

**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 395**

**[Docket No. FMCSA-2018-0248]**

**RIN 2126-AC19**

**Hours of Service of Drivers**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** FMCSA proposes amendments to its hours-of-service (HOS) requirements to provide greater flexibility for drivers subject to the HOS rules without adversely affecting safety. First, the Agency proposes to change the short-haul exception to the record of duty status (RODS) requirement available to certain commercial motor vehicle (CMV) drivers by lengthening the drivers' maximum on-duty period from 12 to 14 hours and extending the distance limit within which the driver may operate from 100 air miles (115.08 statute miles) to 150 air miles (172.6 statute miles). Second, the Agency proposes to modify the adverse driving conditions exception by extending by 2 hours the maximum window during which driving is permitted. Third, the Agency proposes to increase flexibility for the 30-minute break rule by requiring a break after 8 hours of driving time (instead of on-duty time), and allowing the requirement to be satisfied by an on-duty break from driving, rather than requiring an off-duty break. Fourth, the Agency proposes to modify the sleeper-berth exception to allow drivers to split their required 10-hours off duty into two periods: one period of at least 7 consecutive hours in the sleeper berth and the other period of not less than 2 consecutive hours, either off duty or in the

sleeper berth. Neither period would count against the driver's 14-hour driving window. Fifth, the Agency proposes to allow one off-duty break of at least 30 minutes, but not more than 3 hours, that would pause a truck driver's 14-hour driving window, provided the driver takes 10 consecutive hours off-duty at the end of the work shift. Today's NPRM also poses questions about other HOS-related topics the Agency is considering as part of this rulemaking.

**DATES:** Comments on this notice must be received on or before [INSERT DATE 45 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA-2018-0248 using any of the following methods:

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

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, by telephone at (202) 366-4325, or email at [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

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- Q. Environment (NEPA, CAA)

## **I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS**

### **A. Submitting Comments**

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA-2018-0248), indicate the specific section of this document to which each 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 telephone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA-2018-0248, 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 on 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 and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

*Confidential Business Information*

Confidential Business Information (CBI) is commercial or financial information that is customarily not made available to the general public by the submitter. Under the Freedom of Information Act (5 U.S.C. 552), CBI is eligible for protection from public disclosure. If you have CBI that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Accordingly, please mark each page of your submission as “confidential” or “CBI.” Submissions designated as CBI and meeting the definition noted above will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001. Any commentary that FMCSA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

**B. Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number,

FMCSA-2018-0248, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 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. ET, Monday through Friday, except Federal holidays.

**C. 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](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.transportation.gov/privacy](http://www.transportation.gov/privacy).

**D. Advance Notice of Proposed Rulemaking**

Under section 5202 of the Fixing America’s Surface Transportation Act (FAST Act), Pub. L. 114-94, 129 Stat. 1312, 1534-1535 (Dec. 4, 2015), if a regulatory proposal is likely to lead to the promulgation of a major rule, FMCSA is required to engage in negotiated rulemaking or publish an advance notice of proposed rulemaking (ANPRM), unless the Agency finds good cause that an ANPRM is impracticable, unnecessary, or contrary to the public interest (49 U.S.C. 31136(g)). FMCSA published an ANPRM on August 23, 2018 (83 FR 42631).<sup>1</sup>

**II. EXECUTIVE SUMMARY**

**A. Purpose and Summary of the Regulatory Action**

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<sup>1</sup> On August 21, 2018, FMCSA posted the ANPRM at <https://www.fmcsa.dot.gov/regulations/hours-service-advanced-notice-proposed-rulemaking>.

The implementation of the Electronic Logging Device (ELD) rule (80 FR 78292, Dec. 16, 2015) and the ELD's ability to increase compliance with HOS regulations for drivers of CMVs prompted numerous requests from Congress and from CMV operators for FMCSA to consider revising certain HOS provisions. FMCSA has received petitions from multiple stakeholders requesting relief from the HOS rules, including the Owner-Operator Independent Drivers Association (OOIDA) and TruckerNation.org (TruckerNation).<sup>2</sup> In response, FMCSA published the August 23, 2018 ANPRM, and held five public listening sessions. Today's NPRM addresses the areas of concern discussed in the petitions, listening sessions, and in the ANPRM.

**B. Summary of Major Provisions**

Today's proposal would improve efficiency by providing flexibility in five areas, allowing operators to shift their work and drive time to mitigate the effect of certain variables (e.g., weather, traffic, detention times). Today's proposal would extend the maximum duty period allowed under the short-haul exception available to certain CMV drivers under 49 CFR 395.1(e)(1) from 12 hours to 14 hours. It would also extend, from a 100 to a 150 air-mile radius, the maximum distance from the work-reporting location in which drivers qualifying for the short-haul exception may operate. FMCSA also proposes to modify the exception for adverse driving conditions in § 395.1(b)(1) by allowing such conditions to extend the maximum driving windows under §§ 395.3(a)(2) and 395.5(a)(2) by up to 2 hours. The Agency proposes to make the 30-minute break requirement for property-carrying CMV drivers in § 395.3(a)(3)(ii) applicable only in situations where a

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<sup>2</sup> These are available in the public docket for this rulemaking at: <https://www.regulations.gov/document?D=FMCSA-2018-0248-1210> and <https://www.regulations.gov/document?D=FMCSA-2018-0248-0003>, respectively.

driver has driven for a period of 8 hours without at least a 30-minute non-driving interruption. If required, a 30-minute break could be satisfied with a period, either off duty, in the sleeper berth, or on-duty not-driving. FMCSA also proposes to modify the sleeper-berth requirements to allow drivers to take their required 10 hours off duty in two periods, provided one off-duty period (whether in or out of the sleeper berth) is at least 2 hours long and the other involves at least 7 consecutive hours spent in the sleeper berth. Neither time period would count against the maximum 14-hour driving window in § 395.3(a)(2). Finally, FMCSA proposes to add a new option under § 395.3(a)(3)(iii) that would allow one off-duty break of at least 30 minutes, but not more than 3 hours, during the course of a driver's 14-hour driving window to extend that period for the length of the break, provided drivers take at least 10 consecutive hours off duty at the end of the work shift.

### **C. Costs and Benefits**

The proposed rule would not result in any new costs for regulated entities. Instead, the proposed rule would result in increased flexibility for drivers and a quantified reduction in costs for motor carriers. The Federal Government would incur a one-time electronic Record of Duty Status (eRODS) software update cost of approximately \$20,000. The proposed change to the 30-minute break requirement would result in a reduction in opportunity cost, or a cost savings, for motor carriers. FMCSA estimates that the 10-year motor carrier cost savings attributable to the proposed changes to the 30-minute break provision, net of the Federal Government costs, would total \$2,348.9 million discounted at 3 percent, and \$1,931 million discounted at 7 percent. These cost savings are \$275.4 million annualized at a 3 percent discount rate and \$274.9 million



annualized at a 7 percent discount rate. All values are in 2017 dollars. There are a number of other potential cost savings of this proposed rule that FMCSA considered but, due to uncertainty about driver behavior, could not quantify on an industry level. These non-quantified cost savings include increased flexibility resulting from the extension of the duty day and the air-mile radius for those operating under the short-haul exception; the increased options for drivers to respond to adverse driving conditions during the course of their duty period; reducing the need to apply for exemptions from the 30-minute break requirement; and increased flexibility afforded to drivers, such as increased options with regard to on-duty and off-duty time resulting from changes to the 30-minute break requirement, the sleeper-berth provisions, and the new split duty period provision.

None of the proposals in today's NPRM would increase the maximum allowable driving time, but may change the number of hours driven, or hours worked during a given work shift. The flexibilities in this proposal are intended to allow drivers to shift their drive and work time to mitigate the impacts of certain variables (e.g., weather, traffic, detention times) and to take breaks without penalty when they need rest; FMCSA does not anticipate that any of these time shifts would negatively impact drivers' health. As discussed later in this document, FMCSA anticipates that individual drivers may see a change in their work hours (both driving and non-driving) or vehicle miles traveled (VMT), but that the proposed changes would not result in an increase in freight movement or aggregate VMT. Aggregate VMT is determined by many factors, including market demand for transportation. FMCSA does not anticipate that the changes proposed in this rule would stimulate demand in the freight market, but acknowledges that freight loads may shift from one carrier or driver to another. However, FMCSA also

acknowledges that if drivers and motor carriers cannot meet the current freight demands, the proposed rule may enable them to rearrange their daily schedules such that additional loads could be moved, resulting in an increase in aggregate VMT. FMCSA considers this an unlikely outcome of the proposed rule, and after consideration of the potential impacts, has determined that this proposal would not adversely affect driver fatigue levels or safety.

**Table 1. Today's Proposal.**

HOS Provision	Existing Requirement	Proposed Changes	Potential Impacts
<b>Short Haul</b>	<p>Drivers using the short haul exception applicable to drivers requiring CDL may not be on duty more than 12 hours.</p> <p>Drivers using the short haul exception applicable to drivers requiring CDL may not drive beyond a 100 air-mile radius.</p>	<p>Would extend the maximum duty period allowed under the short-haul exception available to certain CMV drivers from 12 hours to 14 hours.</p> <p>Would also extend, from a 100 to a 150 air-mile radius, the maximum distance in which drivers qualifying for the short-haul exception may operate.</p>	<p>Increase the number of drivers able to take advantage of the short-haul exception.</p> <p>Shift work and drive time from long-haul to short-haul, or from driver to driver.</p> <p>No increase in freight movement or aggregate VMT.</p>
<b>Adverse Driving Conditions</b>	<p>A driver may drive and be permitted or required to drive a commercial motor vehicle for not more than 2 additional hours beyond the maximum time allowed. However, this does not currently extend the maximum "driving windows."</p>	<p>Would allow a driver to use the adverse driving conditions exception to extend the maximum "driving windows" by up to 2 hours. This proposed change would apply for both property-carrying (14-hour "driving window") and passenger-carrying (15-hour "driving window") operators.</p>	<p>Increase the use of the adverse driving condition provision.</p> <p>Allow driving later in the work day, potentially shifting forward the hours driven and VMT travelled.</p> <p>Allow drivers time to park and wait out the adverse condition or driving slowly through it. This has the potential to decrease crash risk relative to current requirements, assuming drivers now drive through adverse conditions.</p> <p>No increase in freight volume or aggregate VMT, as adverse</p>

			conditions cannot be planned for in advance.
<b>30 Minute Break</b>	If more than 8 consecutive hours have passed since the last off-duty (or sleeper berth) period of at least half an hour, a driver must take an off-duty break of at least 30 minutes before driving.	Would make the 30-minute break requirement for property-carrying CMV drivers applicable only in situations where a driver has driven for a period of 8 hours without at least a 30-minute interruption. If required, a 30-minute break could be satisfied with a non-driving period, either off duty, in the sleeper berth, or on-duty not-driving.	<p>Increase the on-duty/non-driving time by up-to 30 minutes, or allow drivers to reach their destination earlier.</p> <p>No anticipated fatigue effect because drivers continue to be constrained by the 11-hour driving limit and would continue to receive on-duty/non-driving breaks from the driving task. Additionally, drivers are enabled to take off-duty breaks when needed via the split-duty day provision.</p> <p>Minimal or no change to hours driven or VMT, as the current off-duty break only impacts these factors if the schedule required driving late within the 14-hour driving window.</p>
<b>Split-Sleeper Berth</b>	A driver can use the sleeper berth to get the “equivalent of at least 10 consecutive hours off duty.” To do this, the driver must spend at least 8 consecutive hours (but less than 10 consecutive hours) in the sleeper berth. This rest period does not count as part of the 14-hour limit. A second, separate rest period must be at least 2 (but less than 10) consecutive hours long. This period may be spent in the sleeper berth, off duty, or sleeper berth and off duty combined. It does count as part of the maximum 14-hour driving window.	Would modify the sleeper-berth requirements to allow drivers to take their required 10 hours off-duty in two periods, provided one off-duty period (whether in or out of the sleeper berth) is at least 2 hours long and the other involves at least 7 consecutive hours spent in the sleeper berth. Neither time period would count against the maximum 14-hour driving window.	<p>Allow one hour to be shifted from the longer rest period to the shorter rest period.</p> <p>Potentially increase the use of sleeper berths because drivers using a berth have two additional hours to complete 11 hours of driving (by virtue of excluding the shorter rest period from the calculation of the 14-hour driving window).</p> <p>No anticipated effect on fatigue because aggregate drive limits and off-duty time remains unchanged.</p> <p>Hours driven or VMT may change for an individual driver on a given work shift (by increased use of the sleeper berth). Total hours driven or aggregate VMT would remain the same.</p>
<b>Split-Duty Provision</b>	Once the duty period starts, it runs for 14 consecutive hours, after which the driver may not drive a commercial motor vehicle (CMV) again until having another 10 or more consecutive hours off duty. Nothing stops the running of the “14-hour clock” except a minimum 8-	Would add a new option for one off duty break of at least 30 minutes, but not more than 3 hours, during the course of a driver’s 14-hour “driving window” to extend that period for the length of the break, provided that drivers take at least 10 consecutive hours off	<p>Allow up to 3 hours in an off-duty status to be excluded from the 14-hour driving window.</p> <p>Drivers could use this time to: rest without the penalty of losing time in their driving window, avoid traffic via waiting in a parking lot and increase their VMT efficiency, or mitigate the effect on the 14-hour rule of long detention times by</p>

	hour period in a sleeper berth.	duty at the end of the work shift.	<p>allowing driving later in the work shift.</p> <p>Minimizing the effect on fatigue because drivers could use the voluntary pause to rest, off-setting any potential effect of driving later in the work shift.</p> <p>Depending on the situation, hours driven and VMT on a given work shift could: remain the same but shift within the driving window; decrease the hours driven by increasing VMT per hour; allow the driver to finish more work during the current work shift instead of postponing it to the next one.</p>
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### III. ABBREVIATIONS AND ACRONYMS

ANPRM	Advance notice of proposed rulemaking
CAA	Clean Air Act
CBI	Confidential Business Information
CE	Categorical Exclusion
CFR	Code of Federal Regulations
CMV	Commercial motor vehicle
DOT	Department of Transportation
ELD	Electronic logging device
E.O.	Executive Order
eRODS	Electronic record of duty status
FAST Act	Fixing America's Surface Transportation Act
FMCSA	Federal Motor Carrier Safety Administration
FMCSRs	Federal Motor Carrier Safety Regulations
FR	Federal Register
HOS	Hours of service
NEPA	National Environmental Policy Act
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
OOIDA	Owner-Operator Independent Drivers Association
RODS	Record of duty status
RFA	Regulatory Flexibility Act
SCE	Safety critical event
§	Section
Secretary	Secretary of Transportation
SBREFA	Small Business Regulatory Enforcement Fairness Act of 1996
TruckerNation	TruckerNation.org
UDA	United Drivers Association
U.S.C.	United States Code

#### **IV. LEGAL BASIS FOR THE RULEMAKING**

This NPRM is based on the authority derived from the Motor Carrier Act of 1935 (1935 Act) and the Motor Carrier Safety Act of 1984 (1984 Act). The 1935 Act, as amended, provides that “The Secretary of Transportation may prescribe requirements for— (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.” (49 U.S.C. 31502(b)(1), (2)).

The HOS regulations proposed below concern the “maximum hours of service of employees” of both motor carriers and motor private carriers, as authorized by the 1935 Act.

This NPRM also is based on the authority of the 1984 Act, as amended, which provides broad concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to “prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles.” The 1984 Act also requires that: “At a minimum, the regulations shall ensure that— (1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely . . . ; (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators; and

(5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section...” (49 U.S.C. 31136(a)(1)-(5)).

This NPRM is based specifically on section 31136(a)(2) and, less directly, sections 31136(a)(3) and (4). To the extent section 31136(a)(1) focuses on the mechanical condition of CMVs, that subject is not included in this rulemaking. However, as the phrase “operated safely” in paragraph (a)(1) encompasses safe driving practices, this proposed rule also addresses that mandate. To the extent section 31136(a)(4) focuses on the health of the driver, the Agency addresses that issue under the section *Driver Health Comments*, below. As for section 31136(a)(5), FMCSA anticipates the added flexibility of the NPRM would not increase the risk of coercion related to HOS rules.

Before prescribing regulations under these authorities, FMCSA must consider their “costs and benefits” (49 U.S.C. 31136(c)(2)(A) and 31502(d)). Those factors are addressed below.

## **V. BACKGROUND**

The HOS regulations in effect until 2003 were promulgated pursuant to the Motor Carrier Act of 1935 and then reissued under the Motor Carrier Safety Act of 1984, along with the rest of the Federal Motor Carrier Safety Regulations (53 FR 18042, May 19, 1988). The HOS rules are codified at Part 395 of Title 49 CFR. These regulations were originally promulgated in 1937, revised several times before 1940, and then left largely unchanged until 1962. They required 8 hours off between tours of duty work shifts that could be of indeterminate length, lasting until the driver accumulated a total of 15 hours on duty. Concerns that these regulations were outdated and contributed to driver fatigue

led to an effort to incorporate new knowledge about fatigue and rest, and their effects on safety.

Revisions to the HOS regulations were proposed in an NPRM published in the May 2, 2000, Federal Register (65 FR 25540). Following reviews of the comments to the docket and additional study, FMCSA developed a revised set of HOS regulations. The final rule (the “2003 HOS rule”) was promulgated on April 28, 2003 (68 FR 22456), and took effect on January 4, 2004. A regulatory impact analysis (RIA) comparing the costs, benefits, and impacts of this rule relative to the previous rule and several alternatives was prepared in accordance with the requirements of Executive Order 12866. That RIA, which is available in the HOS rule docket, showed that full compliance with the 2003 HOS rule could both save lives and increase productivity compared to full compliance with the rule then in existence. Much of the safety advantage of the 2003 HOS rule was shown to come from the mandate for at least 10 hours off after each tour of duty, and from helping to keep drivers on a regular 24-hour cycle.

After the 2003 HOS rule had been in effect for several months, it was vacated by a Federal appellate court. On July 16, 2004, the United States Court of Appeals for the D.C. Circuit held that FMCSA had not considered effects of the changes in the HOS rule on drivers’ health, as required by 49 U.S.C. 31136(a)(4). *Public Citizen et al. v. FMCSA*, 374 F.3d 1209 (D.C. Cir. 2004). Additionally, the court expressed concerns about several areas of the rule, including:

- Permission to drive 11 hours in a tour of duty, rather than 10;
- Allowing more hours on duty in a given week, as a result of the restart

provisions;

- Allowing drivers to split their off-duty periods into two parts through the use of sleeper berths; and
- Lack of consideration of the use of electronic on-board recorders.

In response to the court's action, Congress reinstated the 2003 HOS rule for a year, to give FMCSA a chance to revisit the issues cited by the court. A new HOS rule was published on August 25, 2005, retaining most of the provisions of the 2003 rule but requiring drivers using sleeper berths to spend 8 consecutive hours in the berth and take an additional 2 hours either off duty or in the sleeper berth; this 2 hour period must be counted against the 14 hour driving window (70 FR 49978). This established one "core" 8-hour period of sleep, as called for by various scientific research studies, yet provided the driver flexibility in use of the shorter off-duty period. Drivers, however, objected to 8 hours in the sleeper berth, and, in general, to the lack of flexibility provided by the sleeper-berth provisions and 14-hour rule. The 2005 HOS rule also provided relief to some short-haul operations using lighter trucks.

