue, and accidents in the U.S. railroad industry," ***Fatigue: Biomedicine, Health & Behavior***, 1:1-2, 99-115.[6]	Study analyzes results from five surveys administered between 2006 and 2011 and provides a comprehensive description of fatigue in U.S. railroad workers employed in safety-sensitive positions.

[3] See: https://downloads.regulations.gov/FMCSA-2016-0260-0313/attachment_9.pdf
[4] See: https://downloads.regulations.gov/FMCSA-2016-0260-0313/attachment_2.pdf
[5] Also noted by the authors of the 2013 proposal, which is included in the docket for this notice.
[6] Available at: https://downloads.regulations.gov/FMCSA-2016-0260-0313/attachment_1.pdf

Gianluca Ficca, John Axelsson, Daniel J. Mollicone, Vincenzo Muto, Michael V. Vitiello (2010): "Naps, cognition and performance," ***Sleep Medicine Reviews 14***, 249–258.[7]	Literature review explores daytime split-sleep schedules and their effects on recovery (compared with consolidated sleep schedules) and the benefits of naps in terms of wakefulness performance and cognition.
Daniel J. Mollicone, Hans P.A. Van Dongen, David F. Dinges (2007): "Optimizing sleep/wake schedules in space: Sleep during chronic nocturnal sleep restriction with and without diurnal naps," ***Acta Astronautica 60***, 354 – 361.[8]	Laboratory study of 93 adults investigates physiological sleep obtained in a range of restricted sleep schedules.
Daniel J. Mollicone, Hans P.A. Van Dongen, Ph.D., Naomi L. Rogers, Ph.D., and David F. Dinges, Ph.D. (2008): "Response Surface Mapping of Neurobehavioral Performance: Testing the Feasibility of Split Sleep Schedules for Space Operations," ***Acta Astronautica 63*** (7-10): 833–840.[9]	Laboratory study of 90 adults examined feasibility of split-sleep schedules for astronauts with mission-critical space operations involving restricted nighttime sleep.
J. Horne (2011): "Obesity and short sleep: unlikely bedfellows?," ***Obesity Reviews***, 12: e84–e94.[10]	Analysis critically examines the link between habitual short sleep and obesity, using a previously collected data set.
L. Di Milia, G. Kecklund (2013): "The distribution of sleepiness, sleep and work hours during a long-distance morning trip: A comparison between night- and non-night workers," ***Accident Analysis and Prevention***, 53:17-22.[11]	Study estimates the prevalence of chronic sleepiness and sleep restriction in a sample of 649 drivers.
Gregory Belenky, M.D., Steven R. Hursh, Ph.D., James Fitzpatrick, Hans P. A. Van Dongen, Ph.D. (2008): "Split Sleeper Berth Use and Driver Performance: A Review of the Literature and Application of a Mathematical Model Predicting Performance from Sleep/Wake History and Circadian Phase," American Trucking Associations.[12]	Study reviews the literature to examine the recuperative value of split versus consolidated sleep for performance and applies a mathematical model to evaluate the effects on performance of 288 sleeper berth provision compliant and non-compliant schedules.
Gregory Belenky, M.D., Melinda L. Jackson, Ph.D., Lindsey Tompkins, Brieann Satterfield, Amy Bender (2012): "Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health," FMCSA.[13]	In-residence laboratory study of 53 healthy participants provides between-group comparisons of nighttime, split, or daytime sleep across a 5-day simulated workweek.

FMCSA sponsored an in-residence laboratory study[14] titled "Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health."