Public Citizen and others challenged the August 2005 rule on several grounds. On July 24, 2007, the D.C. Circuit ruled in favor of Public Citizen and vacated the 11-hour driving time and 34-hour restart provisions (*Owner-Operator Independent Drivers Association, Inc. v. FMCSA*, 494 F.3d 188 (D.C. Cir. 2007)). The court concluded that FMCSA had violated the Administrative Procedure Act's requirements by failing to provide an opportunity for public comment on the methodology of the Agency's operator-fatigue model, which FMCSA had used to assess the costs and benefits of alternative changes to the 2005 HOS rule. In particular, the court found that the Agency had not adequately disclosed and made available for review the modifications it had



made to the 2003 operator-fatigue model to account for time-on-task (TOT) effects in the 2005 analysis. The court concluded that FMCSA's methodology had not remained constant from 2003 to 2005 because the TOT element in the model was new and constituted the Agency's response to a defect in its previous methodology. The court concluded that the Agency violated the Administrative Procedure Act because it failed to give interested parties an opportunity to comment on the methodology of the crash risk model that the Agency used to justify an increase in the maximum number of daily and weekly hours that CMV drivers may drive and work. The court listed several elements of the way FMCSA calculated the impact of TOT that it held could not have been anticipated and that were not disclosed in time for public comment upon them. Turning to Public Citizen's second argument, the court also found that FMCSA had failed to provide an adequate explanation for certain critical elements in the model's methodology. In vacating the increase in the daily driving limit from 10 to 11 hours, the court found arbitrary and capricious what it described as FMCSA's "complete lack of explanation for an important step in the Agency's analysis," the manner in which it had plotted crash risk as a function of TOT per hours of driving. The court also found that FMCSA had failed to provide an explanation for its method for calculating risk relative to average driving hours in determining its estimate of the increased risk of driving in the 11th hour. In vacating the 34-hour restart provision, the court found that FMCSA also had provided no explanation for the failure of its operator-fatigue model to account for cumulative fatigue due to the increased weekly driving and working hours permitted by the 34-hour restart provision.

In an order filed on September 28, 2007, the court granted in part FMCSA's motion for a stay of the mandate. The court directed that issuance of the mandate be withheld until December 27, 2007.

On December 17, 2007, FMCSA published an Interim Final Rule (IFR) amending the Federal Motor Carrier Safety Regulations, effective December 27, 2007, to allow CMV drivers up to 11 hours of driving time within a 14-hour, non-extendable window from the start of the workday, following 10 consecutive hours off duty (72 FR 71247). The IFR also allowed motor carriers and drivers to restart calculations of the weekly on-duty time limits after the driver has at least 34 consecutive hours off duty. FMCSA explained that the IFR reinstating the 11-hour limit and the 34-hour restart was necessary to prevent disruption to enforcement and compliance with the HOS rule when the court's stay expired, and would ensure that a familiar and uniform set of national rules governed motor carrier transportation. Public Citizen immediately requested the D.C. Circuit to invalidate the IFR. However, on January 23, 2008, the court issued a per curiam order denying Public Citizen's request. On November 19, 2008, FMCSA adopted the provisions of the IFR as a final rule (73 FR 69567).

On December 18, 2008, Advocates for Highway and Automotive Safety, Public Citizen, the International Brotherhood of Teamsters, and the Truck Safety Coalition (hereafter referred to as "HOS petitioners") petitioned FMCSA to reconsider the research and crash data justifying the 11-hour driving rule and the 34-hour restart provision. FMCSA denied the petition on January 16, 2009. On March 9, 2009, the HOS petitioners filed a petition for judicial review of the 2008 rule in the D.C. Circuit and, on August 27, 2009, filed their opening brief. However, in October 2009, DOT, FMCSA, and the HOS

petitioners reached a settlement agreement. DOT and FMCSA agreed to submit a new HOS NPRM to the Office of Management and Budget (OMB) by July 26, 2010, and to publish a final rule by July 26, 2011. Subsequently, FMCSA, DOT and the HOS petitioners agreed to publish the final rule on October 28, 2011. The parties filed a joint motion to hold the 2009 lawsuit in abeyance pending publication of the NPRM; the court later accepted that motion.

In 2011, after presenting various alternatives, FMCSA revised some aspects of the HOS regulations and maintained other provisions. The 2011 Final Rule could be divided into “daily” and “multi-day” provisions, which can be expressed as follows:

- Drivers of property-carrying CMVs must take at least 30 minutes off-duty no later than 8 hours after coming on duty if they wish to continue driving after the 8th hour.
- Drivers of property-carrying CMVs may drive up to 11 hours following an off-duty period of at least 10 consecutive hours.
- Drivers of property-carrying CMVs may not drive after the end of the 14th hour after coming on duty following an off-duty period of at least 10 consecutive hours.
- Drivers of property-carrying CMVs may obtain the equivalent of 10 consecutive hours off duty if they have a period of at least 8 hours in the sleeper berth and a second period of at least 2 hours either off duty or in the sleeper berth. Compliance is calculated from the end of the first two periods.
- For Drivers of property-carrying CMVs, any period of 7 or 8 consecutive days can begin following a period of at least 34 consecutive hours off duty provided it included 2 periods between 1:00 am and 5:00 am.

Several categories of motor carriers and drivers are exempt from parts of the HOS regulations or from the entire HOS regulation under the National Highway System (NHS) Designation Act of 1995 (referred to as the NHS Act) and other statutes.

Public Citizen, the American Trucking Associations, and others challenged the 2011 final rule on several grounds. On August 2, 2013, the D.C. Circuit vacated the requirement for short-haul drivers to take a 30-minute break, but upheld the 2011 rule in all other respects. *American Trucking Associations, Inc., v. Federal Motor Carrier Safety Administration*, 724 F.3d 243 (2013).

*The 2015 and 2016 DOT Appropriations Acts and the Further Continuing and Security Assistance Appropriations Act, 2017*

Sec.133 of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, Div. K, Title I, sec. 133, 128 Stat. 2130, 2711-2713 (Dec. 16, 2014) suspended the 2011 restart provisions, which required 2 consecutive off-duty periods between 1:00 and 5:00 a.m. and allowed only one restart per week; temporarily reinstated the pre-2011 restart rule; and required a study of the effectiveness of the new rule. Sec. 133 of the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. L., Title I, sec. 133, 129 Stat. 2242, 2850 (Dec. 18, 2015) made it clear that the 2011 restart provisions would have no effect unless the study required by the 2015 DOT Appropriations Act showed that those provisions had statistically significant benefits compared to the pre-2011 restart rule; this Act also expanded the factors that the Agency was required to evaluate by including driver health and longevity. The Further Continuing and Security Assistance Appropriations Act, 2017, Pub. L. No. 114-254, Div. A, sec. 180, 130 Stat. 1005, 1016 (Dec. 10, 2016), replaced Sec. 133 of the 2016 DOT

Appropriations Act in its entirety to correct an error and ensure that the pre-2011 restart rule would be reinstated by operation of law<sup>3</sup> unless the study required by the 2015 DOT Appropriations Act showed that the 2011 restart rule had statistically significant benefits compared to the pre-2011 restart rule. DOT concluded that the study failed to find statistically significant benefits, and the Office of Inspector General confirmed that conclusion in a report to Congress. The pre-2011 restart rule was therefore reinstated by operation of law.

Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, issued on January 30, 2017, directs executive agencies of the Federal government to “manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations” (82 FR 9339, Feb. 3, 2017). The E. O. 13777, Enforcing the Regulatory Reform Agenda, issued on February 24, 2017, sets forth regulatory reform initiatives and policies to “alleviate unnecessary regulatory burdens placed on the American people” (82 FR 12285, Mar. 1, 2017). In accordance with those Presidential directives and based upon its experience and expertise, FMCSA reviewed the driver HOS regulations to determine if revisions might alleviate unnecessary regulatory burdens while maintaining CMV driver safety and health and motor carrier safety, as well as the safety of the public. On May 17, 2018, 5 months after the implementation of the ELD mandate mentioned above, Administrator Martinez received a letter signed by 30 Senators (available in the docket for this rulemaking) expressing support for greater flexibility in the HOS regulations.

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<sup>3</sup> Because this study failed to establish a statistically significant improvement in the initial factors required by Congress, evaluation of the additional factors added by Congress became moot.

The DOT has longstanding processes to periodically review regulations and other agency actions.<sup>4</sup> If appropriate, FMCSA will revise regulations to ensure that they continue to meet the needs for which they were originally designed and that they remain justified, in accordance with applicable executive orders.<sup>5</sup> On October 2, 2017, DOT published a Notification of Regulatory Review, stating that it was reviewing its “existing regulations and other agency actions to evaluate their continued necessity, determine whether they are crafted effectively to solve current problems, and evaluate whether they potentially burden the development or use of domestically produced energy resources” (82 FR 45750). As part of these reviews, DOT sought public comment on existing rules that are good candidates for repeal, replacement, suspension, or modification. The HOS regulations and ELDs were the most common substantive topics discussed in response to the DOT Notification of Regulatory Review. The HOS regulations were identified as an area for potential modifications both as a result of the public comments received and due to changes in tracking HOS compliance through implementation of the ELD rulemaking. The accuracy of the electronic data provided to enforcement is much higher than the information that was previously provided on paper. While the ELD rule did not change

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<sup>4</sup> Section 610 of the Regulatory Flexibility Act requires Federal Agencies to periodically conduct reviews of rules that: (1) have been published within the last 10 years; and (2) have a “significant economic impact on a substantial number of small entities.” Agencies publish in the Federal Register the results of any such rules they reviewed during the past year, as well as a list of rules to be reviewed the next year.

<sup>5</sup> See Exec. Order No. 13777, sec. 1, (Mar. 1, 2017, 82 FR 12285) (“It is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people or ...”); E.O. 13610 (May 14, 2012, 77 FR 28469) (requiring agencies to conduct retrospective analyses of existing rules to determine whether they remain justified); E.O. 13563, sec. 6(b) (Jan. 21, 2011, 76 FR 3821) (requiring agencies to submit a plan “under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives”); E.O. 12866, sec. 5, (Sept. 30, 1993, pub. 58 FR 51735) (requiring each agency to “review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency’s regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President’s priorities and the principles set forth in this Executive order”).

the HOS rules, the accurate recording of driving time by ELDs highlighted the rigidity of HOS provisions and the practical ramifications drivers faced.

The August 23, 2018, ANPRM (83 FR 42631) requested public comment on four areas pertaining to the HOS rules: short-haul operations, the adverse driving conditions exception, the 30-minute break requirement, and the sleeper-berth provision. The ANPRM also sought public comment on two petitions for rulemaking relating to the HOS rules, one from OOIDA and one from TruckerNation.

*OOIDA Petition for Rulemaking*

On February 13, 2018, OOIDA petitioned FMCSA to amend the HOS rules to allow drivers to take an off-duty rest break for up to 3 consecutive hours once per 14-hour driving window. OOIDA requested that the rest break stop the 14-hour clock and extend the latest time a driver could drive after coming on duty. However, drivers would still be limited to 11 hours of driving time and required to have at least 10 consecutive hours off duty before the start of the next work shift.

OOIDA's petition also included a request that the Agency eliminate the 30-minute break requirement. The organization explained that there are many operational situations where the 30-minute break requires drivers to stop when they do not feel tired.

*TruckerNation Petition for Rulemaking*

On May 10, 2018, TruckerNation petitioned the Agency to revise the prohibition against driving after the 14<sup>th</sup> hour following the beginning of the work shift. As an alternative, the organization requested that the Agency prohibit driving after the driver has accumulated 14-hours of on-duty time.

In addition, TruckerNation requested that FMCSA allow drivers to use multiple off-duty periods of 3 hours or longer in lieu of having 10 consecutive hours off-duty and eliminate the 30-minute break requirement.

#### Additional Petitions for Rulemaking

Two additional petitions for rulemaking were received; one from the United States Transportation Alliance (USTA) and one from the United Drivers Association (UDA)<sup>6</sup>. The petitions were not discussed in the ANPRM due to the timing of receipt; however, they were reviewed and considered in the development of this NPRM.

The USTA petition proposed an HOS rule that would prohibit driving after 80 hours on duty in a 7-day period (instead of the 60-hour limit in §§ 395.3(b)(1) and 395.1(b)(1), and allow a 14-hour day for driving or other work duties. The drivers' remaining 10 hours would include 2 hours of off-duty time, and 8 hours of sleeper-berth time could be split into two segments, with a minimum of 2 hours per segment. The 80-hour clock would be reset by 24 hours off duty. The petition is included in the docket referenced at the beginning of this notice.

The UDA proposal maintained the 14/10 HOS rule; however, the 10 hours off duty could be split into two 5-hour sleeper-berth periods. The weekly on-duty time, after which driving would be prohibited, would be 80 hours in an 8-day period, with a 24-hour restart, similar to that proposed by USTA. The petition is included in the docket referenced at the beginning of this notice.

#### Public Listening Sessions

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<sup>6</sup> These petitions are available at <https://www.regulations.gov/document?D=FMCSA-2018-0248-2550> and <https://www.regulations.gov/document?D=FMCSA-2018-0248-0342>.



FMCSA held a series of public listening sessions following the release of the ANPRM. These were held in Dallas, Texas, on August 24, 2018; Reno, Nevada, on September 24, 2018; Joplin, Missouri, on September 28, 2018; Orlando, Florida, on October 2, 2018; and Washington, DC, on October 10, 2018.<sup>7</sup> Transcripts of those listening sessions are available in the public docket for the rulemaking, and the sessions are available to stream at <https://www.fmcsa.dot.gov/mission/policy/public-listening-sessions-hours-service>.

## **VI. OVERVIEW OF COMMENTS TO THE ANPRM**

The ANPRM asked a series of questions about the four topics and the two petitions for rulemaking mentioned above, but did not propose any regulatory changes. FMCSA appreciates the comments submitted. The Agency requests that individuals responding to the ANPRM comment again in the context of today's NPRM.

As noted above, FMCSA held a series of listening sessions. Comments provided at those sessions have been considered in the development of section VII of this preamble, "Discussion of the Proposed Rulemaking."

In addition, the Agency received more than 5,200 comments on the ANPRM, including over 1,000 from CMV drivers. Commenters also included trade associations and industry groups, law enforcement agencies, safety advocacy groups, motor carriers, and governmental entities. The majority of ANPRM commenters supported changes to the HOS rules. Of the issues addressed in the ANPRM, most comments were addressed to the 30-minute break and the sleeper-berth issues. Drivers and individuals supported

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<sup>7</sup> Listening sessions were announced in the **Federal Register** at 83 FR 42631, August 23, 2018; 83 FR 45204, September 6, 2018; 83 FR 47589, September 20, 2018; 83 FR 48787, September 27, 2018, and 83 FR 50055, October 4, 2018. The listening session scheduled for September 14, 2018 in Washington, DC was canceled and rescheduled.

other issues raised in the ANPRM or petitions, especially extending the short-haul duty period from 12 hours to 14 hours. Many drivers and individual commenters were in favor of extending the maximum driving window by 2 hours in the event of adverse driving conditions. A few driver and individual commenters requested that the definition of “adverse driving conditions” be changed or clarified, to make understanding and compliance easier for users and enforcement personnel.

A large number of CMV drivers, trade associations, and industry groups supported the elimination of the 30-minute break rule. However, safety advocacy groups opposed changes to the rule due to the lack of research on its safety impacts.

Many commenters favored expanding the sleeper-berth options to 5/5, 6/4, or 7/3. In addition, they would like to see both qualifying sleeper-berth periods stop the 14-hour driving window. Most of the trade associations that commented on short-haul operations approved of an expansion of the 12-hour driving window to 14 hours. Trade associations, and other commenters were also in favor of expanding the adverse driving condition provision to extend the duty period during which driving is allowed.

Generally, law enforcement and safety advocacy organizations opposed changes to the current HOS rules. These comments often referenced safety research identified in prior HOS rulemakings. The relevant studies are discussed in the sections below.

Most motor carriers that responded were in favor of all the suggested changes in the ANPRM. Most of the elected officials supported flexibility for drivers.

#### *Other Comments to the ANPRM*

In addition to the four central topics covered by the ANPRM and the two petitions, FMCSA received comments and suggestions related to other aspects of the HOS rules.

*Driver Health Comments.* A number of commenters critiqued the current HOS rules, stating that the rules negatively impact their health. However, safety advocacy groups stated that changes to existing HOS would negatively impact health. The driver sleep apnea group, Truckers for a Cause provided research by Dr. Mona Shattell (3 studies cited in comments) on CMV driver mental health issues that showed stress caused by the “14-hour clock” to be a large cause and potential health issues. HOS changes which reduce this documented stress inducer would reduce driver stress and resulting health issues. They go on to add that fatigue research (Williamson 2001) has clearly shown that there is a fatigue impairment which greatly increases with being awake more than 14 hours. This impairment is equivalent to blood alcohol content (BAC) of .02% at 15 hours and .04% at 16 hours. With .04% being legally intoxicated for a CMV driver it is reasonable that HOS regulations should restrict driving beyond a 14 hour work day limit unless there has been reasonable restorative rest. The American Academy of Sleep Medicine focuses almost exclusively on the issue of fatigue – as it relates to driver health and some of the proposed changes. According to AASM, “these proposed changes would occur in the setting of other common sleep disorders, such as sleep apnea, shift work sleep disorder, or insufficient sleep, which increase the risk of drowsy driving..... Given the large body of evidence that sleepiness plays a significant role in crashes, we recommend against the proposed relaxation of the present rules, in the best interest of not only commercial drivers’ health and safety, but also public safety as a whole.” . The

International Brotherhood of Teamsters commented on the 12-hour short haul provision, stating that several studies show that the majority of work-related injuries occurring among truck drivers result from non-driving work activities. When researchers further investigated these findings, they found that the types of injuries experienced by truck drivers varied by industry sector but were generally associated with falling from heights, trips, slips, falls, and overexertion due to manual materials handling. Drivers who are involved in short haul operations experienced occupational injuries primarily while performing three activities: 1) operating the truck; 2) lifting/cranking; and 3) maneuvering into/out of truck cab..... Short-haul drivers will experience increased fatigue as a result of having to work an expanded number of hours and concurrently experience more fatigue-related occupational injuries and crashes.....” In addition, researcher collected data on the driver’s heart rates to estimate metabolic output and determined that such drivers worked in a job that required a high level of energy.” FMCSA has considered these comments, and, as discussed in the Health Impacts section later in this document, proposes to find that the provisions of this NPRM would not adversely affect driver health.

*Economic and Research Data, Surveys, and Studies Submitted to the Docket.* A number of research papers, surveys, and studies, along with related data, were submitted to the docket. The relevant submissions, including those made by OOIDA, the American Transportation Research Institute (ATRI), and the Insurance Institute for Highway Safety (IIHS), have been considered and are discussed in the draft RIA for this NPRM, available in the docket. Other studies had been considered in previous rulemakings, were out of scope for this rule, or had data limitations.

*Scope of Rulemaking.* A number of the commenters raised HOS issues beyond the topics identified in the ANPRM. Many commenters believe driver pay is too low for the responsibilities they hold and stated that if drivers were paid more or compensated by the hour, there would be less of a need for HOS regulations. Other commenters stated that third parties such as shippers and receivers, who are not generally subject to FMCSA regulations, pressure drivers to violate HOS rules or create an environment where drivers are unable to take advantage of the work time allowed.

A number of commenters requested that FMCSA consider adopting the Canadian HOS standards.<sup>8</sup> These comments were either general or focused on specific limits, rest breaks, and sleeper-berth provisions.

## **VII. DISCUSSION OF THE PROPOSED RULEMAKING**

### **A. Short-Haul Operations**

#### *Current Regulation*

Currently, under 49 CFR 395.1(e)(1), certain CMV drivers do not have to prepare RODS, use an ELD, maintain supporting documents, or take a 30-minute break after 8 hours of duty if they meet certain conditions, including a return to their normal work reporting location and release from work within 12 consecutive hours after their starting time. Truck drivers operating under this provision are permitted a 12-hour work day in which to drive up to 11 total hours. Passenger-carrier drivers are allowed 10 hours of driving in a 12-hour workday. Under this short-haul exception, drivers also must operate within a 100 air-mile radius of their work reporting location. The motor carrier must

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<sup>8</sup> A copy of the Canadian Commercial Vehicle Drivers Hours of Service rules is available at <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2005-313/page-2.html#docCont> (Accessed December 31, 2018). A single-page summary is available at [https://www.cvse.ca/national\\_safety\\_code/pdf/HOS\\_Service\\_Rules.pdf](https://www.cvse.ca/national_safety_code/pdf/HOS_Service_Rules.pdf) (Accessed December 31, 2018).

maintain time records reflecting certain information. Specifically, the motor carrier that employs the driver and utilizes this exception must maintain and retain for a period of 6 months accurate and true time records showing: the time the driver reports for duty each day; the total number of hours the driver is on duty each day; the time the driver is released from duty each day; and the total time for the preceding 7 days in accordance with 49 CFR 395.8(j)(2) for drivers used for the first time or intermittently.

Under 49 CFR 395.3(a)(2)–(3), other property-carrying CMV drivers not utilizing the short-haul exception have a 14-hour window in which to drive up to 11 hours. Unless otherwise excepted, however, these drivers must maintain RODS, generally using an ELD. Drivers qualifying for the 49 CFR 395.1(e)(1) exception have the option to use the 14- or 15-hour driving window applicable to property and passenger carriers, respectively, under §§ 395.3 or 395.5, to fulfill the needs of the employer on a given day. However, drivers doing so would lose the benefits of the short-haul exception and be required to prepare RODS for those days.

#### *Current Exemptions to the Short-Haul Operation Provision*

Among other things, section 5521 of the FAST Act requires that the Agency allow drivers of ready-mixed concrete delivery trucks to return to the normal work reporting location within 14 hours of coming on duty rather than 12-hours of coming on duty. FMCSA implemented this provision on July 22, 2016 (81 FR 47714). FMCSA also has granted applications for exemptions, allowing an extension of the duty period in the short-haul provision from 12 to 14 hours, to the following entities: Waste Management Holdings, Inc., October 25, 2018 (83 FR 53940); American Concrete Pumping Association, November 1, 2018 (83 FR 54975); and National Asphalt Pavement

Association, Inc., January 26, 2018 (83 FR 3864). Several additional groups have requested similar exemptions, but FMCSA has not yet published final decisions.

### Comments to the ANPRM

A majority of commenters asserted that FMCSA should extend the duty period for short-haul operations from 12 to 14 hours. However, other commenters, including drivers, disagreed. Some commenters suggested extending the air-mile radius of this provision to match the requirements of the 150 air-mile exceptions in §§ 395.1(e)(2) (Operators of property-carrying CMVs not requiring a CDL) and 395.1(k) (Agricultural operations).

A number of commenters said that they use the short-haul exception or would like to utilize it.<sup>9</sup> They gave specific operational examples under which drivers exceeded one or both of the limits infrequently, and most described driving as a secondary job function for their drivers. These commenters stated that operational complexity increased due to drivers using different statuses. If the overall short-haul provision were modified, many commenters who supported changing the short-haul provisions believed they might not need other exemptions and exceptions.

### Today's Proposal

This NPRM proposes extending the maximum allowable work day for property- and passenger-carrying CMV drivers under the § 395.1(e)(1) short-haul exception from 12 to 14 hours to correspond with the 14-hour period requirement for property drivers in

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<sup>9</sup> The Association of General Contractors of America commented: "Since many construction operations are local in nature, the short-haul exemption has been helpful but limited. Expansion of the short haul to 150 miles would significantly reduce the impact of HOS on the construction industry. The short-haul exemption should allow for an additional 2 hours of on-duty time. These additional 2 hours are absolutely crucial due to the seasonal nature of construction, and the fact that drivers in this industry are so frequently waiting at a jobsite—which we classify as "on duty not driving"." (<https://www.regulations.gov/document?D=FMCSA-2018-0248-4947>).

§ 395.3(a)(2). Today's proposal would also extend the existing distance restriction under this provision from 100 air miles to 150 air miles to be consistent with the radius requirement for the other short-haul exception under § 395.1(e)(2). Truck drivers would continue to be limited to 11 hours of driving time, and passenger carrier drivers to 10 hours of driving time. All CMV drivers using the § 395.1(e)(1) exception would need to complete their work day within 14 hours of the beginning of the work shift.<sup>10</sup>

Safety Rationale

Using data from the FMCSA Motor Carrier Management Information System (MCMIS),<sup>11</sup> the Agency analyzed concrete mixer crashes before and after the FAST Act allowed ready-mix concrete operators up to 14 hours to return to their work reporting location under the short-haul provision. A review of the MCMIS crash data found that extending the short-haul exemption from 12 to 14 hours did not statistically increase the share of concrete mixers involved in crashes. This evaluation is discussed further in the draft RIA. Furthermore, the Agency emphasizes that the changes to the short-haul exception proposed in today's notice would allow neither additional drive time during the work day nor driving after the 14<sup>th</sup> hour from the beginning of the work day.

The extension of the air-mile radius by 50 air miles would allow carriers to reach customers farther from the work reporting location while maintaining eligibility for the short-haul exception. FMCSA believes that extending the air-mile radius would not increase market demand for services, and thus would not result in increased vehicle miles traveled (VMT). FMCSA anticipates that if these drivers change their routes resulting in

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<sup>10</sup> Currently, short-haul drivers can use the adverse driving conditions provision under § 395.1(b), and this provision would continue to be available to drivers using the short-haul exception.

<sup>11</sup> MCMIS is an information system that captures data from field offices and through various sources. It is a source for FMCSA inspection, crash, compliance review, safety audit, and registration data.



an increase in VMT (e.g., an increase in deliveries made per shift), that VMT would be shifted from other drivers or from the next day. On any given day, a driver may see an increase or decrease in VMT, but total VMT would not change. It could also be the case that on days that required driving past the 12<sup>th</sup> work hour, the driver was previously operating as a long-haul driver. Under this rule, the same driver could work the same day (i.e., no change in work hours or VMT for any driver), with the only change being eligibility for the short-haul exception. Thus, more drivers or more trips would now be eligible for the short-haul exception, and thus excluded from the requirement to take a 30-minute break or prepare daily RODS, potentially with an ELD. Carriers would have the flexibility to meet existing and future market demands within the area that could be serviced within a 14-hour duty day more efficiently (i.e. not incurring the costs of preparing RODS and retaining supporting documents for the days drivers did not satisfy the short-haul limits) while maintaining eligibility for the short-haul exception. Extending the air-mile radius and the work day would not extend the maximum allowable driving time. Therefore, the Agency does not anticipate any adverse impact on safety.

The IIHS provided data it believes indicates interstate truck drivers operating under the short-haul exception had a significantly higher crash risk than those not using the exception. FMCSA reviewed this study and found that it was based on a very small sample size, which prevented the authors from estimating a matched-pair odds ratio restricted to drivers operating under a short-haul exception, and was not nationally representative. Further, the authors noted that other related factors unobserved in the study may have led to this result. For example, it is possible that older or more poorly maintained trucks are used in local operations. The Agency relied on its own data and

analysis discussed earlier in this section, which shows that increasing the duty day from 12 to 14 hours did not statistically increase the share of concrete mixers involved in crashes. The Agency's analysis is discussed in more detail in the RIA. The Agency invites comments on this determination.

In addressing today's proposed changes to the HOS rules, the agency encourages motor carriers and other stakeholders to submit driver record data supporting their comments in a manner that does not reveal the identity of an individual driver.

#### Additional Questions

FMCSA seeks additional information and data on the impacts of expanding short-haul exemption provision, in part to assess its potential costs and benefits. Specifically:

- How will this change impact motor carrier's ability to enforce HOS rules? What enforcement difficulties may arise from expanding both the time and distance requirements?
- Will drivers drive further or longer in the driving window under the short haul exception? Would this be different than these loads being hauled by drivers complying with the ELD requirements?
- Will the elimination of the 30-minute break requirement for drivers that are potentially driving later in their duty period impact safety?
- What cost savings are expected from not having to comply with the ELD requirements?

Additionally, some commenters to the ANPRM requested that drivers using the short-haul exception be allowed to end the work shift at a different location than the one from which they were dispatched. FMCSA requests public comment about this request,

including which segments of the motor carrier industry would be impacted by this potential change and whether this change would have an adverse effect on safety, or lead to operational changes such as increased driving time per trip or driving in the 12<sup>th</sup> and 13<sup>th</sup> hour after coming on-duty.

## **B. Adverse Driving Conditions**

### Current Regulation

Section 395.1(b)(1) allows 2 additional hours of driving time for “adverse driving conditions,” which is defined in § 395.2 as “snow, sleet, fog, other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions, none of which were apparent on the basis of information known to the person dispatching the run at the time it was begun.” Although the rule allows truck drivers up to 13 hours of driving time under adverse conditions, instead of the normal 11 hours, it does not provide a corresponding extension of the 14-hour driving window. Similarly, the current rule allows drivers of passenger-carrying CMVs up to 12 hours of driving time under adverse conditions without a corresponding extension of the applicable duty period.

### Comments to the ANPRM

Most commenters generally supported extending the adverse driving conditions provision to allow for a longer duty period. Some of these commenters noted that the additional time could be used to enable drivers to find a safe place to park. However, some commenters objected to a change to the exception. One commenter stated that due to the advancements of technology, there is no reason to replace proper trip planning with a 2-hour extension of the 14-hour driving window. Another commenter said that

extending the 14-hour driving window would allow operators to be driving at a time in the drivers' work days when crash risks increase dramatically.

*Frequency of Use.* Some commenters said that they never used the adverse driving conditions exception, while others reported wide variances in the frequency of their use. A trade group provided survey results indicating an average use of the exception of 1.5 times a month.<sup>12</sup> A commenter said drivers should not be allowed to use this exception more than twice in a 7-day period.

*Clarify Definition.* Many commenters were confused by the current definition and requested clarification, including how often the provision may be used. Several specifically asked about the definition's use of the word "apparent." Some commenters asked that provisions be expanded to include "foreseen" conditions or requested that "unforeseen" be stricken from the definition. Some commenters pointed out that weather conditions would be known by the dispatcher before the start of a trip, given today's technology. However, these commenters still believed the provision should exist. Many commenters stated that detainment by a third party, such as a shipper or receiver, during loading and unloading should be considered an adverse condition.

Commenters also requested that the definition be changed to require "proof" or that the use of this status be "verifiable." Commenters asked for a clear definition that would eliminate inconsistent enforcement practices. Commenters also stated that training drivers in the use of the regulations should be based on a clarified definition. Some

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<sup>12</sup> Comment from OOIDA with this survey is available at: <https://www.regulations.gov/document?D=FMCSA-2018-0248-3347>.

commenters requested that specific weather conditions be mentioned in the definition, while others wanted it to also apply to a variety of road-work conditions.

Some commenters requested that determination of adverse driving conditions should be a decision of the driver rather than the dispatcher.

Passenger Carriers. Some commenters requested that “adverse passenger conditions” be taken into consideration in the definition, and requested that passenger carriers be allowed an extension of the 10-hour drive time due to “adverse passenger conditions.”

#### Today’s Proposal

Today’s proposal would allow a driver up to a 16-hour driving window (for property carriers) within which to complete up to 13 hours of driving, or a 17-hour duty period (for passenger carriers) within which to complete up to 12 hours of driving, if the driver encounters adverse driving conditions.

#### Safety Rationale

While the Agency is not aware of any research that is specific to the impact of adverse conditions on crash risk, the flexibility provided in the proposal would give drivers greater latitude to respond to adverse driving conditions by removing the existing penalty that “shortens” the driver’s duty day if he or she responds cautiously to an adverse condition in a manner that takes up more duty time. FMCSA expects the proposed increase to duty time during adverse driving conditions to incentivize drivers facing these conditions to either travel at a reduced speed due to road conditions, which is likely to minimize the risk of crashes, or to suspend CMV operations in order to wait for the adverse conditions to abate. Further, the Agency stresses that this proposal would not

increase available driving time beyond what is currently allowed by the exception. FMCSA does not anticipate that changes to the adverse weather condition provision would lead to increased VMT in most situations, but might shift when the miles are driven. This provision is intended to allow you to drive your anticipated trip within 1 shift (instead of extending it to 2) when adverse weather would decrease your VMT efficiency, or make road travel unsafe for a period of up to 2 hours. It is not intended to allow for additional trips or increased freight movement. FMCSA does not anticipate that motor carriers would be able to schedule additional freight movement because adverse conditions can't be planned for in advance.

FMCSA notes that the Federal Aviation Administration (FAA) and the Federal Railroad Administration (FRA) both allow duty period extensions in similar circumstances. FAA allows a 2-hour flight duty period extension for unforeseen operational circumstances (14 CFR 117.19(a)(1)) and FRA allows a 4-hour duty period extension for emergencies or work related to emergencies (49 CFR 228.405(c)). FRA's hours of service laws also do not apply to circumstances involving "Acts of God" (49 U.S.C. 21102(a)(3)).

The "adverse passenger conditions" mentioned by commenters from the bus industry do not involve driving conditions external to the vehicle, such as snow, sleet, fog, and the other conditions listed in the definition in § 395.2. Adverse passenger conditions are not within the scope of this rulemaking.

In addressing today's proposed changes to the HOS rules, the agency encourages motor carriers and other stakeholders to submit driver record data supporting their comments in a manner that does not reveal the identity of an individual driver.

### Additional Questions

FMCSA seeks additional information and data on the impacts of changing the adverse conditions provision, in part to assess its potential costs and benefits.

Specifically:

- Will this change cause drivers to travel further in adverse conditions?
- Will this change drivers' behavior when encountering adverse conditions? How so?
- Understanding adverse conditions cannot be predicted, will drivers utilize this provision more often after this change?

Additionally, FMCSA requests public comment about potential modifications to the definition of "adverse driving conditions." Specifically, the Agency requests input on the suggestion that knowledge of the existence of adverse conditions should rest with the driver rather than the dispatcher. Alternatively, should the requirement for lack of advance knowledge at the time of dispatch be eliminated? Should the current definition of "adverse driving conditions" be modified to address other circumstances?

### **C. 30-Minute Break**

#### Current Regulation

Under 49 CFR 395.3(a)(3)(ii), except for drivers who qualify for either short-haul exception under § 395.1(e)(1) or (2), driving is not permitted if more than 8 hours have

passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes.<sup>13</sup>

Comments to the ANPRM

Most commenters (including many drivers) supported removing the 30-minute break, citing a number of reasons, including stress on the driver and a perceived increase in crash risk. Many commenters stated that drivers already take sufficient breaks from driving, and that the additional break requirement is unsafe or unnecessary. Some commenters, including safety organizations, expressed support for the 30-minute break requirement, stating that rest breaks are necessary and should remain as currently required. Others stated that no other viable alternative could match the safety benefits achieved by an off-duty, 30-minute break.

Logistics/Time Taken. Some commenters recommended replacing the 30-minute provision with a rule requiring two breaks or similar expansions of break time. Drivers liked this idea if they felt it was more in-line with their existing operations, or if they thought it would be more advantageous. There was no data provided to show it increased safety. Commenters were discussing the current requirement, which mandates a 30-minute off-duty break that does not pause the duty clock. A commenter asked that the rule be revised to provide that the break may be taken any time during the duty period and that a second break would not be required if the first one is taken early in the duty period. Some commenters suggested allowing breaks to be split into smaller segments,

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<sup>13</sup> The 30-minute rule does not apply to drivers who operate CMVs within a 100 air-mile radius of their normal work reporting location and return to that location within 12 hours, as authorized by § 395.1(e)(1), or to drivers who do not need a CDL, operate within a 150 air-mile radius of their work reporting location, and meet certain other requirements, as authorized by § 395.1(e)(2).



such as 10 minutes. Others stated that the break should be tied to changes to the sleeper-berth provision.

Total On-Duty Time. Many commenters requested that on-duty non-driving time, e.g., fueling or loading and unloading, be counted towards the break time. A number of commenters also requested that breaks stop the 14-hour on-duty clock. Others said that only breaks over a certain length and spent in a sleeper berth should stop the 14-hour on-duty clock.

In Combination with the Split Sleeper-Berth Provisions. Several commenters recommended that modifications to the break be tied to sleeper-berth changes. Others suggested that breaks be reviewed in conjunction with the proposed Split Sleeper-Berth Pilot Program.<sup>14</sup>

Removal of the 30-Minute Break for All Drivers. Since short-haul drivers are exempt from the 30-minute break requirement, several commenters believed that it ought to be eliminated for all drivers.

Incidental Drivers. Multiple commenters represented industries or operations for which driving is incidental to the principal job of the driver. A number suggested that their operations be exempt from the 30-minute break requirement.

#### Today's Proposal

FMCSA proposes to modify the existing 30-minute break requirement with a prohibition on driving for more than 8 hours without at least one 30-minute change in duty status. This would allow 30 minutes of on-duty, not driving time, off-duty time, or sleeper berth time to qualify as a break. Many drivers have interruptions of their driving

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<sup>14</sup> The Split Sleeper-Berth Pilot Program mentioned in comments has been canceled. See the discussion below.

time during normal business operations, such as loading or unloading a truck, completing paperwork, or stopping for fuel. Under the current rules, the break is required to be off-duty time during which no work, including paperwork, may be performed and is triggered after 8 hours, regardless of driving time. The flexibility provided in this proposal would allow these normal breaks from driving (i.e., “time on task” in the research literature) to count as an interruption of the 8 hours of driving status, provided the break lasts at least 30 minutes. Additionally, these proposed changes to the 30-minute break provision proposed by today’s rule would not allow an increase in maximum driving time during the work shift or driving after the 14<sup>th</sup> hour from the beginning of the work shift.

#### Safety Rationale

In today’s NPRM, the Agency is reconsidering the value of off-duty breaks relative to on-duty breaks. Based on comments received, the Agency has taken another look at the Blanco, et al. (2011),<sup>15</sup> study to determine the applicability of its findings to the 30-minute break requirement.

While Blanco found that off-duty breaks resulted in a greater decrease in subsequent safety critical events (SCE) than on-duty breaks, many of the breaks were between 30 and 59 minutes in length, casting doubt on the findings’ applicability to a strict 30-minute break.<sup>16</sup> Furthermore, the off-duty breaks in the Blanco study were voluntary and many were taken in the sleeper berth. Both of these elements deviate from

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<sup>15</sup> Blanco, M., Hanowski, R., Olson, R., Morgan, J., Soccolich, S., Wu, S.C., & Guo, F. (2011) “The Impact of Driving, Non-Driving Work, and Rest Breaks on Driving Performance in Commercial Motor Vehicle Operations.” Available in this rulemaking docket.

<sup>16</sup> In reviewing the Blanco study, it was determined that there were 3,171 breaks of 30 minutes or longer used in the analysis. It should be noted that there were relatively few off-duty breaks – only 211 off-duty breaks, which was less than 6.7 percent of the total number of breaks.

the current environment where a rigid 30-minute rest break requirement forces drivers to go off-duty regardless of whether they feel fatigued or have space to rest. Thus, the study participants could have experienced off-duty breaks that were more beneficial in nature than the off-duty breaks taken as a result of the 2011 final rule, as the study participants likely opted to take off-duty breaks as a countermeasure to fatigue.