[7] Available at: https://downloads.regulations.gov/FMCSA-2016-0260-0313/attachment_2.pdf
[8] Available at: https://downloads.regulations.gov/FMCSA-2016-0260-0313/attachment_3.pdf
[9] Available at: https://downloads.regulations.gov/FMCSA-2016-0260-0313/attachment_5.pdf
[10] Available at: https://downloads.regulations.gov/FMCSA-2016-0260-0313/attachment_4.pdf
[11] Available at: https://downloads.regulations.gov/FMCSA-2016-0260-0313/attachment_6.pdf
[12] Available at: https://downloads.regulations.gov/FMCSA-2016-0260-0313/attachment_7.pdf
[13] Available at: https://downloads.regulations.gov/FMCSA-2016-0260-0313/attachment_9.pdf
[14] Available at: https://downloads.regulations.gov/FMCSA-2016-0260-0313/attachment_4.pdf

The study was conducted from January 2010 through May 2011. Three sleep conditions were examined: consolidated nighttime sleep, split sleep (utilizing a "5/5" split analogous to the "5/5" split referenced in this notice), and consolidated daytime sleep. With respect to objectively measured sleep, during the 5-day simulated workweek, participants in the nighttime condition slept the most (8.4 hours ± 13.4 minutes), participants in the daytime condition slept the least (6.4 hours ± 15.3 minutes), and participants in the split-sleep condition fell somewhere in between (7.16 hours ± 14.2 minutes).

The study found that consolidated daytime sleep resulted in less total sleep time, increased subjective ratings of self-assessed sleepiness, and increases in blood glucose and testosterone at the end of the workweek (which are indicative of "metabolic perturbation") relative to the start. However, neither cognitive task performance nor driving performance in a driving simulator task were affected by a participant's sleep condition. The findings suggest that, with respect to total sleep time, consolidated sleep is better than split sleep if the consolidated sleep opportunity takes place at night, but that split sleep is better than consolidated sleep if the consolidated sleep opportunity takes place during the day. This laboratory study and the studies referenced in Table 2 (as well as others) provide the scientific basis for the present pilot program.

Previous sleep studies that have shown detrimental effects caused by split sleep are described in Table 3.

TABLE 3. SELECTED STUDIES SHOWING NEGATIVE IMPACTS OF SPLIT SLEEP FOR TRANSPORTATION OPERATORS

Reference	Description
NTSB (1995). ***Factors that affect Fatigue in Heavy Truck Accidents***. Volume I: Analysis. Safety Study NTSB Number: SS-95/01, NTIS Number: PB95-917001, Washington, D.C.[15]	Study determined that split-shift sleeper berth use increased the risk of fatality and that duration of last sleep as well as continuous sleep were the most important predictors of fatigue-related accidents.

[15] Available at: https://downloads.regulations.gov/FMCSA-2016-0260-0313/attachment_12.pdf

Hertz, R.P., "Tractor-Trailer Driver Fatality: The Role of Nonconsecutive Rest in a Sleeper Berth," Insurance Institute for Highway Safety, October 1987. Revised Feb. 1988. http://www.fmcsa.dot.gov/rules-regulations/administration/rulemakings/final/05-16498-HOS-Final-Rule-8-25-05.htm.[16]	Study found that CMV driver fatality was significantly associated with split sleeper berth use and that the quality and quantity of sleep obtained in the sleeper berth was less than that obtained when sleeping at home.
Dingus, et al, "Impact of Sleeper Berth Usage on Driver Fatigue," NHTSA, 2002. https://www.regulations.gov/document/FMCSA-2004-19608-1994.[17]	Concluded that sleeping in a moving vehicle impaired the quality of rest.[18]
Pilcher, JJ and Huffcutt, Al. "Effects of sleep deprivation on performance: a meta-analysis." Pubmed.gov, May 1996. https://www.ncbi.nlm.nih.gov/pubmed/8776790.[19]	Found that a single, longer sleeping period was more refreshing that splitting sleep into multiple shorter periods and that fatigue and micro sleeps were more likely when an individual experienced disturbed sleep.

The studies shown in Table 3 have findings that may be outdated due to advances in methods of conducting studies as well as advances in the understanding of fatigue, fatigue management, and how different sleep patterns affect performance and fatigue. More recent studies provide evidence that the circadian rhythm affects fatigue more than splitting sleep does, and that splitting sleep may be more beneficial than sleeping in a single rest period during daylight hours. A literature review performed by Belenky, et al, in 2008[9] provided further evidence supporting the proposed pilot program, notwithstanding the findings shown in Table 3, and addressed the majority of the publications cited in Table 3 with respect to the question of revisiting the subject of split sleep.