Lastly, Blanco categorized breaks from driving into four groups; Rest During Duty Period (Type 1), Work During Duty Period (Type 2), Rest During Duty Period/Off Duty (Type 3), and Off-Duty (Type 4). Break Type 1 and Type 4 include resting activities such as eating and sleeping, and break Type 3 is a combination of Type 1 and Type 4 breaks such that it also includes rest activities. The Blanco study collected data from November 2005 to March 2007, when the regulatory guidance required that any time spent in the vehicle cab (with the exception of the sleeper berth) was considered on-duty time. This would include in-cab activities that after 2011 could be considered off-duty, such as eating or taking naps. As such, while the Blanco study analyzes the reduction in SCEs for Type 1 and Type 4 breaks separately, under the present regulatory structure they would likely both be considered off-duty breaks and thus would fit into Type 4; Off-Duty Break. Using the published data in the Blanco study, FMCSA recalculated the magnitude of SCE reduction for an off-duty break using the break frequency published in the study for break Type 1, Type 3, and Type 4. This calculation resulted in a 33 percent SCE reduction, which is lower than the 51 percent for Type 4 breaks alone, and very close to the 30 percent reduction for Break Type 2.<sup>17</sup> FMCSA

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<sup>17</sup> It is FMCSA's position that the calculated 3% difference in SCE reduction should not be considered to correspond directly to a difference in crash rates. This is because SCEs are a much more common event than crashes, which results in the likelihood that a 30% reduction and a 33% reduction in SCEs may have the same impact on overall crash rates.

acknowledges that this result is not precise due to the limitations of the available data. Multiple break types could make up a single break, such that the summation of the break frequency by type can be more than the total number of breaks, and the magnitude of SCE reduction would likely be slightly different than what was calculated above. What is clear is that the magnitude of SCE reduction that Blanco attributed to off-duty breaks is larger than the SCE reduction that would be attributable to the off-duty 30-minute breaks required under the 2011 HOS rule (those that would be made up of Type 1, Type 3, Type 4 breaks as defined by Blanco). In light of this recent review, it appears that FMCSA placed too great a value on off-duty breaks, compared to other types of breaks described above. What seems to be consistent in the Blanco study was that breaks of any type reduced SCEs. Therefore, the Agency proposes to change the break provision to allow the driver to take a break while on duty but not driving, rather than requiring the time to be off duty.

Further, the Agency is proposing to tie the break requirement to eight hours of driving time rather than eight consecutive hours since the driver's last off-duty or sleeper berth period of at least 30 minutes. Based on the discussion above, FMCSA believes that on-duty breaks can have essentially the same SCE reduction as off-duty breaks. Tying the break requirement to driving time is in line with this finding. Many commenters to the ANPRM stated that the current 30-minute break provision requires them to go off duty after eight hours of on-duty time, even though they may not have driven for a long period of time when the rule requires a stop. FMCSA required the 30-minute break in the 2011 HOS rule based on literature that found a break from the driving task would lead to a reduction in SCEs in the hour after a break was taken. If drivers' schedules include time

periods of at least 30-minutes in an on-duty/non-driving status, they are receiving the intended benefits of the current requirement. FMCSA continues to believe that a break from driving is important for safety, but acknowledges that the changes in today's proposed rule would be less burdensome for carriers and drivers while achieving the same goal – a break from the driving task. These proposed changes may result in a decrease in off-duty breaks, but FMCSA anticipates that any potential effect on fatigue from fewer off-duty breaks will be offset or minimized by continuing to require a break from the driving task. Further, as explained below, this proposal would allow drivers to take an off-duty break when they believe it would be most helpful at preventing them from driving while fatigued, as opposed to requiring a break regardless of the warning signs of fatigue, without impacting their 14-hour driving window. As an example, consider a driver who under the current requirements spends two hours in on-duty/not driving status to start his or her duty period subsequently drives for six hours, takes the required 30-minute break, and then drives for five more hours before reaching the 11-hour limit. All other things equal, the proposed changes would allow this driver to take the break up to two hours later than under the current requirements, such that the driver's duty period could consist of an initial two hours in on-duty/not driving status followed by eight hours of driving, a 30-minute break, and three hours of driving before reaching the 11-hour limit. Both under the current requirements and under the proposed rule, this hypothetical driver receives the benefits of a break from the driving task. However, deferral of the break results in the driver driving later into the day before taking a required break, but driving fewer hours after it is taken. The Agency cannot say how this temporal shift in the break would alter the frequency of SCEs before the required break is

taken as compared to driving fewer hours after the break. The agency requests comments on how to estimate the change in SCEs from this temporal shift in the 30 minute break. Further, the Agency notes that for a driver who immediately begins driving at the start of his or her duty period, he or she may drive eight continuous hours before a break is required; this is true under the current requirements and would remain so under the proposed rule.

FMCSA anticipates that the same level of safety can be achieved by (1) allowing the driver to take a break while on-duty but not driving, rather than requiring the time to be off-duty, and (2) starting the 8-hour period when the CMV operator begins driving. The changes to the 30-minute break provision proposed by today's rule do not involve any increase to the 11-hour driving limit in place today.

Those drivers that work more than 8 hours but do not drive more than 8 hours may increase their VMT efficiency. These drivers are currently required to take a 30-minute off-duty break. Under the proposal, their on-duty/non-driving time would be considered a break from driving. They would be able to increase their efficiency by a reduction in off-duty time of up-to 30 minutes, but this would only be the case if off-duty breaks are not part of their regular operating schedule, and taken solely as a result of the 30-minute break requirement.

Drivers that drive for 8 consecutive hours may see an increase in VMT efficiency. This would occur if their day already has a 30-minute on-duty period (e.g., waiting at a loading dock) that would occur regardless of this rule. This on-duty period would meet the break requirements of the proposed rule. These drivers may also see their VMT unchanged. This would occur if their day does not contain a 30-minute on-duty period

that could count towards the proposed break requirement. In this instance, they would need to find a spot to park and take a break from driving under both today's requirements and the proposed requirements.

Furthermore, the Agency has reviewed several requests for exemption from the current 30-minute break requirement. In certain cases, the Agency has granted limited exemptions after determining, following notice and comment in the **Federal Register**, that the exemption would not result in any decrease in safety.<sup>18</sup> For example, in certain cases the Agency has allowed the break requirement to be satisfied with on-duty not-driving time. All exemptions require a carrier to report recordable crashes related to the exemption to the Agency. However, crashes may involve multiple factors, and might not be directly attributable to the exemption.

FMCSA was able to analyze some MCMIS crash data to provide insight into the relationship between crash risk and one exemption in particular. FMCSA granted an exemption on August 21, 2015 (80 FR 50912), allowing operators of vehicles transporting certain hazardous materials (HM) to satisfy the 30-minute break requirement using attending time. This exemption was necessary because FMCSA regulations prohibit operators of vehicles transporting certain HM from leaving their vehicles

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<sup>18</sup> For more information about each of the exemptions, and the specific conditions under which they were granted, please review the following notices: the American Trucking Associations, granted August 21, 2015 (80 FR 50912); the Department of Energy, granted June 22, 2015 (80 FR 35703); the National Asphalt Pavement Association, granted January 26, 2018 (83 FR 3864); the National Tank Truck Carriers, granted April 9, 2018 (83 FR 15221); R&R Transportation, granted October 2, 2015 (80 FR 59848); the Specialized Carriers & Rigging Association, granted November 1, 2016 (81 FR 75727); the Department of Defense (DOD) Surface Deployment & Distribution Command (SDDC), granted October 28, 2013 (78 FR 64265); the American Concrete Pumping Association, granted March 21, 2017 (82 FR 14595); the National Pork Producers Council, granted June 11, 2014 (79 FR 33634); the California Farm Bureau Federation for bee transporters, granted June 19, 2015 (80 FR 35425); and the American Concrete Pavement Association, granted February 6, 2019 (84 FR 2307).

unattended (49 CFR 397.5), and thus, they could not satisfy the off-duty break requirement while maintaining compliance with the requirement to attend the vehicle.

MCMIS contains counts of crashes where a vehicle with an HM placard was present, as well as crash counts of all large truck crashes. Using these data points, FMCSA examined the total number of crashes where a vehicle with an HM placard was present for the 2 years before and after the exemption went into effect. From August 22, 2013, through August 21, 2015, there were 7,217 crashes where vehicles with an HM placard were present, or 2.616 percent of the total crashes involving large trucks (7,217 HM placard present / 275,915 large truck crashes). From August 22, 2015 through August 21, 2017 there were 7,277 crashes where vehicles with an HM placard were present, or 2.419 percent of the total crashes involving large trucks (7,277 HM placard present / 300,775 large truck crashes). This analysis has some limitations in that not all vehicles transporting HM are large trucks and that crashes cannot be attributed to the exemption. However, the slight decrease in the HM placard share of total large truck crashes may suggest that the exemption allowing attending time to satisfy the break requirement did not increase crash risk for operators of vehicles transporting certain HM.

In the years that FMCSA has spent administering these exemptions, FMCSA has not discovered evidence of adverse safety impacts that would require withdrawal of any 30-minute exemption. However, in other cases, FMCSA has denied requests for blanket exemptions because the applicants were unable to provide an adequate alternative to, or



sufficient information to support relief from, the 30-minute break that meets the statutory criteria and demonstrates an equivalent level of safety.<sup>19</sup>

FMCSA anticipates that an on-duty break from driving would not adversely affect safety relative to the current requirements as discussed in connection with the Blanco study, above, but requests additional data on the safety impacts of this proposal.

In addressing today's proposed changes to the HOS rules, the agency encourages motor carriers and other stakeholders to submit driver record data supporting their comments in a manner that does not reveal the identity of an individual driver.

#### Additional Questions

FMCSA seeks additional information and data on the impacts of changing the 30 minute break provision, in part to better assess its potential costs and benefits.

Specifically:

- Will you take fewer total breaks from driving with this change? How many and when would those breaks have occurred during your route?
- Do you expect to still take a 30 minute break if you have less than 8 hours of drive time? If so, would you take that break on-duty or off-duty?
- If you no longer need to take a 30 minute break, how do you expect to spend this additional time?

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<sup>19</sup> For more information about these denials, please review the following information: the Payne & Dolan/Zenith Tech/Northeast Asphalt application, denied June 24, 2015 (80 FR 36397); the Commercial Vehicle Safety Alliance petition, denied August 9, 2016 (T.F. Scott Darling, Administrator, FMCSA, in a letter denying a petition for rulemaking dated October 28, 2015, to Colin Mooney, Executive Director, Commercial Vehicle Safety Alliance, August 8, 2016. Available at: <https://www.fmcsa.dot.gov/petitions>); and the Transco/McLane application, denied July 18, 2017 (82 FR 32918).

- How will this provision change your scheduling and planning?
- Do you expect to drive more miles or hours based on this change? Do you expect to be able to complete additional “runs”?

Additionally, the Agency acknowledges that many commenters specifically asked that the 30-minute break requirement be eliminated, and has considered that as an alternative under E.O. 12866. However, without the benefit of further information in this regard, it would not be appropriate to entirely eliminate the rule. Given that the flexibility allowed in today’s proposal would alleviate many of the concerns expressed by commenters, FMCSA seeks further information on the effect of eliminating the break requirement altogether. Specifically—

(1) What would be the safety impact of eliminating the required break, potentially allowing up to 11 consecutive hours of driving?

(2) What has been the cost to your company of complying with the 30-minute break rule since the compliance date for that rule, July 1, 2013?

(3) How often do work shifts require an individual to drive more than 8 hours without at least a 30-minute change in duty status?

(4) Would eliminating the break requirement result in greater cost savings than the current proposal? If so, what would be the amount of these cost savings?

#### **D. Sleeper Berth**

##### History

The 2003 HOS rule (68 FR 22456, Apr. 28, 2003, amended by 68 FR 56208, Sept. 30, 2003), introduced the concept of a fixed 14-hour driving window to help limit

potential overly-long periods of wakefulness and duty hours that could lead to fatigue-related crashes.

The 2005 HOS final rule (70 FR 49978, Aug. 25, 2005) changed the sleeper-berth provisions to require the equivalent of 10 hours off duty to be taken in one 8-hour sleeper-berth period, combined with another 2-hour period, either in the sleeper berth, off duty, or a combination of the two. This established one 8-hour period in which to obtain restorative rest, yet provided the driver flexibility in use of the shorter period. Although comments were closely divided on the issue and research related to the length of the longer rest period was not definitive, the Agency limited drivers to an 8/2 split option. Drivers, however, have often objected to 8 hours in the sleeper berth, the lack of flexibility allowed by the sleeper-berth provisions, and 14-hour rule in general.

#### Current Regulation

Current HOS rules allow a sleeper-berth user to divide the minimum 10 hours off duty, which are otherwise required to be consecutive, into two separate periods. Drivers who use sleeper berths may take at least 8 consecutive hours of the required 10-hour off-duty period in the sleeper berth. In addition, the driver using the sleeper-berth exception must take a separate (earlier or later) period of at least 2 hours off duty, which may be in the sleeper berth if desired. It does not matter which rest period is taken first.

#### Comments to the ANPRM

Many commenters to the ANPRM requested increased flexibility in the sleeper-berth provisions. Some suggested reverting to the pre-2005 split sleeper-berth provisions,

which allowed qualifying hourly splits of 7/3, 6/4, or 5/5.<sup>20</sup> Some drivers suggested that the longer period be not less than 7 hours, because they suspected that motor carriers might require them to take the shortest rest period, regardless of how the drivers felt. However, several commenters stated that team drivers should be allowed to take advantage of additional flexibility, such as a 5/5 split. Safety advocates did not believe the data supported any changes to the existing sleeper-berth provisions.

One of the most common concerns raised by CMV drivers has been that, under the current HOS rules, they do not have the flexibility to rest when they are tired. Some commenters suggested that sleeper-berth time splits be allowed to vary from day to day, so long as drivers accumulated a total of at least 8 hours a day in the berth. Other commenters suggested that at least 8 hours in the berth should be logged for every 24-hour period, and once 10 hours are accumulated, the on-duty clock should be restarted. One commenter recommended eliminating the split sleeper-berth provision and just allowing “off-duty” time to stop the 14-hour clock. Some drivers stated that increased flexibility in split options would allow carriers to coerce drivers to operate when they would prefer not to do so. The perception from these commenters was that the dispatcher would manipulate the hours to maximize productivity.

Commenters from multiple segments of the motor carrier industry stated that sleeper-berth options currently do not suit their specific needs, and that expanded options would assist their operations. Commenters stated that parking would be easier if drivers had more staggered sleeping times and used rest stops at different times. However, some

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<sup>20</sup> Before the August 25, 2005 revisions of § 395.1(g), drivers of property-carrying CMVs were allowed to split sleeper-berth time into any two periods, as long as neither one was less than 2 hours, subject to certain restrictions.

commenters suggested retaining the current standard, a sleeper-berth period of at least 8 hours.

### Safety Rationale

There is an extensive body of research suggesting that split-sleep schedules may improve safety and productivity as compared to consolidated daytime sleep. Mollicone, et al. (2007)<sup>21</sup> conducted a laboratory study of 93 healthy adult subjects to investigate physiological sleep obtained in a range of restricted sleep schedules. Eighteen different conditions with restricted nocturnal anchor sleep, with and without diurnal naps, were examined. The study found that “split sleep schedules are feasible and can be used to enhance the flexibility of sleep/work schedules involving restricted nocturnal sleep due to scheduling.” The researchers concluded that the results are generally applicable to any continuous industrial operation that involves sleep restriction, night operations, and shift work.

Belenky, et al. (2012)<sup>22</sup> conducted a laboratory study on 53 healthy participants, making a between-group comparison of nighttime, 5 hour/5 hour split, or daytime sleep across a 5-day simulated workweek. The effect of the three sleep conditions was measured by polysomnography, Psychomotor Vigilance Task, high fidelity driving simulator, Digit Symbol Substitution Test, and subjective state, as well as the long-term health-related biomedical measurements of blood glucose, IL-6, leptin, testosterone, and blood pressure. In comparison to consolidated nighttime sleep or split sleep, participants

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<sup>21</sup> Mollicone, D.J., Van Dongen, H.P.A., Dinges, D.F. (2007) “Optimizing Sleep/Wake Schedules in Space: Sleep During Chronic Nocturnal Sleep Restriction With and Without Diurnal Naps,” *Acta Astronautica*, 60 (2007) 354 – 361. Available in this rulemaking docket.

<sup>22</sup> Belenky, G., Jackson, M.L., Tompkins, L., Satterfield, B., & Bender, A. (2012) “Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health,” Washington, DC: FMCSA. Available in the docket for this rulemaking.

in the daytime sleep condition slept less and reported (on a subjective sleepiness scale) that they felt sleepier. With respect to total sleep time and sleepiness, the findings of this 2012 study suggest that split sleep is preferable to consolidated daytime sleep which is allowed under the current regulations.

Short, et al. (2015)<sup>23</sup> conducted a systematic review of the sleep, sleepiness, and performance implications of limited wake shift work schedules. They identified 20 independent studies, including 5 laboratory and 17 field-based studies focused on maritime watch keepers, ship bridge officers, and long-haul train drivers. Findings indicate that limited wake shift work schedules were associated with better sleep and lower sleepiness in the case of (1) shorter time-at-work, (2) more frequent rest breaks, (3) shifts that start and end at the same clock time every 24 hours, and (4) work shifts commencing in the daytime (as opposed to night).

Socolich, et al. (2015)<sup>24</sup> analyzed data that had been naturalistically collected during a separate study to compare driver usage of three separate restart methods under the 2005 HOS regulations: 10 consecutive hours off duty, 34 consecutive hours off duty, or the split sleeper berth provision, which requires a single sleeper berth period of at least 8 hours. The study also examined the relationship between the driver's choice of restart method and that driver's safety performance. The drivers chose which restart method worked best for their schedule and their preference, and they were free to use any restart

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<sup>23</sup> Short, M. A., Agostini, A., Lushington, K., & Dorrian, J. (2015) "A Systematic Review of the Sleep, Sleepiness, and Performance Implications of Limited Wake Shift Work Schedules," *Scandinavian Journal of Work, Environment and Health*, 41(5):425440. Available at: <https://www.ncbi.nlm.nih.gov/pubmed/26103467>. (Accessed January 4, 2019).

<sup>24</sup> Socolich, S., Hanowski, R., & Blanco M. (2015). Evaluating the Sleeper Berth Provision: Investigating Usage Characteristics and Safety-Critical Event Involvement. (Report No. 17-UI-046). Available at: <https://vtechworks.lib.vt.edu/handle/10919/73954> (accessed June 20, 2019).

period at any time, as long as they complied with the current HOS regulations. Safety performance was determined by comparing safety critical events with baseline data for each driver during the shift following their chosen restart method. After controlling for individual driver differences, Soccolich, et al. found that safety performance was comparable (i.e., not significantly different) between drivers who used the sleeper berth provision and drivers who chose either the 10- or 34- hour restart method.

The above research highlights the value of split-sleep scenarios in combating driver fatigue, but does not directly speak to the changes proposed in this rule -- allowing a 7/3 "split" option, and not counting either rest period in the calculation of the 14-hour "driving window." Under the 2003 HOS rule, which initially established the concept of the 14-hour driving window, drivers were permitted to accumulate the minimum off-duty period of 10 consecutive hours in four separate ways: (1) a minimum of 10 consecutive hours off duty; (2) a minimum of 10 consecutive hours in a sleeper berth; (3) by combining consecutive hours in the sleeper berth and off-duty time that total 10 hours; and (4) by combining two separate sleeper-berth rest periods totaling at least 10 hours, provided that neither period is less than 2 hours. The fourth option was the split sleeper-berth option at the time, which allowed drivers to split their sleeper berth time in any combination (such as 4/6; 5/5) as long as each period was at least 2 hours, and totaling a minimum of 10 hours. The rule allowed these periods to be excluded from the calculation of allowable on-duty and driving time. This approach resulted in concerns that the 2005 HOS rule intended to alleviate. The primary issue was the ability of drivers to split their rest periods into segments that did not provide for an adequate rest period, such as the 5/5 split. The 2005 rule resulted in more clarity by relying on the fixed 14-hour "driving

window” under which only a rest period of at least 8 hours in the sleeper berth would not count against the 14-hour driving window. Although comments were closely divided on the issue and research related to the length of the longer rest period was not definitive, the Agency limited drivers to an 8/2 split option. In developing today’s proposal, the Agency reviewed available research regarding the sleeper berth exception that has been in place since 2005 to determine if the intention of the regulation—an adequate longer rest period—can be achieved while providing additional flexibility.

Research conducted prior to 2003 found that commercial drivers were getting 5.18 hours of sleep per night, on average (Mitler, et al. (1997)).<sup>25</sup> In 2003, FMCSA revised the HOS regulations to provide drivers with more opportunities for sleep. Research completed after 2003 found an increase in sleep for drivers following the implementation of the 2003 HOS regulations. Hanowski, et al. (2007),<sup>26</sup> conducted a naturalistic driving study with 73 drivers, collecting and analyzing sleep actigraphy data to determine overall sleep quantity. The study found that commercial drivers were getting more sleep under the revised HOS regulations, with an average of 6.15 hours of sleep per 24-hour period (compared to the average of 5.18 hours per night reported by Mitler, et al. in 1997).

Van Dongen and Mollicone (2013)<sup>27</sup> conducted a naturalistic driving study of 106 CMV drivers whose schedules included the HOS restart provision. The study found that

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<sup>25</sup> Mitler, M.M., Miller, J.C., Lipsitz, J.J., Walsh, J.K., Wylie, C.D. (1997) “The Sleep of Long-Haul Truck Drivers,” *New England Journal of Medicine*, 337, 755-761. Available in the docket for this rulemaking.

<sup>26</sup> Hanowski, R.J., Hickman, J., Fumero, M.C., Olson, R.L., Dingus, T.A. (2007) “The Sleep of Commercial Vehicle Drivers Under the 2003 Hours-of-Service Regulations,” *Accident; Analysis and Prevention*, 39(6), 1140-5. Available in the docket for this rulemaking.

<sup>27</sup> Van Donge, H.P.A. & Mollicone, D.J. (2013) “Field Study on the Efficacy of the New Restart Provision for Hours of Service,” (FMCSA-RRR-13-058). Washington, DC: FMCSA. Available in the docket for this rulemaking.



drivers obtained between 6.0 and 6.2 hours of sleep (on average) per 24 hours during duty cycles, as measured by wrist-worn actigraphy devices.

Dinges, et al. (2017),<sup>28</sup> conducted a naturalistic driving study to evaluate the operational, safety, fatigue, and health impacts of the HOS restart provisions. A total of 235 CMV drivers, representative of the industry, contributed data while working their normal schedules, with 181 drivers completing all 5 months of the study. Drivers' sleep times were monitored with wrist-worn actigraphy devices. The study found that drivers obtained, on average, approximately 6.5 hours of sleep per day during duty periods.

Finally, Sieber, et al. (2014),<sup>29</sup> conducted a survey of 1,670 long-haul truck drivers at 32 truck stops across the 48 contiguous United States. The research team used the responses to compute prevalence estimates for self-reported health conditions and risk factors. Drivers were asked to report how many hours they slept per night, on average; researchers compared drivers' self-reported sleep durations to those reported by sampled working adults in the 2010 National Health Interview Survey (NHIS).<sup>30</sup> The National Institute of Occupational Safety and Health study found that:

- 26.5 percent of long-haul truck drivers reported that they slept 6 hours or less per night, compared to 30.0 percent of the general working population;
- 51.4 percent of long-haul truck drivers reported that they slept 6–8 hours per night, compared to 63.9 percent of the general working population; and

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<sup>28</sup> Dinges, D.F., Maislin, G., Hanowski, R.J., Mollicone, D.J., Hickman, J.S., Maislin, D., Kan, K., Hammond, R.L., Soccolich, S.A., Moeller, D.D., & Trentalange, M. (2017) "Commercial Motor Vehicle (CMV) Driver Restart Study: Final Report," (FMCSA-RRR-15-011). Washington, DC: FMCSA. Available in the docket for this rulemaking.

<sup>29</sup> Sieber, K.W., Robinson, C.F., Birdsey, J., Chen, G.X., Hitchcock, E.M., Lincoln, J.E., Akinori, N., & Sweeney, M.H. (2014) "Obesity and Other Risk Factors: The National Survey of U.S. Long-Haul Truck Driver Health and Injury," *American Journal of Industrial Medicine*, 57, 615-626. Available at: <https://www.ncbi.nlm.nih.gov/pubmed/24390804>. (Accessed January 4, 2019).

<sup>30</sup> Available at: <https://www.ncbi.nlm.nih.gov/pubmed/22624451> (accessed May 6, 2019).

- 22.1 percent of long-haul truck drivers reported that they slept more than 8 hours per night, compared to 5.0 percent of the general working population.

These studies show that long-haul truck drivers are, on average, getting more sleep than they did prior to the HOS rule change in 2003. Further, it shows that drivers are likely getting more sleep than other working adults in the United States.

Maislin, et al. (2001),<sup>31</sup> showed that it is possible for a person to avoid physiological sleepiness or performance deficits on less than 7 hours of sleep; the subjects in this study were supplementing their sleep with longer naps later in the day. Maislin found that a shorter restricted anchor sleep combined with longer naps can reduce sleepiness and performance deficits similar to longer duration anchor sleep alone. This study confirmed that total sleep time per 24-hour period is an important factor in reducing fatigue and improving performance. Rest breaks, and especially naps, are an important tool in combating fatigue, and FMCSA encourages their use. As noted in Wylie (1998),<sup>32</sup> “[n]aps in trips with judged drowsiness appeared to result in recovery effect, compared to the relatively high levels of drowsiness seen in the hour prior to napping.” Research on napping indicates it does refresh a driver and improves performance in the near term. Caldwell, et al. (1997),<sup>33</sup> found that their subjects performed better after napping compared to after only resting without sleep. Garbarino

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<sup>31</sup> Maislin, G., Rogers, N.L., Price, N.J., Mullington, J.M., Szuba, M.P., Van Dongen, H.P.A., and Dinges, D., (2001) “Response Surface Modeling of the Effects of Chronic Sleep Restriction With and Without Diurnal Naps,” – Report. Available in the docket for this rulemaking.

<sup>32</sup> Wylie, D. (1998) “Commercial Motor Vehicle Driver Drowsiness, Length of Prior Principal Sleep Periods, and Naps,” – Report. Available in the docket for this rulemaking.

<sup>33</sup> Caldwell, J.S., et al. (1997) “The Efficacy of Hypnotic-Induced Prophylactic Naps for the Maintenance of Alertness and Performance in Sustained Operations,” – Report. Available in the docket for this rulemaking.

(2004)<sup>34</sup> found that, in addition to working as a short-term countermeasure to fatigue experienced during normal working hours, napping “before night work can be an effective countermeasure to alertness and performance deterioration.” Naps do not have to be long to improve performance. Sallinen, et al. (1997),<sup>35</sup> found that naps of less than 1 hour most influenced performance, and a survey of train engineers found that 20-minute napping was effective for enhancing alertness (Moore-Ede, et al. (1996)).<sup>36</sup>

The research discussed above demonstrates that drivers are getting adequate sleep, and that allowing a 7/3 split option would continue to provide the opportunity for a longer sleep period commensurate with current levels of sleep for truck drivers. Further, by excluding the shorter rest period from the calculation of the 14-hour driving window, a driver has the ability to obtain needed rest without using available work time.

The Agency had planned to conduct a pilot program to collect data on the safety of drivers who split their sleeper-berth time in a variety of ways. However, as a result of a literature review, and subsequent comments to the ANPRM and listening sessions, FMCSA concluded that there was sufficient basis to support limited changes to the sleeper-berth provision without conducting a pilot program. Today’s proposal would allow drivers additional flexibility in the use of the sleeper-berth provision.

### Today’s Proposal

Over the years FMCSA has received comments from motor carriers and industry associations that the current sleeper-berth provisions are too rigid and that drivers do not

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<sup>34</sup> Garbarino, S., et al. (2004) “Professional Shift-Work Drivers Who Adopt Prophylactic Naps Can Reduce the Risk of Car Accidents During Night Work,” - Report Abstract. Available in the docket for this rulemaking.

<sup>35</sup> Sallinen, Harma, M., Åkerstedt, T., Rosa, R., Lillqvist, O. (1997) “Can a Short Napbreak Improve Alertness in a Night Shift?” – Report. Available in the docket for this rulemaking.

have enough opportunities to stop driving and take breaks when they are fatigued. The Agency recognizes that approximately 26 percent of drivers sleep less than 6 consecutive hours per night and about 51 percent sleep between 6 and 8 consecutive hours per night based on the NHIS study cited above; some may actually find it difficult to sleep more than 7 consecutive hours.<sup>37</sup> However, the current sleeper-berth provision requires them to be in the berth for 8 consecutive hours thus confining them to the berth for more time than many of them need for sleeping.

Today, FMCSA proposes a modification of the sleeper berth exception to allow drivers to satisfy the required 10 hours off duty by taking two off-duty periods, provided that neither period is less than 2 consecutive hours and one period consists of at least 7 consecutive hours in the berth. This sleeper-berth exception would provide drivers greater operational flexibility, while affording the opportunity for the driver to obtain the necessary amount of restorative sleep. Drivers using this option would be required to obtain one single rest period of at least 7 consecutive hours, paired with another period of at least 2 hours, provided that a total of 10 hours of off-duty time is achieved. When paired, neither qualifying period would count against the 14-hour driving window.

This proposal would ensure that drivers using the sleeper berth to obtain the minimum off-duty time have at least one rest period of a sufficient length to have restorative benefits to counter fatigue. This proposal would also provide for a second rest period that would allow a driver to have time for a nap or rest break, or provide an opportunity to attend to personal matters or other activities. A break later in the day, in

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<sup>37</sup> Moore-Ede, M., Mitchell, R.E., Heitmann, A., Trutschel, U., Aguirre, A., Hajamavis, H. (1996) "Canalert '95 - Alertness Assurance in the Canadian Railways," – Report. Available in the docket for this rulemaking.

which a driver could take a nap, could have a positive impact on driver performance, especially considering that drivers could be on an irregular or rotating schedule, getting out of phase with their natural circadian rhythm. Consistent with the current HOS rules, the order of the qualifying rest periods does not matter.

Each time an individual takes one of these two rest breaks, he or she would need to recalculate the on-duty period and driving hours available. Drivers must be in compliance with the 11-hour driving time and 14-hour driving window requirements on both sides of the qualifying rest period. Driving time in the period immediately before and after each rest period, when added together, must not exceed 11 hours under § 395.3(a)(3) and must not violate the 14-hour driving window under § 395.3(a)(2). The time in the period immediately before and after each rest period, when added together, establish the 14-hour window within which all driving must be completed. Thus, a CMV driver's activities between the qualifying split breaks, count towards the driver's next available 11-hour and 14-hour limits.

An example showing the 11-hour and 14-hour limitations in which the driver uses the sleeper berth provision might prove helpful. Assume the driver starts work on day 1 at 7:30 AM, spends half an hour on duty (not driving), and then starts driving at 8:00 AM. She drives for a continuous 7 hours but then takes a 3-hour off duty break, beginning at 3:00 PM. She then starts driving again at 6:00 PM and drives for 4 hours. At 10:00 P.M., the driver enters the sleeper berth for 7 hours when she exhausted her 11 hours of driving time clock. She remains in the sleeper berth until 5:00 AM on day 2. (Alternatively, she could have limited her 3:00 PM break to as little as 2 hours and then restarted driving, but her second break in the sleeper berth would need to be longer so that combined time

equals at least 10 hours.) Under either scenario, combining the two break periods under the sleeper berth provision, would allow her to avoid the required 10 consecutive hours off-duty, which would apply had she relied on the proposed split duty day provision rather than the sleeper berth exception. She can now drive again until noon that second day, at which point she runs up against the 11-hour clock governing driving time (her available hours are calculated from the end of the initial break period). Suppose instead of beginning to drive at 5:00 AM, the driver spent 4 hours on duty (not driving) and then resumed driving at 9:00 AM. She would then need to stop driving at 3:00 PM because she exhausted her 14-hour driving window, even though she drove for only 10 hours. However, note that a driver could not claim use of both the split duty day provision and the sleeper berth exception in a single duty day, without violating the 10 consecutive hour rule.

In addressing today's proposed changes to the HOS rules, the agency encourages motor carriers and other stakeholders to submit driver record data supporting their comments in a manner that does not reveal the identity of an individual driver.

#### *Additional Questions*

In today's NPRM, the Agency requests comments on the split rest periods under the sleeper berth proposal, including not counting either period toward the 14-hour driving window.

Given the previous discussion of the research showing many drivers typically sleep a little more than 6 consecutive hours, FMCSA also requests comments and any supporting data on the possibility of a 6- and 4-hour split break. Drivers using this option would be required to obtain one rest period of at least 6 consecutive hours in the sleeper

berth, paired with another period off duty or in the sleeper berth, for a total of 10 hours of off-duty time.

Specifically FMCSA requests comments on:

- How often do you use the sleeper berth provision under the current regulations?  
Will you use the sleeper berth provision more or less if the proposed changes are finalized? How much more or less?
- How will this provision change your scheduling and planning?
- How often would you utilize the 7-3 hour split during an average week?
- Would you expect to get the same amount of sleep in the 7 hour period as in the current 8 hour period?
- Do you expect to drive more miles or hours based on this change? Do you expect to be able to complete additional “runs”?

#### **E. Split-Duty Period**

##### Current Rule

After being off duty for 10 or more consecutive hours, a driver of a property-carrying CMV is allowed a period of 14 consecutive hours in which to drive up to 11 hours. The 14-consecutive-hour driving window begins when an individual starts any kind of work. The individual may not drive again after the end of the 14-hour window until he or she has been off duty for another 10 consecutive hours, or the equivalent of at least 10 consecutive hours using the sleeper berth option. This 14-hour window currently may not be extended by off-duty breaks that may occur during the duty period.

##### Request

OOIDA petitioned FMCSA to allow property-carrying CMV drivers to take a single off-duty rest break for up to 3 consecutive hours once per 14-hour driving window. That rest break would pause the 14-hour clock for the duration of the break. However, drivers would still be limited to 11 hours of driving time and required to have at least 10 consecutive hours off duty before starting a new duty period. OOIDA also requested that the Agency eliminate the 30-minute break.

#### Comments Related to the Petition

Consistent with the OOIDA petition, a number of commenters addressed the 14-hour rule, saying that it should be extended by a break period of up to 3 hours. Many commenters to the ANPRM have stated that the 14-hour driving window does not comport with the inconsistent and sometimes unpredictable working conditions encountered during a duty period. Thus, the current rule leads to unintended consequences of added stress and potential speeding that result from the need to finish a run prior to the end of the 14-hour window.

#### Relevant Research

The Blanco study showed that the SCE rate increased modestly with increasing work and driving hours. Blanco also found that

“... breaks can be used to counteract the negative effects of time-on-task. The results from the break analyses indicated that significant safety benefits can be afforded when drivers take breaks from driving. This was a key finding in the current study and clearly shows that breaks can ameliorate the negative impacts associated with time-on-task. The benefits from breaks from driving ranged from a 30- to 50-percent reduction in the rate of SCE in the hour following a break, depending on the type of break from driving, with the most benefit occurring for off-duty (non-working) breaks.”

#### Today's Proposal



Today's proposal would allow a single break of off-duty time, ranging from 30 minutes to no more than 3 consecutive hours, to be excluded from the 14-hour driving window, provided the driver has at least 10 consecutive hours off duty before the start of his or her next duty period. A single pause up to 3 hours to the 14-hour clock would provide significantly more flexibility than allowed under the current rules. It would allow drivers to take an off-duty break without fear of exhausting their available hours under the 14-hour clock, which would also allow them to take additional rest or to avoid traffic congestion.<sup>38</sup>

An example under which a driver uses the split duty period might prove helpful. Assume a driver starts a new workday on duty at 7:30 AM and begins driving at 8:00 AM. At 9:00 AM, she arrives at a warehouse and experiences a 3-hour wait. The driver elects to use the split duty period, recording this time as "off-duty," given she isn't performing any type of work. At noon, the driver begins to load, a process that takes 1 hour which she records as on duty, not-driving time. At 1:00 PM, the driver starts driving for a consecutive 8 hours (1:00 PM – 9:00 PM), at which point she must take a 30-minute break under today's proposal. At 9:30 PM, however, she may still drive an additional 2 hours under today's split duty day proposal. She would need to stop driving at 11:30 PM because she would run up against her maximum driving time --11 hours (even though she would have another hour available on her maximum driving window). At 11:30 PM, she starts a 10-consecutive hour off-duty period. She may then resume driving at 9:30 AM the following day. Absent the split duty pause, the driver would have had to stop driving at 9:30 PM when she exhausted her 14-hour driving window.

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<sup>38</sup> OOIDA also petitioned for elimination of the current 30-minute break requirement. The agency's analysis of this issue is discussed earlier in this document.

At 9:30 AM, assume the driver spends 30 minutes on duty (not driving), then drives from 10:00 AM to 2:00 PM. She then spends 2 ½ hours at a receiver, unloading part of her load. From 4:30 PM to 6:30 PM, she drives to her next stop where she spends an additional 2 hours unloading (until 8:30 PM). She then drives for an hour to a rest area (9:30 PM) where she rests for 3 hours under the proposed split duty period. At 12:30 AM she starts driving. However, at 2:30 AM she has exhausted the 14-hour window (adjusted for her 3-hour pause) and must now take 10 hours off duty before driving, even though she never exhausted her 11-hour driving limit.

### Safety Rationale

Except under the sleeper berth option, current regulations do not allow drivers to pause the 14-hour clock to take a prolonged break regardless of how they feel. By not providing credit for a break taken during a duty period, the existing rules may disincentivize drivers from voluntarily taking any additional rest breaks beyond those required by regulation. For drivers who voluntarily take additional rest breaks, the existing rules may incentivize these drivers to speed in order to complete their driving prior to the end of the 14-hour driving window, resulting in increasing crash risk. The split-duty provision would alleviate these unintended consequences by allowing drivers to take a break if they feel fatigued, or if their work day straddles a time period that doesn't provide for meaningful work to be accomplished (e.g., long detention times). The intent is to give drivers the flexibility to shift their work and drive time commensurate with the length of a voluntary off-duty period. FMCSA is aware that this provision would

allow driving up to 17 hours after the last longer rest period. Some research<sup>39</sup> has found a higher risk of an SCE when driving later in the driving window. However, that research did not examine a prolonged break within the driving window. Nor did that research consider how driver behavior might change to meet a delivery time. FMCSA is proposing to allow a voluntary break of up to 3 hours to mitigate the safety impacts that could result from unpredictable working conditions, and anticipates that due to the voluntary nature of the break, drivers would be able to obtain rest that would mitigate the potential effect on fatigue of driving later in the work shift. FMCSA is not aware of research findings pointing to the optimal length of a pause, but considers 3 hours to be the right balance of flexibility and safety. FMCSA bases this proposal on the same logic which allows the 10-hour off-duty period to be split for drivers using sleeper berths. Research, as described in section VII. D., indicates benefits of mitigating time on task fatigue through a shorter rest period combined with a required sleeper berth period. Both provisions are based on a shorter break paired with a longer rest period. FMCSA requests comments, research, and data on the optimal length of a pause that would allow drivers reasonable flexibility to manage operational variables while ensuring that driving does not occur after too much time has elapsed since the last longer rest period.