IV. Pilot Program Requirements

Specific requirements for pilot programs are found in 49 U.S.C. 31315(c) and 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

[16] Available at: https://downloads.regulations.gov/FMCSA-2016-0260-0313/attachment_8.pdf
[17] Available: https://downloads.regulations.gov/FMCSA-2016-0260-0313/attachment_11.pdf
[18] Note that the referenced study is applicable to team driving scenarios.
[19] Available at: https://downloads.regulations.gov/FMCSA-2016-0260-0313/attachment_10.pdf

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 the following elements in each pilot program plan:

(A) A scheduled life of each pilot program of not more than 3 years.

(B) A specific data collection and safety analysis plan that identifies a method for comparison.

(C) A reasonable number of participants necessary to yield statistically valid findings.

(D) An oversight plan to ensure that participants comply with the terms and conditions of participation.

(E) Adequate countermeasures to protect the health and safety of study participants and the general public.

(F) A plan to inform State partners and the public about the pilot program and to identify approved participants to safety compliance and enforcement personnel and to the public.

At the conclusion of each pilot program, 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 (§ 381.520, see also 49 U.S.C. 31315(c)(5)).

Scheduled Life of Pilot Program

The pilot program will take approximately 34 months (up to 36 months) to complete in its entirety.

Specific Data Collection and Safety Analysis Plan

As detailed in this notice, the data collection portion of the pilot program will be 4 months per participating driver. Of that time, for each driver, 1 month will involve the

collection of data while the driver operates under "baseline" conditions (i.e., according to the current regulations). The remaining 3 months of the data collection period will consist of operations under the exemption.

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 information to be collected from each participating motor carrier and driver before the pilot program begins (i.e., during the application phase) are discussed in Section VIII of this notice. Following a pre-study briefing, participants would receive a study-provided smartphone installed with data collection applications necessary for the research (e.g., fatigue measurement apps, survey apps, etc.). These would not include any automated data collection applications that collect and record information without the driver's consent. Drivers would also receive a wearable wrist actigraphy device (e.g., a "smartwatch").[20] At a minimum, FMCSA would gather the following data during the study:

- Records of duty status prepared using an electronic logging device, to evaluate participants' use of the split duty period exemption.
- Roadside inspection data and crash records.
- Wrist actigraphy data, to evaluate total sleep time, time of day sleep was taken, and sleep quality, e.g., sleep latency and intermittent wakefulness.
- Psychomotor Vigilance Test (PVT) data, to evaluate drivers' behavioral alertness/effects of fatigue, based on reaction times. For this study, drivers would 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.

[20] Participants will wear wrist actigraphy devices throughout their participation in the study. Actigraphy is a minimally obtrusive, validated approach to assessing sleep/wake patterns.

- Subjective sleepiness ratings, using the Karolinska Sleepiness Scale (KSS),[21] to measure drivers' perceptions of their fatigue levels.
- Survey data (e.g., driver pre-and-post study surveys to provide contextual information).
- Other information necessary to complete the analyses may be collected through the participating motor carrier. Every effort will be made to reduce the burden on the motor carrier in collecting and reporting this data.

The "method of comparison" for the "safety analysis plan" will vary depending on the data, but may include *t*-tests, χ^2 tests, other inferential/descriptive statistics, and/or qualitative analyses to include case narratives (e.g., for crash events). To make effective comparisons between drivers operating in compliance with the current regulations and drivers operating under the conditions of the exemption, the study has been structured as a *within subjects* research design, which will compare data for the same drivers operating under both conditions.

FMCSA acknowledges the potential for employing motor carriers, shippers, and receivers to pressure participating drivers to use the exemption in a manner which benefits their business needs but not the driver's own schedule, restfulness, and safe driving behavior. This is not FMCSA's intended outcome for the proposed pilot program, nor the intended usage of the exemption covered by the proposed pilot program. During the proposed pilot program, FMCSA would actively monitor and watch for any indication that shippers, receivers, or employing motor carriers are inappropriately influencing or misusing a driver's ability to determine how and when to utilize the flexibility provided by the exemption.