It should be noted that the proposed off-duty break of up to 3 hours is not a unique exception to the 24-hour circadian cycle implicit in the current 14-hour driving window plus 10 consecutive hours off duty. Under current rules, drivers are not required to go off duty at the end of the 14-hour period. They must stop driving, but may remain

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<sup>39</sup> Blanco, M., Hanowski, R., Olson, R., Morgan, J., Soccolich, S., Wu, S.C., & Guo, F. (2011) "The Impact of Driving, Non-Driving Work, and Rest Breaks on Driving Performance in Commercial Motor Vehicle Operations." Available in this rulemaking docket.

on duty to perform other tasks. Post-driving work is most likely if the driver arrives at a terminal near the end of the 14-hour period and is required to perform additional work for the motor carrier at that location. Only when the driver goes off duty does the 10-hour rest period begin. The work day may thus be longer than 24 hours. On the other hand, drivers wishing to maximize their driving time may drive up to 11 hours, take a minimum of 10 hours off duty, and repeat the cycle. Based on FMCSA experience, this schedule is rare and mostly limited to drivers making rapid cross-country trips. The result is a 21-hour day, called a backward rotating cycle. That is a considerable improvement over the 18-hour day allowed by the FMCSRs until 2003, when a 10-hour driving limit could be combined with only 8 hours off duty. But in those two cases, drivers are likely to reach their 60- or 70-hour “weekly” on-duty limit more quickly, requiring them to stop driving, at least for a 34-hour restart. Neither of the current alternatives to a 24-hour cycle – post-driving work and compressed schedules – requires the driver to take compensatory off-duty time, yet that is precisely the added value provided by the proposed split duty day. The off-duty time required by this provision would enable drivers to take restorative rest that would counteract, if not eliminate, the effects of a longer duty day. The preamble to the 2003 final rule included the following: “The FMCSA believes that the strict 24-hour work/rest cycle would be ideal from a scientific viewpoint, but it is simply not practical and too inflexible to require of the industry. A strict 24-hour work/rest cycle would cause unavoidable impacts to motor carrier operations that the agency cannot justify from a safety or economic standpoint” (81 FR 22456, 22468, April 28, 2003). That conclusion remains true today.

When designating a qualifying off-duty period during the course of a duty day, a driver is not required to document the provision she or he is employing. However, a driver could not extend the duty period by employing both the sleeper berth option and split-duty day provision within the course of a duty period. A driver relying on the split-duty day provision can extend a duty day up to 17 hours by taking a qualifying off-duty break (ranging between 30 minutes and 3 hours), but then must take 10 consecutive hours off-duty before resuming driving. However, a driver could decide after taking a 3-hour break (or any off-duty or sleeper berth break of at least 2 consecutive hours) to instead pair it with a sleeper berth break of 7 hours, (thus totaling 10 hours off duty) and neither break period would count against the 14-hour clock. By using the sleeper berth approach, the driver could avoid the 10 consecutive hours off-duty under the split-duty day provision, provided that she or he satisfies the provisions of the sleeper berth rule. While the driver would have the option of using either the split-duty day provision or the sleeper berth option (provided the vehicle has a sleeper berth), a driver could not take more than a single 3-hour break, claiming time under both the sleeper berth provision and split-duty day provision without running afoul of the required 10 consecutive hours off duty under the split-duty day provision. Additionally, the split-duty day provision would be available to drivers who cannot rely on the sleeper berth exception because they are driving vehicles lacking a sleeper berth.

In addressing today's proposed changes to the HOS rules, the agency encourages motor carriers and other stakeholders to submit driver record data supporting their comments in a manner that does not reveal the identity of an individual driver.

*Additional Questions on the Proposal*

FMCSA seeks additional information and data on the impacts of the split-duty period provision, in part to assess its potential costs and benefits. Specifically:

- How will this provision impact the number of driving hours during a single driving window? How will this provision impact your total driving hours during a given week or year?
- How would this provision impact your regular schedule? How often would you expect to take advantage of this provision in a given work week? Why?
- What are the expected benefits from utilizing the 3 hour pause?
- Do you expect to use this provision to account for uncertainty such that trips could be finished on their scheduled completion day? How often do uncertain factors impact your schedule such that you are unable to complete a trip during the expected driving window and must delay delivery until after a 10 hour off-duty period?
- Do you expect to be able to complete more trips due to this provision (i.e., schedule additional freight movement)? How many additional trips would you expect to plan during a given week or year?
- Would you expect to be able to utilize more of the 11 hours of drive time currently available due to the 3 hour pause?
- Do you expect this provision to impact drivers' sleep schedule? How so?
- Will this provision allow for drivers to shift off their circadian rhythm more easily than under current rules?
- In a full year, would this provision lead to additional driving miles and/or driving time?

- How often would you take advantage of the full 3 hour pause as compared to shorter amount of times? Why?
- How would you plan to utilize the off-duty time spent during the 3 hour pause? Would you utilize the time sleeping in a truck cab more often or other leisure activities more often?
- Do you anticipate any fatigue impacts on driving up to the 17<sup>th</sup> hour of a duty day? How would the up to 3 hour break impact that fatigue level?

*Additional Questions on Allowing Multiple Pauses*

FMCSA seeks additional information on whether the pause should be allowed to be divided and total up to 3 hours. Specifically:

- What operations would benefit from multiple off-duty periods totaling 3 hours?
- Are there data and research available to support breaking up the 3-hour pause into smaller increments?
- Would this flexibility cause drivers to alter their daily behavior or increase productivity? If so, how?
- What would be the impact on fatigue with several smaller breaks compared to a single period of up to 3 hours?
- If the 3-hour break were divided up into smaller increments, what would be the impact on enforcement when determining compliance?
- Would the added complexity of multiple pauses substantially add to the time needed for ELD vendors to re-program ELD software? If so, how much additional time would be needed?

## **F. TruckerNation Petition**

TruckerNation petitioned the Agency to prohibit driving after the driver has accumulated 14 hours of on-duty time, rather than 14 hours after the beginning of the work shift. In addition, it petitioned the Agency to allow drivers to use multiple off-duty periods of 3 hours or longer in lieu of having 10 consecutive hours off duty.

TruckerNation also requested elimination of the 30-minute break requirement.

### Comments Related to the Petition

Commenters voiced both agreement with and opposition to the petition. Some stated that other changes to HOS rules might yield better results. Others objected to it on the grounds of safety concerns.

### FMCSA Response

FMCSA has reviewed the TruckerNation petition and notes that it did not include data or research that would support the request. The TruckerNation petition would allow use of multiple off-duty periods of 3 hours or longer in lieu of having 10 consecutive hours off-duty or a split-sleeper rest period of at least 7 hours. This petition has the potential to allow drivers to operate for long periods of time without a sufficient longer sleep period. FMCSA believes it is important that CMV drivers have an opportunity for a longer sleep period. For these reasons, the Agency is not adopting the TruckerNation petition as proposed; however, aspects of the TruckerNation petition may be addressed in alternate ways.

## **G. Other Petitions**

Similar to TruckerNation, the USTA petition provides an alternate means for splitting up the 10 hours of off-duty time into three separate periods, some as short as 2



hours, including, e.g., a 2/3/5 split of the 10-hour period. The UDA petition provides for splitting the 10-hour period into two 5-hour periods. In both proposals, the 34-hour restart is shortened to 24 hours.

#### FMCSA Response

FMCSA has reviewed both the USTA and UDA petitions. As discussed above, no data was provided by the petitioners or available from other sources to support a proposal to eliminate the opportunity for a CMV driver to have a longer sleep period. Both petitions would result in the potential of drivers operating for long periods of time without a sufficient sleep period. For example, both petitions would allow a driver to operate for an entire week without a rest period longer than 5 hours. For these reasons, the Agency is not adopting the USTA or UDA petitions as proposed; however, aspects of both petitions may be addressed in alternate ways.

#### **H. Compliance Date for the Rulemaking**

To determine an appropriate compliance date for any final HOS rule, FMCSA asks for comments on the time needed for vendors to reprogram ELDs to conform to the proposed changes as well as time required by other areas of the motor carrier industry. While today's proposed changes, if adopted, should not require reprogramming of the basic requirements of an ELD, the Agency recognizes that many ELDs are set up to provide information and warnings to the driver or carrier relating to HOS compliance beyond what the technical specifications governing ELDs require, thus necessitating modifications in ELD software. Several ELD manufacturers requested time to implement HOS changes into their technology and the Agency requests additional information on how long this might take. Specifically, the Agency seeks comment on whether a 6-month

or 12-month timeframe would provide sufficient time for ELD manufacturers and the motor carrier industry to conform to the proposed changes.

## **VIII. INTERNATIONAL IMPACTS**

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States Territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations in which they operate.

## **IX. SECTION-BY-SECTION ANALYSIS**

This section includes a summary of the proposed regulatory changes in 49 CFR part 395, organized by section number and paragraph number.

### **A. Section 395.1 Scope of Rules in This Part**

#### § 395.1(b)(1): Adverse Driving Conditions

Today's NPRM proposes to modify the exception for drivers of property- and passenger-carrying CMVs encountering adverse driving conditions. Specifically, it would allow drivers of property- or passenger- carrying CMVs to extend their respective driving windows by up to an additional 2 hours, consistent with the current rules governing an extension of driving time.

In proposed § 395.1(b)(1), the reference to paragraph (h)(2) would be corrected to "paragraph (h)(3)," to reflect the provision addressing adverse driving conditions in the State of Alaska. The phrase "or duty time during which driving is permitted" would be added to reflect the expanded coverage of the adverse driving condition exception.

Other proposed changes to § 395.1 are editorial in nature to improve the clarity of the rule.

§ 395.1(e)(1): Short-Haul Operations

Today's NPRM proposes to modify the HOS short-haul exception under which an eligible driver of a CMV is not required to maintain RODS, and thus does not require an ELD for that day, and is not required to maintain supporting documents. Specifically, today's proposal would extend the current "100 air-mile radius" under § 395.1(e)(1)(i) to a "150 air-mile radius" and extend the work day period during which driving and work is allowed under § 395.1 (e)(1)(iii)(A) to a maximum of 14 hours. The driving time limits and off-duty periods required before restarting driving would remain unchanged.

References throughout paragraph (e)(1) under which drivers of "ready-mixed concrete delivery vehicle[s]" have a 14-hour driving window would be removed because the proposed change would allow a 14-hour driving window for all drivers operating under this exception.

Existing paragraph (e)(1)(iii)(C) (proposed paragraph (e)(1)(iii)(B)) would be modified to extend the 12-hour driving window applicable to drivers of passenger-carrying CMVs using the short-haul exception to a 14-hour driving window for consistency with the rule governing other drivers operating under this exception.

Existing paragraphs (e)(1)(iv)(A), (B), and (C) would be removed as these provisions are duplicative of provisions under §§ 395.3 and 395.5. Existing (e)(1)(v) would be redesignated as (e)(1)(iv).

The proposed changes would not alter the current exception referenced in § 395.1(e)(1)(ii)(A) to a “driver-salesperson” or affect drivers of property-carrying CMVs not requiring a commercial driver’s license who operate under § 395.1(e)(2).

Other proposed changes are stylistic.

§ 395.1(g)(1): Sleeper Berths

Today’s NPRM proposes to modify the sleeper berth rule applicable to drivers of property-carrying CMVs who elect to use this exception, provided that the CMV is equipped with a sleeper berth as defined in § 393.76. Generally, rather than the current 8- and 2-hour sleeper berth provision, today’s proposal would allow a driver to satisfy the required 10 hours off duty by taking two off-duty periods, provided that neither period is less than 2 consecutive hours and one period consists of at least 7 consecutive hours in the sleeper berth. The two breaks would need to total 10 hours. Furthermore, under today’s proposal, neither period of time would count against the driver’s 14-hour driving window.

Paragraph (g)(1)(i) would be modified to clarify that this provision reflects the options available to a driver to satisfy the 10-hour hour off-duty period required under § 395.3(a)(1) before beginning a new duty day.

Proposed new paragraph (g)(1)(i)(D) would describe an option for a team driver to take a combination of sleeper-berth time and time in the passenger seat—an option currently addressed in § 395.1(g)(1)(ii)(C). However, the current provision would be modified to require at least 7 hours in the sleeper berth rather than the current 8 hours, and would allow up to 3 hours, rather than the current 2 hours, spent riding in the passenger seat of a CMV.

Proposed paragraph (g)(1)(iii), captioned “Calculation,” would exclude both qualifying rest periods in applying the 14-hour rule.

Existing paragraphs (g)(1)(i)(B) through (g)(1)(i)(C) would be removed because these requirements are covered elsewhere in part 395. Specific requirements that pertain to the State of Alaska would be moved to § 395.1(h).

Proposed paragraphs (g)(1)(ii)(A) and (B) would require that a rest period consist of no less than 2 hours and that one rest period consist of at least 7 consecutive hours in the sleeper berth. As stated in proposed new paragraph (g)(1)(ii)(C), the two breaks would need to total 10 hours.

Existing paragraph (g)(1)(ii)(C), as it relates to the calculation point for compliance with the “equivalent ... 10 consecutive hours off duty,” is deleted as unnecessary in light of the proposed language making clear that driving time in the period “immediately before and after each rest period, when added together” not violate either the 11- or 14-hour rules. This deletion does not modify how compliance with the sleeper berth provision is calculated. Other proposed changes are stylistic.

§ 395.1(h): State of Alaska

Today’s NPRM would revise the HOS exception applicable to drivers of property-carrying CMVs in the State of Alaska to clarify the provision. Specifically, existing paragraph (h)(1) would be redesignated as new paragraph (h)(1)(i) and proposed paragraphs (h)(1)(ii) – (iv) would be added to address the required off-duty periods and use of the proposed sleeper-berth option. These proposed additions are derived from existing provisions applicable to Alaska under § 395.1(g) and are moved to paragraph (h) for clarity and based upon the provisions implicit under existing paragraph (h)(1). For

example, the maximum 20-hour duty period under paragraph (h)(1)(ii) need not be consecutive hours and may be interrupted by any off-duty or sleeper-berth period. The reference to a 30-minute break under existing § 395.1(g)(1)(i)(B) was inadvertently added as part of a technical amendment rule (78 FR 58470, Sept. 24, 2015). That change was intended to address the hour limitations applicable in Alaska, but erroneously included the reference to a 30-minute break provision—a provision that was never intended to apply to drivers operating in Alaska, given the specific rules applicable to such drivers. Today's proposal would eliminate that reference.

Other proposed changes are editorial in nature to improve the clarity of the rule.

**B. Section 395.3 Maximum Driving Time for Property-Carrying Vehicles**

Today's NPRM would allow drivers to pause their 14-hour driving window and would modify the 30-minute break requirement applicable to drivers of property-carrying CMVs.

Specifically, proposed § 395.3(a)(3)(ii) (Interruption of driving time) would modify the requirement that a driver (other than a driver operating under the short-haul exceptions) may not drive if more than 8 hours have passed since the last period in which the driver took a minimum 30-minute off-duty or sleeper-berth break. Instead, the proposal would provide that a driver may not drive more than 8 hours without at least a 30-minute interruption in time behind the wheel whether on duty, off duty, or a combination of both.

Proposed paragraph (a)(3)(iii) (Split-duty period) would be added to allow drivers the option to break up their 14-hour driving window by taking a single off-duty break of at least 30 consecutive minutes, but not more than 3 consecutive hours, extending the

driver's 14-hour limit by the length of the off-duty break. This proposal would make clear that a break under this provision would not impact the requirement for a driver to take 10 consecutive hours off under § 395.3(a)(1).

Other proposed changes are editorial in nature and intended to improve the clarity of the rule.

## **X. REGULATORY ANALYSES**

### **A. E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563), and DOT Regulatory Policies and Procedures**

FMCSA has determined that this rulemaking is an economically significant regulatory action under E.O. 12866<sup>40</sup> Regulatory Planning and Review, as supplemented by E.O. 13563.<sup>41</sup> It also is significant under Department of Transportation regulatory policies and procedures because the economic costs and benefits of the rule exceed the \$100 million annual threshold and because of the substantial Congressional and public interest concerning the HOS requirements (DOT Order 2100.6 dated December 20, 2018).

An RIA is available in the docket. That document:

- Identifies the problem targeted by this rulemaking, including a statement of the need for the action.
- Defines the scope and parameters of the analysis.
- Defines the baseline.

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<sup>40</sup> Executive Order 12866 of September 30, 1993. Regulatory Planning and Review. (58 FR 51735, October 4, 1993).

<sup>41</sup> Executive Order 13563 of January 18, 2011. Improving Regulation and Regulatory Review. (76 FR 3821, January 21, 2011).

- Defines and evaluates the costs and benefits of the action.

The RIA is the synthesis of research conducted specific to current HOS practices, stakeholder comments, and analysis of the impacts resulting from changes to the HOS provisions proposed by this NPRM.

#### Affected Entities

The changes proposed in this NPRM would affect CMV drivers, motor carriers, and, except as otherwise exempt under 49 CFR 390.3T(f)(2), the Federal government. The HOS regulations apply to CMV drivers. FMCSA obtained driver count information, by carrier operation, from the Motor Carrier Management Information System (MCMIS), which includes information submitted to FMCSA by motor carriers the first time the carrier applies for a DOT number, and then biennially thereafter. Table 2 below displays the 2017 estimate of CMV drivers from MCMIS. With the current baseline annual number of 6,317,068 CMV drivers (473,617 passenger carrier CMV drivers and 5,843,451 property carrier CMV drivers), FMCSA then estimated the future baseline number of CMV drivers who would be affected by the proposed rule annually during the analysis period of 2020 to 2029. These future baseline projections were developed by increasing the current baseline 2017 values consistent with occupation-specific employment growth projections obtained from the BLS Employment Projections program. As explained in the RIA, FMCSA computed a weighted average annual compound growth rate of 0.613 percent for passenger vehicle driver employees and 0.588 percent for truck driver employees. The table below provides the total annual population of CMV drivers. More detail on these driver counts can be found in the RIA.



Due to exceptions and exemptions from the HOS regulations, the total CMV driver population must be broken down based on specific criteria in order to isolate the population that would be affected by each provision of today's proposal. With the exception of the adverse driving condition provision and maximum driving window under the short-haul exception, the changes proposed in this NPRM would affect only property-carrying CMV operations. Further, the quantified cost savings anticipated from the rule are largely a function of the estimated number of drivers who are affected by the 30-minute break requirement. In general, those CMV drivers subject to the 30-minute break requirement exclude the 474,000 passenger carrier drivers, the 3.0 million drivers estimated to operate under the short-haul exception, and the 19,000 drivers from Alaska (who are not subject to the 30-minute break requirement). This analysis will refer to drivers affected by the 30-minute break requirement as CMV truck drivers. The table below provides estimates of all CMV drivers, and the CMV truck drivers that are currently subject to the 30-minute break requirement.

**Table 2. CMV Truck Driver Population**

Year (A)	Passenger Carrier CMV Drivers (B)	Property Carrier CMV Drivers (C)	Total CMV Drivers (D) = (B) + (C)	CMV Drivers Subject to the 30 Minute Break Requirement (E)
2017	473,617	5,843,451	6,317,068	2,866,472
2018	476,522	5,877,791	6,354,312	2,883,317
2019	479,444	5,912,332	6,391,776	2,900,261
2020	482,385	5,947,077	6,429,461	2,917,305
2021	485,343	5,982,025	6,467,368	2,934,449
2022	488,320	6,017,179	6,505,499	2,951,693
2023	491,314	6,052,540	6,543,854	2,969,039
2024	494,328	6,088,108	6,582,436	2,986,487
2025	497,359	6,123,886	6,621,245	3,004,038
2026	500,409	6,159,874	6,660,283	3,021,691
2027	503,478	6,196,073	6,699,551	3,039,449

2028	506,566	6,232,485	6,739,051	3,057,310
2029	509,673	6,269,111	6,778,784	3,075,277

Summary of Costs

FMCSA evaluated the impacts expected to result from the changes proposed in the NPRM and anticipates that there would be no new regulatory costs or increases in existing regulatory costs for the regulated entities. The NPRM would, however, improve efficiency by allowing drivers to shift their drive and work time to mitigate the effect of uncertain variables, resulting in a reduction in costs, or cost savings, to drivers and motor carriers. The Agency anticipates that the change to each provision would result in cost savings, quantitatively estimates the motor carrier cost savings attributable to the 30-minute break proposal, and qualitatively assesses cost savings of the remaining impacts resulting from today's NPRM.

30-Minute Break

Today's NPRM proposes to allow on-duty, non-driving time to fulfill the 30-minute break requirement, as opposed to the current off-duty requirement. Also, the break would be required after 8 hours of driving rather than 8 hours of on-duty time. The NPRM would thus reduce the number of drivers required to take a break (i.e., those drivers whose schedules include on-duty breaks from driving would not be required to also take an off-duty break) and it also allows for flexibility in how drivers spend their time as long as they are not driving. The proposed rule would result in cost savings to carriers in the form of avoided losses in driver productivity.

FMCSA values the reduction in driver time spent in nonproductive activity as the opportunity cost to the motor carrier, which is represented by the now attainable profit, using three variables: driver hours available for labor (i.e., those hours that are currently

required to be off duty, but could be on-duty but not-driving under the NPRM), an estimate of a typical average motor carrier profit margin, and the marginal cost of operating a CMV. The estimation of driver hours stems from the populations of drivers who either (1) drive more than 8 hours in an average shift, (2) work more than 8 hours in an average shift but do not drive more than 8 hours, or (3) work less than 8 hours in an average shift. Drivers who fall into category (3) would be unaffected by the proposed changes. Drivers who fall into category (2) would receive regulatory relief from the proposal, estimated as regaining a full half hour per shift. Additionally, drivers who drive more than 8 hours (category 1), would also receive regulatory relief by the allowance of on-duty, non-driving time to meet the 30-minute break requirement, estimated as regaining half of the half hour break time (15 minutes) per shift. The Agency multiplied the time estimated to be regained by drivers per affected shift, the number of affected shifts, and the estimated driver population in each driver group to produce column (A) in Table 3.

As shown in Table 3, the estimate of cost savings is the product of the total hours saved by drivers (column A), and the estimated hourly profit for motor carriers (column B). FMCSA estimates the cost savings resulting from the changes to the 30-minute break provision to be \$275.4 million on an annualized basis at a 3 percent discount rate, and \$274.9 million on an annualized basis at a 7 percent discount rate.

**Table 3. Total and Annualized Motor Carrier Cost Savings due to Changes in Break Provision**

Year	CMV Drivers Currently Subject to the 30 Minute Break Requirement	Total Hours Saved (A)	Profit per Hour (2017\$) (B)	Total Cost Savings – Undiscounted (Millions of 2017\$) (C = A × B)	Total Cost Savings - 3% Discount Rate (Millions of 2017\$)	Total Cost Savings - 7% Discount Rate (Millions of 2017\$)
2020	2,917,305	80,582,382	\$3.33	(\$268.5)	(\$260.7)	(\$251.0)
2021	2,934,449	81,055,933	\$3.33	(\$270.1)	(\$254.6)	(\$235.9)
2022	2,951,693	81,532,267	\$3.33	(\$271.7)	(\$248.6)	(\$221.8)
2023	2,969,039	82,011,401	\$3.33	(\$273.3)	(\$242.8)	(\$208.5)
2024	2,986,487	82,493,350	\$3.33	(\$274.9)	(\$237.1)	(\$196.0)
2025	3,004,038	82,978,132	\$3.33	(\$276.5)	(\$231.6)	(\$184.3)
2026	3,021,691	83,465,762	\$3.33	(\$278.1)	(\$226.2)	(\$173.2)
2027	3,039,449	83,956,258	\$3.33	(\$279.8)	(\$220.9)	(\$162.8)
2028	3,057,310	84,449,636	\$3.33	(\$281.4)	(\$215.7)	(\$153.1)
2029	3,075,277	84,945,914	\$3.33	(\$283.1)	(\$210.6)	(\$143.9)
<b>Total 10-Year Cost Savings</b>					<b>(\$2,348.9)</b>	<b>(\$1,930.5)</b>
<b>Total Annualized Cost Savings</b>					<b>(\$275.4)</b>	<b>(\$274.9)</b>
<b>Notes:</b>						
(a) Total cost values may not equal the sum of the components due to rounding. (The totals shown in this column are the rounded sum of unrounded components.)						
(b) Values shown in parentheses are negative values (i.e., less than zero) and represent a decrease in cost or a cost savings.						

Time is a scarce resource, and FMCSA recognizes that forced off-duty time is not always the drivers' best alternative. Some commenters claimed that the rigid off-duty requirement forces drivers to rest when they are not tired and penalizes them for resting. Though the Agency does not necessarily agree with these commenters' characterization of the off-duty requirement, it is reasonable to assume that the current HOS regulations

are imposing an opportunity cost on drivers that could be alleviated by providing drivers greater flexibility. In recent RIAs for non-HOS regulations, FMCSA has valued the opportunity cost of drivers' time using their wage rate. In other words, the increased flexibility provided by the proposal would result in a reduction in costs, or a cost savings, to drivers equal to the number of hours saved multiplied by the driver wage rate. The Agency did not account for the opportunity cost of the driver's time in the 2011 RIA, and thus hesitates to estimate cost savings resulting from today's proposed changes. The Agency requests comments on any additional impacts that have not been discussed above.

FMCSA considered eliminating the break requirement entirely. Drivers would still use off-duty time when needed or break-up the driving task using on-duty/non-driving time. Drivers in group 1 would likely regain 15 minutes of on-duty time, and drivers in group 2 would likely regain 30 minutes of on-duty time. As in the preferred alternative, FMCSA assumes that drivers in group 1 would only regain 15 minutes because they need personal time to eat, drink, etc. That time would continue to be off-duty regardless of eliminating the requirement. Elimination of the break requirement would seem to provide additional flexibility beyond the preferred alternative; however, it would not impact driver behavior relative to the preferred alternative, and thus would result in an equivalent motor carrier cost savings.

#### *Split-Duty Period*

Currently, after being off duty for 10 or more consecutive hours, a driver of a property-carrying CMV is allowed a period of 14 consecutive hours in which to drive up to 11 hours. The 14-consecutive hour driving window begins when an individual starts

any kind of work. Subject to an exception involving use of a sleeper berth, the individual cannot drive again after the end of the 14-consecutive hour period until he or she has been off duty for another 10 consecutive hours, or the equivalent of at least 10 consecutive hours. This 14-hour window currently cannot be extended by off-duty breaks that may occur during the duty period. In effect, taking a break penalizes drivers because their available work hours were spent resting. The 14-hour window was intended to prohibit drivers from extending their work day by continuing to drive after taking repeated breaks. However, many commenters to the ANPRM have stated that the 14-hour driving window does not comport with the inconsistent and sometimes unpredictable working conditions encountered during a duty period. Thus, the current rule leads to unintended consequences of added stress and potential speeding that result from the need to finish a run prior to the end of the 14-hour window.

In an effort to provide more flexibility, but still maintain the safety achieved by the 14-hour window, today's proposal would allow a single break of off-duty time, ranging from a minimum of 30 consecutive minutes, up to 3 consecutive hours, to be excluded from the 14-hour window, provided that the driver has 10 consecutive hours off-duty before the start of his or her next duty period. A single pause would allow drivers desiring to rest to take an off-duty break without fear of exhausting their available hours under the 14-hour driving window.

This proposal would not result in new requirements or costs but would allow for additional flexibility by giving drivers the ability to make informed decisions about their work and driving time. The ATRI estimated time and cost savings of a scenario similar to

the proposal.<sup>42</sup> For reasons discussed in the RIA, FMCSA cannot extrapolate the time savings to any particular driver or trip. However, the analysis is informative and insightful. In light of the ATRI analysis, FMCSA believes that allowing drivers to rest when they are tired or during peak rush-hour or detention times would result in cost savings to drivers. The Agency requests comments on any additional impacts that have not been discussed above.

### Sleeper Berth

Drivers qualifying for the HOS sleeper-berth provision in 49 CFR 395.1(g)(1)(i)(A) and (ii)(A) must, before driving, accumulate the equivalent of at least 10 consecutive hours off duty. The equivalent refers to two periods that need not be consecutive: at least 8 but fewer than 10 consecutive hours in a sleeper berth, and a separate period of at least 2 hours either in the sleeper berth or off duty, or any combination thereof. Today's NPRM would continue to allow drivers using the sleeper berth to obtain their required off-duty time by taking fewer hours in the sleeper berth. However, drivers using this option would be required to obtain one rest period of at least 7 consecutive hours in the sleeper berth, paired with another period of at least 2 hours, such that 10 hours of off-duty time is achieved. Neither period would count against the 14-hour driving window.

The sleeper berth provision proposed in today's rule allows for additional flexibility in a driver's duty day by (1) providing for an optional 1-hour reduction in the

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<sup>42</sup> American Transportation Research Institute, "Technical Memorandum: Hours-of-Service Flexibility". August 2018. Available at: <http://atri-online.org/2018/08/28/atri-hours-of-service-flexibility-technical-memo/> (Accessed on December 31, 2018).

amount of time that drivers are required to spend in the sleeper berth, and (2) excluding both rest periods when calculating the 14-hour driving window. The Agency expects that carriers and drivers could realize efficiency gains by the proposed reduction in time required to be in the sleeper berth and the exclusion of the shorter off-duty period in the calculation of the 14-hour driving window. A driver that uses the sleeper berth provision today must include the shorter rest period in the calculation of the 14-hour window, resulting in an available 12 hours to complete up to 11 hours of driving. Under the proposed rule, drivers would be provided the ability to choose between split-rest options that would not reduce their available work time because the shorter rest period would be excluded from the calculation of the 14-hour driving window. The Agency, however, lacks data on the use of the sleeper berth provision today, and the number of drivers that would use it under the proposed rule. FMCSA thus requests comment on the potential frequency of the use of the sleeper berth provision today, the change in the use of the provision that would result from the proposal, and the gains in efficiency that drivers would experience due to this change.

FMCSA also considered retaining the current split option of 8/2 but excluding the shorter rest period from the calculation of the 14-hour driving window. Excluding the shorter rest period from the calculation of the 14-hour driving window would result in the same per-trip cost savings estimated for the preferred alternative but would limit the driver's flexibility. The preferred alternative would allow drivers to use a 7/3 split option, which is consistent with the split-duty period proposal in this NPRM and provides flexibility for drivers to shift an additional hour of their off-duty time in the most optimal way for their current situation.



FMCSA also considered expanding the sleeper berth options to allow a 7/3 split, while continuing to count the shorter rest period in the calculation of the 14-hour driving window. Drivers making use of this alternative would then have an 11-hour window within which to drive 11 hours. This alternative provides a false sense of flexibility due to the impracticality, and would limit the use of the option to those drivers that don't anticipate reaching the maximum driving or work time. Additionally, it would eliminate the cost savings resulting from increased productivity discussed in the preferred alternative. This alternative does not meet the Agency objective of providing drivers the ability to take needed rest breaks while ensuring opportunity for an adequate rest period.

#### Short-Haul Operations

Currently, under 49 CFR 395.1(e)(1), drivers do not have to prepare RODS or use an ELD if they meet certain conditions, including a return to their work reporting location and release from work within 12 consecutive hours. Drivers operating under this provision are permitted a 12-hour work day in which to drive up to 11 hours (for passenger carriers, up to 10 hours) and the motor carrier must maintain time records reflecting certain information. Specifically, the motor carrier that employs the driver and utilizes this exception must maintain and retain for a period of 6 months accurate and true time records showing: the time the driver reports for duty each day; the total number of hours the driver is on duty each day; the time the driver is released from duty each day; and the total time for the preceding 7 days in accordance with 49 CFR 395.8(j)(2) for drivers used for the first time or intermittently.

Under 49 CFR 395.3(a)(2)–(3), other property-carrying CMV drivers not utilizing the short-haul exception have a 14-hour driving window in which to drive up to 11 total

hours. Under 49 CFR 395.5(a)(1)–(2), CMV drivers operating passenger-carrying CMVs can operate for up to 15 hours after coming on duty. However, unless otherwise excepted, these drivers must maintain RODs, generally through the use of an ELD. The drivers qualifying for the 49 CFR 395.1(e)(1) exception currently have the option to use the 14- or 15-hour duty day in §§ 395.3 or 395.5, but may choose not to use the option to avoid keeping RODS.

Additionally, drivers currently qualifying for this HOS short-haul exception must stay within 100 air-miles of their work reporting location. In today's NPRM, FMCSA proposes to extend the air-mile radius from 100 air miles to 150 air miles, consistent with the radius requirement for the other short-haul exceptions in § 395.1(e)(2).

In the ELD rule, FMCSA anticipated that all drivers employed by passenger and private non-passenger (i.e., property) carriers qualifying for the short-haul exception would be able to take advantage of the exception. However, FMCSA received comments on the HOS ANPRM from carriers discussing their business practices and normal operating conditions, and how the lack of flexibility in the 12-hour workday limits their ability to take advantage of the short-haul exception. On many shifts, drivers return to their work reporting location within 12 hours, but there are some occasions when drivers need an additional 2 hours in their workday. This extra time beyond 12 hours could result from detention time, longer-than-expected customer service stops, traffic, or other unforeseen events. When this occurs more than 8 days in a 30-day period, the driver must prepare daily RODS using an ELD as required by 49 CFR 395.8 (a)(1)(iii)(A)(1). Due to the uncertainty surrounding the driver's eligibility at the beginning of the workday, the carrier may choose to have their driver operate as though he or she is not eligible for the

short-haul exception. This results in unnecessary ELD expenses. One commenter estimated that the proposal would reduce the required ELDs for its heavy-duty service vehicles by 84 percent, resulting in annual cost savings of \$1.5 million. While this comment is informative and suggests that the proposed rule would result in cost savings, FMCSA cannot extrapolate from one carrier's cost savings to determine the cost savings to all carriers. Thus, while FMCSA expects the proposal to result in cost savings for the affected entities, those impacts are not quantified.

The extension of the air-mile radius by 50 air miles would afford drivers additional flexibility and allow carriers to reach customers farther from the work reporting location while maintaining eligibility for the short-haul exception. Extending the air-mile radius would not extend the driving time. FMCSA does not anticipate that extending the air-mile radius would increase market demand or result in more VMT. Rather, more carriers might use the short-haul exception. Carriers would have the flexibility to meet market demands more efficiently while maintaining eligibility for the short-haul exception. One commenter explained that the increased flexibility in the air-mile radius would reduce the number of vehicles necessary for their operation, and thus would result in cost savings of approximately \$1.7 million per year. Again, motor carriers are very diverse in their operating structures, and FMCSA cannot extrapolate from one carrier's cost savings to determine the cost savings to all carriers. While FMCSA expects the proposal to result in cost savings for the affected entities, those impacts are not quantified. The Agency requests comments on the impact of extending the air-mile radius and any additional impacts that have not been discussed above.

FMCSA also considered limiting the proposal to an extension of the time required for drivers to return to their work reporting location from 12 to 14 hours, without changing the air-mile radius requirements. This alternative would decrease the population eligible for the short-haul exception relative to the preferred alternative by removing eligibility for those drivers operating between 100 and 150 air miles. Decreasing the population affected by the NPRM would decrease any cost savings resulting from the proposal.

#### Adverse Driving Conditions

Under the current regulations, drivers qualifying for the HOS adverse driving conditions provision in 49 CFR 395.1(b)(1) may drive for no more than 2 additional hours beyond the maximum driving time allowed under 49 CFR 395.3(a) or 395.5(a) if they encounter adverse driving conditions after dispatch. The current provision does not allow for the extension of the 14-hour driving window (or 15 hours on duty for drivers of passenger-carrying CMVs), and thus cannot be used if the adverse condition is encountered towards the end of that period. In today's rule, FMCSA proposes to allow a 2-hour extension of the 14-hour driving window (or 15 hours on duty for drivers of passenger-carrying CMVs). This proposal aligns the regulations with the intent of the adverse driving condition provision, which is to allow drivers flexibility when faced with unexpected conditions. This proposal would not increase the available driving time.

The adverse driving conditions provision is intended to provide flexibility for drivers who encounter adverse conditions which were not apparent at the time of dispatch. However, it does not currently extend the driving window, limiting its use. Today's proposal would increase flexibility by allowing drivers encountering adverse

conditions to extend their driving window by the same 2 hours that currently apply to driving time. The proposed changes would provide drivers with additional options to determine the best solution based on their situation.

The Agency anticipates that the increased options and flexibility would result in cost savings to drivers, but is unable to quantify them due to a lack of data regarding the use of the adverse driving exception. The Agency requests information on current usage of the adverse driving conditions exception as well as anticipated use under the proposed rule. The Agency also welcomes comments on possible cost savings, as well as any additional impacts that have not been discussed above.

#### Federal Government eRODS Cost

FMCSA would incur costs to update the existing eRODS software. The eRODS software is used by safety officials (Federal, State, and local safety partners) to locate, open, and review output files transferred from a compliant ELD. The eRODS software consists of two components: a database containing the HOS requirements and the software component that compares the compliant ELD output files to the HOS requirements. The proposed changes to the 30-minute break requirement, sleeper-berth requirements, and the split duty period would necessitate updates to the eRODS database that stores the HOS requirements and some minor programming changes to the compliance algorithm aspects of the software.

The Department's Volpe National Transportation Systems Center developed the eRODS software and continues to maintain and update it when needed. Volpe estimates that the proposed rule would result in one-time eRODS software update costs of \$20,000.

This would include updating the HOS requirements database and minor programing changes to the software component which consist of five steps: developing a requirements analysis, design, coding, testing, and deployment of the updates.

*Non-Quantified Costs*

There are a number of other potential cost savings of this proposed rule that FMCSA considered that, due to uncertainty around driver behavior, could not quantify on an industry level.