Reasonable Number of Participants Necessary to Yield Statistically Valid Findings

[21] The KSS is a nine-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.

FMCSA is not aware of any past research which could be used to guide estimates of effect sizes for fatigue/self-reported sleepiness/actigraphy data as it pertains to the proposed pilot program's flexible sleeper berth split options. Therefore, preliminary power analyses were performed to estimate ranges of required sample sizes given rough benchmarks for practically significant effect sizes. Because FMCSA is proposing to use a within-subjects research design, the analyses began with a power analysis for a *t*-test examining the difference between dependent means, using a rough benchmark for a moderate effect size, d_z of 0.25, α error probability = 0.05, and statistical power of (1 – β) = 0.95. This yielded a sample size estimate of 175 participants.

Because the true effect sizes are unknown and may be smaller than estimated in the previous paragraph, further analyses focused on accepting slightly decreased statistical power (e.g., 0.80) while increasing sample size to increase the chances of detecting smaller effects using the same type of *t*-test. Based on those additional analyses, FMCSA selected an increased target sample size of 256 drivers.

This number is advantageous in that it provides a moderately improved probability of detecting "small" effect sizes relative to a sample size of 175, while providing adaptability to changes in research needs that might arise going forward (e.g., a change to a mixed design vs the present plan to utilize a within subjects design).

Oversight Plan to Ensure that Participants Comply with the Terms and Conditions of Participation

Eligibility criteria for participation in the proposed pilot program are covered in section VII of this notice.

To ensure that drivers and motor carriers continue to meet these criteria, that the use of the exemption is according to the terms and conditions covered in this notice, and that drivers and motor carriers continue to provide the agreed-upon data, the following oversight plan, or a variation of it, will be used:

1) Carriers' SMS data, including out-of-service rates and other performance parameters, will be reviewed on a monthly basis during the data collection portion of the pilot program.
2) Carriers' crash records, including any crashes involving participating drivers, will be reviewed at frequency of not less than every two days during the data collection portion of the pilot program.
3) Carriers' Motor Carrier Management Information System data, including licensing and insurance data, will be reviewed at a frequency of not less than every three days during the data collection portion of the pilot program.
4) Incoming data, including, for example, actigraph records and records of duty status prepared using an electronic logging device, will be reviewed daily to weekly, depending on the element being reviewed.

Adequate countermeasures to protect the health and safety of study participants and the general public.

FMCSA believes that the same measures which would be used to verify motor carrier/driver compliance with the terms and conditions of the pilot program represent adequate countermeasures to protect the health and safety of study participants and the general public.

In addition, FMCSA would reserve 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. (see 49 U.S.C. 31315(c)(3)). FMCSA would additionally reserve the right to terminate the pilot program at any time such as if there is evidence of increased safety risk resulting from the use of the exemption to split time in the sleeper berth (see 49 U.S.C. 31315(c)(4)).

Plan to inform State partners and the public about the pilot program and to identify approved participants to safety compliance and enforcement personnel and to the public.

FMCSA plans to inform State partners about the program through a variety of means, including e-mail announcement, announcement on the FMCSA website, and discussion of the program at events frequently attended by representatives of State partner agencies.

FMCSA will identify approved participants to safety compliance and enforcement personnel via document provided to each participant that must be carried by the driver during the data collection portion of the pilot program which identifies them as an approved participant. In addition, FMCSA will provide a list of participating motor carriers and drivers to State and Federal enforcement officials via FMCSA's Query Central system. Query Central is a non-public system accessible to State and Federal enforcement officials. Separately, FMCSA will provide a list of participating motor carriers (but not participating drivers) on its public website.

FMCSA plans to identify participating motor carriers to the public via a page on the FMCSA website, updated periodically as necessary to reflect changes in participation status.

V. Proposed Structure of the Pilot Program

The purpose of this pilot program would be to examine whether providing additional regulatory flexibility related to the sleeper berth provision achieves an equivalent level of safety relative to current regulations.

At present, a driver may accumulate the equivalent of at least 10 consecutive hours off-duty by taking not more than two periods of either sleeper berth time or a combination of off-duty time and sleeper berth time if:

(A) Neither rest period is shorter than 2 consecutive hours;

(B) One rest period is at least 7 consecutive hours in the sleeper berth;

(C) The total of the two periods is at least 10 hours; and

(D) Driving time in the period immediately before and after each rest period, when added together:

(1) Does not exceed 11 hours under § 395.3(a)(3); and

(2) Does not violate the 14-hour duty-period limit under § 395.3(a)(2).

The pilot program would be conducted in the form of a research study in which drivers selected for participation would provide FMCSA with data for a 4-month period, divided into a "baseline" period of 1 month, during which the drivers would comply with the current sleeper berth regulations, and another period of 3 months, during which they would operate under an exemption from current sleeper berth regulations. Participating drivers would be exempt from the requirements of § 395.1(g)(1)(ii)(B) and instead would be required to take one rest period of at least 5 consecutive hours in the sleeper berth. This change would result in drivers having the option to select alternative split formats for sleeper berth time, including "5/5" and "6/4" splits.

This pilot program would recruit motor carriers and CDL drivers who operate a CMV equipped with a sleeper berth and who regularly use the sleeper berth provision. The sample would incorporate drivers from small, medium, and large carriers, including owner-operators. FMCSA plans to collect data from approximately 256 participants. The pilot program would involve the collection of various safety performance and fatigue-related data from participating drivers (see subsection titled "Specific Data Collection and Safety Analysis Plan" in Section IV of this notice).

VI. Management of the Pilot Program

FMCSA has designated a program 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 participation in the pilot program is contingent upon a motor carrier meeting 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 (Mar. 7, 2016));
4. Must not have a conditional or unsatisfactory safety rating;
5. Must not have any enforcement actions within the past 3 years;[22]
6. Must not have a driver out of service (OOS) rate above 5.97%[23]; and,
7. Must not have a vehicle OOS rate above the 21.41%[24].

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.

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[22] Enforcement actions include, for example, federal out of service orders and/or monetary penalties issued by FMCSA to a motor carrier or driver for non-compliance.
[23] Lowest annual average national driver out-of-service rate for past 5 calendar years (2021 – 2025) per FMCSA's Analysis & Information website at time of this notice.
[24] Lowest annual average national vehicle out-of-service rate for past 5 calendar years (2021 – 2025) per FMCSA's Analysis & Information website at time of this notice.

- Agree to comply with all pilot program procedures, which will be established and made available in written form to motor carrier applicants prior to initiation of the pilot program.
    - Grant permission for researchers to gather records of duty status prepared using an electronic logging device for each participating driver throughout the study duration, which will allow the researchers to determine whether drivers are utilizing the flexible sleeper berth exemption and how. Records of duty status provided for this pilot program will be:
        - Transferred by the motor carrier directly to third-party researchers contracted by FMCSA.
        - Stored securely and used by the researchers contracted by FMCSA only for the purposes of research for this pilot program as described in this Federal Register notice and as approved by an Institutional Review Board.
        - Described in the results section of a research report resulting from this pilot program only in an aggregate or anonymized manner.

      Records of duty status provided to the researchers for this pilot program will not be:
        - Transferred to FMCSA.
        - Possessed by FMCSA.
        - Reviewed by FMCSA.
        - Used by FMCSA for enforcement actions against a motor carrier or driver for noncompliance.
- Grant permission for drivers participating in the study to operate under the flexible sleeper berth exemption.

B. 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 2-year period immediately preceding the date of participation, the driver had his or her license suspended, revoked, cancelled, or has been disqualified for a conviction of one of the disqualifying offenses listed in § 383.51. In addition, drivers would be required to:

- For the purposes of the study, operate the same CMV (equipped with a sleeper berth) as operated for their main source of employment and regularly use the sleeper berth;
- Possess 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 a motor carrier who has been approved for participation in the pilot program and/or certify as an owner-operator;

Agree to comply with the study procedures, including the use of a wearable actigraph, the completion of tests/surveys related to fatigue/sleepiness, and the preparation of records of duty status using an electronic logging device. Records of duty status, actigraph data, and data collected using test/survey instruments will be transferred to third-party researchers contracted by FMCSA to perform the research services for the pilot program. The researchers will not transfer any of this data or information to FMCSA. It will not be used by FMCSA for the purposes of enforcement actions against a participating motor carrier or driver. It will only be used by the researchers for the research purposes described in this Federal Register notice, including to verify and characterize drivers' use of the optional pause, the effects of the pause on fatigue and driving behavior, and participants' adherence to the parameters of the pilot program. If

this pilot program results in a research report, this data will only be presented in an aggregated or anonymized fashion such that an individual driver's data or identity could be determined from the information appearing in the report. FMCSA would also reserve the right to exclude from participation any driver who the Agency believes has a safety history incompatible with the interests of the pilot program.

VIII. Proposed Process to Apply to Participate

A. Motor Carriers

- Visit the pilot program website 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's representative must acknowledge that any/all driver data collected, including driving data (except data covered by part 395 of the FMCSRs), sleep/fatigue data, and performance data, must remain confidential and will not be shared with the company.

B. Study Group Drivers

- Visit the pilot program website and complete an electronic application including the following details, at a minimum: name, contact information, Medical Certification expiration date, CDL status, typical operation type (e.g., solo, team, etc.), duty reporting location, whether they regularly drive a truck equipped with a sleeper berth, whether they regularly use their sleeper berth, and whether they currently prepare RODS using an electronic logging device (ELD).
- 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 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 this notice and determined that lab studies and other research indicate 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 result in adverse safety outcomes relative to compliance with current regulations. Furthermore, FMCSA will implement strict guidelines detailing who may participate in the pilot and what participants must do during the pilot to ensure adequate monitoring of performance throughout the study.

FMCSA will further support efforts to 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 who demonstrates increased crash risk/increased fatigue levels such that FMCSA determines the driver could present a safety hazard to the motoring public.

Additionally, data collected will be monitored by the research team. The contracted research team will be required to inform FMCSA within 24 hours after learning that a participating driver is involved in a recordable crash. Should there be any adverse outcomes identified, FMCSA may end the pilot program early or remove a participating carrier as a measure to maintain an equivalent level of safety.

X. 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 (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 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 published to solicit comments on the ICR.

XI. 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 (see 49 U.S.C. 31315(c)(3)). FMCSA would reserve the right to terminate the pilot program at any time if, for example, there is evidence of increased safety risk by carriers and/or drivers participating in the pilot program (see 49 U.S.C. 31315(c)(4)).

XII. 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 employing motor carriers, shippers, and receivers do not abuse the split sleeper berth provision (including the additional options covered by the proposed pilot program) by coercing or forcing participating drivers to use it at/during times not chosen by the driver?
3. What measures should FMCSA take to disincentivize abuse of the flexible sleeper berth exemption by shippers and receivers (e.g., through coercion, imposing of additional delays on participating drivers while waiting to load/unload, etc.)?
4. Would the proposed data collection efforts for carriers and drivers discourage participation?
5. Should FMCSA consider collecting additional data/metrics other than those listed in this notice?
6. Is the proposed 4 months' participation/data collection for an individual driver sufficient?
7. Is a 1-month baseline period sufficient for comparison of drivers operating under the current regulations vs operating under the exemption?
8. Is the estimated sample size of 256 drivers sufficient to establish reasonable statistical power?
9. What additional factors, such as driver sex, geographic location, age, operating types, or driver experience, should be considered when selecting participants to ensure a representative sample is achieved?
10. Should FMCSA consider requesting participating carriers grant voluntary permission for the collection of data from their existing outward facing cameras

(for the purposes of capturing crash and safety critical event video footage), provided their decision does not affect their eligibility to participate in the pilot program?

11. Should FMCSA consider requesting participating carriers grant voluntary permission for the collection of data from their existing telematics systems (e.g., for driving events such as instances of harsh braking) provided their decision does not affect their eligibility to participate in the pilot program?

In addition, FMCSA encourages motor carriers and owner operators who are interested in participating in the proposed pilot program to express this interest via public comment.

Issued under authority delegated in 49 CFR 1.87.

Jesse Elison
Chief Counsel

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