FMCSA has granted 5-year exemptions from the requirement to return to the driver's normal work reporting location within 12 hours of coming on duty (examples include: (1) Waste Management Holdings, Inc.; (2) American Concrete Pumping Association; and (3) National Asphalt Paving Association).<sup>43</sup> During the exemption period, all drivers operating under the exemption must carry a copy of the exemption; after that period, those entities seeking to maintain the exemption must reapply. This proposal, if adopted, would result in cost savings to these entities by alleviating the need to pursue the exemption process and eliminating compliance with exemption conditions such as carrying a copy of the exemption applicable to 49 CFR 395.1(e)(1), as well as reallocating the time and resources that would have been spent on the exemption reapplication. The Federal government would experience a cost savings equal to the reduction in time and resources necessary to review, comment on, and make final determinations on the exemptions. Additional non-quantified cost savings include increased efficiency afforded to drivers through the changes to the various HOS

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<sup>43</sup> Available at: <https://www.regulations.gov/docket?D=FMCSA-2017-0197>, <https://www.regulations.gov/document?D=FMCSA-2018-0181-0057>, and <https://www.regulations.gov/docket?D=FMCSA-2018-0175>, respectively.

provisions, such as, efficiency gains due to the short-haul exception; the ability of drivers to make informed decisions due to the changes to the adverse driving conditions and sleeper berth provisions; and the reduction in opportunity cost to drivers from the changes to the 30-minute break provision. The Agency requests comment on how drivers would use the changes in these provisions to inform their decision-making process. This information could assist the Agency in quantifying additional cost savings that are anticipated to result from today's rule.

The Agency did not include the cost for ELD manufacturers to update ELD equipment. A compliant ELD would not need to be updated as a result of this proposed rule. FMCSA is aware that some ELD manufacturers have chosen to go beyond the ELD requirements and provide additional features such as alerts when a driver may be close to an HOS violation. Those additional features would need to be updated as a result of the rule, or risk being inaccurate. Because the additional features are not required by FMCSA, but were developed as a selling point for individual ELD products, updating the additional features would not be a cost to this rule and FMCSA is not estimating the cost of updating the additional ELD features.

The Agency did not quantify impacts resulting from any potential decreases in congestion that may result from the proposed rule. Allowing drivers to take breaks at their convenience, such as during times of heavy traffic congestion, could allow the driver to operate at a consistent speed without the starting and stopping that occurs in heavy traffic. The ATRI technical memorandum demonstrated that avoiding congestion could result in moving freight the same number of miles in fewer work hours. This could reduce fuel and vehicle costs for the motor carriers, congestion for the public by

removing large vehicles from the road during peak travel times, and the incidence of crashes related to congestion. While these impacts could result from any individual trip, FMCSA cannot estimate the magnitude or likelihood of these potential impacts for many reasons. Most notably, these impacts hinge on the availability of CMV parking. FMCSA is aware that parking is not always available, especially in urban areas or heavily travelled truck routes.

Additional non-quantified cost savings include increased flexibility resulting from the extension of the duty day and the air-mile radius for those operating under the short-haul exception; the increased options for drivers to respond to adverse driving conditions during the course of their duty period; and increased flexibility afforded to drivers, such as increased options with regard to on-duty and off-duty time resulting from changes to the 30-minute break requirement, the sleeper-berth provisions, and the new split duty period provision. The Agency requests comment on how drivers would utilize the changes in these provisions to inform their decision-making process. This information could assist the Agency in quantifying additional cost savings that are anticipated to result from today's rule.

### Summary of Benefits

The Agency does not anticipate that this proposed rule would result in any new regulatory benefits. Additionally, the Agency does not believe that the proposed changes would result in any reductions in safety benefits or other regulatory benefits.

### 30-Minute Break



The proposed changes to the 30-minute break provision are estimated to be safety-neutral because both the current rule and the proposed rule would prevent CMV operators from driving for more than 8 hours without at least a 30-minute change in duty status. The distinction is that the proposal would focus on actual driving time rather than on-duty time, some of which may not be spent behind the wheel. The Agency discussed the value of off-duty breaks as compared to on-duty breaks in previous rulemakings, but did not quantify the safety benefits attributable to the off-duty break when the break provision was added to the HOS rules in 2011 (76 FR 81134, Dec. 27, 2011). Further, FMCSA has determined that the value of off-duty breaks relative to on-duty breaks should be reconsidered.

As discussed above and in the RIA, The Agency has carefully considered the views of numerous commenters requesting exemptions or removal of the 30-minute break requirement. As a result of the feedback, and after reviewing available research, FMCSA anticipates that an on-duty break, which would maintain a break from driving, would not adversely affect safety relative to the current requirements. Based on comments received, the Agency has taken another look at the Blanco, et al. (2011), study to determine the applicability of the study findings to the 30-minute break requirement. Today's NPRM focuses on achieving a break from driving as opposed to a break after a certain amount of time on duty. For these reasons, the Agency believes that these changes would not have an impact on the safety benefits of the HOS rules and did not quantify changes in regulatory benefits for this proposed rule.

Alternative 1, which would eliminate the 30-minute break requirement, seems to be more flexible than the preferred alternative. However, eliminating the requirement

would allow drivers the opportunity to operate a vehicle for 11 hours without stopping. In general, FMCSA does not anticipate that drivers would alter their schedules to such an extent, but would likely take breaks to eat, rest, etc. However rare of an occurrence 11 continuous hours of driving may be, FMCSA considers it to be detrimental to safety. As such, alternative 1 may be more flexible and would result in an equivalent level of motor carrier cost savings, but would lead to a reduction in safety benefits relative to the preferred alternative. Therefore, FMCSA is not proposing alternative 1, but requests comment on this determination.

#### *Split-Duty Period*

Today's 14-hour continuous driving window has been perceived as regulatory discouragement against taking long breaks. Drivers may feel compelled to operate while fatigued to avoid losing available driving time, or speed to make up time from traffic congestion. FMCSA anticipates that the NPRM would increase flexibility by allowing drivers to rest when they are tired or to avoid traffic congestion, without losing available work time, and would not reduce safety relative to the current HOS requirements. Additionally, drivers would still be constrained by the 11-hour driving limit in place today.

#### *Sleeper Berth*

As discussed in the RIA and elsewhere in this preamble, there is an extensive body of research suggesting that split-sleep schedules may be a good alternative to consolidated daytime sleep, as they may improve safety and productivity as compared to consolidated daytime sleep.

This proposal would ensure that drivers using the sleeper berth to obtain the minimum off-duty time have at least one rest period of a sufficient length to have restorative benefits to counter fatigue. Today's proposal intends to provide drivers with the flexibility to make decisions regarding their rest that best fits their individual needs, while continuing to prohibit potential overly-long periods of wakefulness and duty hours that could lead to fatigue-related crashes.

The proposed sleeper-berth exception would provide drivers greater operational flexibility, while affording the opportunity for the driver to obtain the necessary amount of restorative sleep. As such, the Agency anticipates that the increased flexibility proposed in today's NPRM would not affect the safety outcomes achieved by the current sleeper berth provision. FMCSA requests comments on the frequency of use of the proposed split-rest periods provision and the impacts of the provision on safety. Additionally, the Agency invites stakeholders to identify any additional safety impacts resulting from the changes to the split-rest periods provision in today's NPRM they believe have not been adequately considered.

Alternative 1, which would maintain an 8/2 split option but exclude the shorter rest period from the calculation of the 14-hour driving window, is more restrictive than the preferred alternative by allowing fewer options for a driver to split their 10 hours of off-duty time. Based on the research discussed above, a 7/3 split option would allow for an adequate rest period such that it would not impact safety relative to an 8/2 split option. As such, alternative 1 would be more restrictive, would reduce cost savings associated with the proposal, and would not provide any additional safety benefits relative to the

preferred alternative. Therefore, FMCSA is not proposing alternative 1 but requests comment on this determination.

Alternative 2, which would allow a 7/3 split option but include the shorter rest period from the calculation of the 14-hour driving window, is more restrictive than the preferred alternative by continuing to count the shorter rest period in the calculation of the 14-hour driving window. Under this alternative, a driver would be required to stop driving 14 hours after coming on-duty, regardless of how much of that 14-hour period was spent resting. Based on results in the Blanco study (2011), FMCSA believes that excluding the shorter rest period from the calculation of the 14-hour driving window would not reduce safety relative to the preferred alternative. The Blanco study showed that the SCE rate increased modestly with increasing work and driving hours. Blanco also found that breaks can be used to counteract the negative effects of time-on-task. The results from the break analyses indicated that significant safety benefits can be afforded when drivers take breaks from driving. This was a key finding in the Blanco study and clearly shows that breaks can ameliorate the negative impacts associated with fatigue and time-on-task. As such, alternative 2 would be more restrictive, reduce cost savings associated with the proposal and would not provide any additional safety benefits relative to the preferred alternative. Therefore, FMCSA is not proposing alternative 2, but requests comment on this determination.

#### Short-Haul Operations

The IIHS conducted a study in North Carolina in 2017 and found that interstate truck drivers operating under the short-haul exception had a crash risk 383 percent higher than those not using the exception. They recommended that, due to this finding, the

Agency should not propose an extension of the short-haul exception from 12 to 14 hours. FMCSA reviewed the study and noted that while the finding was statistically significant, it was based on a very small sample size, which prevented the author from estimating a matched-pair odds ratio restricted to drivers operating under a short-haul exception, and was not nationally representative. Further, the authors noted that other related factors unobserved in the study may have led to this result. For example, it is possible that older or more poorly maintained trucks are used in local operations. Regardless, because FMCSA's number one priority is safety, the Agency investigated the safety implications of the proposal using available data.

Congress passed the FAST Act on December 4, 2015, which, among other things, requires drivers of ready-mixed concrete delivery trucks be exempted from the requirement to return to their normal work-reporting location after 12 hours of coming on duty. Beginning on December 5, 2015, operators of concrete mixer trucks met the requirements for the short-haul exception if they returned to their normal work reporting location within 14 hours after coming on duty. MCMIS contains data on crashes based on vehicle type, allowing the Agency to isolate crashes involving concrete mixer trucks both before and after the congressionally mandated changes to the short-haul exception that mirror today's proposal to extend the 12-hour limit for all short-haul operators.

The Agency first focused on the time of day when crashes occurred. Assuming the majority of concrete mixer trucks are operated on a schedule with a workday that begins in the morning hours and ends in the evening hours, those crashes that occur in the later part of the day would occur towards the end of the 12- or 14-hour workday for the concrete mixer driver. FMCSA found that the percentage of concrete mixers in crashes at

later hours of the day (5:00 pm to 11:59 pm - when drivers are more likely to be close to their maximum hours for the day) has been declining in recent years, falling from 7.6 percent in 2013 to 5.8 percent in 2017.

FMCSA also examined the total number of crashes that involved concrete mixer trucks for the 2 years before and after the congressionally mandated change went into effect. From December 4, 2013, through December 3, 2015, there were 2,723 concrete mixers involved in crashes, or 0.907 percent of the total large trucks involved in crashes (2,723 concrete mixers involved in crashes/300,324 large trucks, including concrete mixers, involved in crashes). From December 4, 2015, through December 2, 2017, there were 2,955 concrete mixers involved in crashes, or 0.919 percent of the total large trucks involved in crashes (2,955 concrete mixers involved in crashes/321,471 large trucks, including concrete mixers, involved in crashes). A Chi-square test suggests that this very minor increase in the concrete mixer share of the total is not statistically significant at the  $p < 0.05$  level. Both analyses suggest that the implementation of the FAST Act on December 4, 2015, did not increase the share of concrete mixers involved in crashes when extending the short-haul exception requirement from 12 to 14 hours.

FMCSA does not anticipate that extending the air-mile radius would increase market demand for services, and thus would not result in increased VMT. While more drivers or more trips would now be eligible for the short-haul exception, and thus excluded from the requirement to take a 30-minute break or prepare daily RODS, the total costs of freight transportation would likely not change to such an extent that the quantity demanded of trucking services would increase. Because total VMT is not expected to increase, the Agency does not anticipate changes in exposure or crash risk.

FMCSA requests comments on the operational changes, or changes to VMT, that might result from today's proposal to extend the air-mile radius. Additionally, the Agency emphasizes the changes to the short-haul exception proposed today would not allow any additional drive time, or allow driving after the 14<sup>th</sup> hour from the beginning of the duty day. Drivers also would still be subject to the "weekly" limits of 60 and 70 hours, and the employer must maintain accurate time records concerning the time the driver reports for work each day and the time the driver is released from duty each day. FMCSA therefore anticipates that this proposal would not affect the crash risk of drivers operating under the short-haul exception.

Alternative 1, which would extend the time required for drivers to return to their work reporting location from 12 to 14 hours but continue to maintain a 100 air-mile radius requirement, would be more restrictive than the preferred alternative by reducing the population of drivers eligible for the short-haul exception. As discussed above, FMCSA does not anticipate that changing the air-mile radius from 100 to 150 air-miles would impact safety. As such, alternative 1 would be more restrictive, reduce any cost savings associated with the proposal, and would not provide any additional safety benefits relative to the preferred alternative. As a result, FMCSA is not proposing alternative 1, but requests comment on this determination.

#### *Adverse Driving Conditions*

The Agency defines "adverse driving conditions" in 49 CFR 395.2 as "snow, sleet, fog, other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions, none of which were apparent on the basis of information known to the person dispatching the run at the time it was begun." The

adverse driving condition provision was intended to provide drivers flexibility to avoid rushing to either stay ahead of adverse conditions, make up for lost time due to poor conditions, or allow drivers time to locate a safe place to stop and wait out the adverse conditions. The Agency anticipates that today's proposed rule would enhance this goal by allowing drivers to avail themselves of this flexibility when the adverse conditions occur later in the driving window. While the Agency is not aware of any research that is specific to the impact of adverse conditions on crash risk, the flexibility provided in the proposal would allow drivers to make decisions based on current conditions without penalizing them by "shortening" their driving window. Further, the Agency stresses that this proposal would not increase maximum available driving time beyond that allowed by the current rule, but may increase driving hours by allowing some drivers to use more of their available driving time.

The Agency is unable to quantitatively assess the impacts on safety from today's proposal due to a lack of data regarding the use of the adverse driving provision. The Agency also lacks data on the relationship between crash risk and adverse driving conditions, and potential reductions in crash risk that result from the avoidance of these conditions. FMCSA thus requests comment on the frequency of use of the adverse driving conditions provision and the impacts of the provision on safety. Additionally, the Agency invites stakeholders to identify any additional safety impacts resulting from the changes to the adverse driving conditions provision in today's proposed rule that have not been discussed above.

#### Health Impacts



The RIA for the 2011 HOS final rule estimated health benefits in the form of decreased mortality risk based on decreases in daily driving time, and possible increases in sleep. The changes were largely based on limiting the use of the 34-hour restart provision. That provision, however, was removed by operation of law when the study required by the 2015 DOT Appropriations Act failed to find statistically significant benefits of the 2011 limitations on the 34-hour restart.<sup>44</sup> Today's proposed rule does not affect the reinstated original 34-hour restart provision, and thus the health benefits estimated in the 2011 RIA would not be affected by today's rule.

As concerns this proposed rule, FMCSA anticipates that some drivers would experience a decrease in stress, which could lead to increases in health benefits. As discussed in the RIA, drivers have repeatedly provided comments relating to stress resulting from the 14-hour limit. Both the split-duty and sleeper berth proposal could alter drivers' schedules relative to the current requirements, by allowing drivers flexibility to rest, without penalty, when they are tired or in times of heavy traffic. However, these proposals would continue to allow for an adequate rest period. Today's proposal retains the current driving time and work time, , but could allow for changes in the number of hours driven or worked on any given day. The flexibilities in this proposal are intended to

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<sup>44</sup> Sec. 133 of the 2015 DOT Appropriations Act (Pub. L. 113-235, Dec. 16, 2014, 128 Stat. 2130, 2711) suspended the 2011 restart provisions, temporarily reinstated the pre-2011 restart rule, and required a study of the effectiveness of the new rule. Sec. 133 of the 2016 DOT Appropriations Act (Pub. L. 114-113, Dec. 18, 2015, 129 Stat. 2242, 2850) made it clear that the 2011 restart provisions would have no effect unless the study required by the 2015 DOT Appropriations Act showed that those provisions had statistically significant benefits compared to the pre-2011 restart rule. Sec. 180 of the Further Continuing and Security Assistance Appropriations Act, 2017 (Pub. L. 114-254, Dec. 10, 2016, 130 Stat. 1005, 1016) replaced Sec. 133 of the 2016 DOT Appropriations Act in its entirety to correct an error and ensure that the pre-2011 restart rule would be reinstated by operation of law unless the study required by the 2015 DOT Appropriations Act showed that the 2011 restart rule had statistically significant improvements related to safety and operator fatigue compared to the pre-2011 restart rule. DOT concluded that the study failed to find these statistically significant improvements, and the Office of Inspector General confirmed that conclusion in a report to Congress.

allow drivers to shift their drive and work time under the HOS rules in an effort to mitigate the impacts of uncertain factors (e.g., traffic, weather, and detention times). Total hours driven or worked could increase or decrease on a given day, but FMCSA does not anticipate that these time shifts would negatively impact drivers health. Instead, today's proposal would empower drivers to make informed decisions based on the current situation, and as a result the proposed rule could lead to a decrease in stress and subsequent health benefits. FMCSA requests comments on the health impacts of today's proposal.

Section 12.f of DOT Order 2100.6 dated December 20, 2018 provides additional requirements for retrospective reviews, specifically each economically significant rule or high-impact rule, the responsible OA or OST component shall publish a regulatory impact report in the *Federal Register* every 5 years after the effective date of the rule while the rule remains in effect.

In accordance with the DOT order, FMCSA would assess the impact of the proposed changes to the HOS requirements within five years of the effective date of a final rule.

**B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)**

E. O. 13771, Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017 (82 FR 9339, Feb. 3, 2017). E.O. 13771 requires that, for every one new regulation issued by an Agency, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process. Final implementation guidance addressing the requirements

of E.O. 13771 was issued by the OMB on April 5, 2017.<sup>45</sup> The OMB guidance defines what constitutes an E.O. 13771 regulatory action and an E.O. 13771 deregulatory action, provides procedures for how agencies should account for the costs and cost savings of such actions, and outlines various other details regarding implementation of E.O. 13771.

This proposed rule is expected to have total costs less than zero, and, if finalized, would therefore qualify as an E.O. 13771 deregulatory action. The present value of the cost savings of this proposed rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2020 (the year the proposed rule would go into effect and cost savings would first be realized), is \$4,055 million. On an annualized basis, these cost savings are \$284 million.

For the purpose of E.O. 13771 accounting, the April 5, 2017, OMB guidance requires that agencies also calculate the costs and cost savings discounted to year 2016. In accordance with this requirement, the present value of the cost savings of this rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2016, is \$3,094 million. On an annualized basis, these cost savings are \$217 million.

### **C. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) of 1980, Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121, 110 Stat. 857, Mar. 29, 1996) and the Small Business Jobs Act of 2010 (Pub. L. 111-240, 124 Stat. 2504 Sept. 27, 2010), requires

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<sup>45</sup> Executive Office of the President. Office of Management and Budget. *Memorandum M-17-21. Guidance Implementing Executive Order 13771*. April 5, 2017.

Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Additionally, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. FMCSA has not determined whether this proposed rule would have a significant economic impact on a substantial number of small entities. Therefore, FMCSA is publishing this Initial Regulatory Flexibility Analysis (IRFA) to aid the public in commenting on the potential small business impacts of the proposals in this NPRM. We invite all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. We will consider all comments received in the public comment process when making a determination or when completing a Final Regulatory Flexibility Assessment.

An IRFA must contain the following:

- (1) a description of the reasons why the action by the agency is being considered;
- (2) a succinct statement of the objective of, and legal basis for, the proposed rule;
- (3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

- (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- (5) an identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and
- (6) a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

*Why the Action by the Agency is Being Considered.*

FMCSA has longstanding processes, which provide that regulations and other agency actions be periodically reviewed and, if appropriate, revised to ensure that they continue to meet the needs for which they were originally designed, and that they remain justified.<sup>46</sup> Further, on October 2, 2017, DOT published a Notification of Regulatory Review and stated that it was reviewing its “existing regulations and other agency actions to evaluate their continued necessity, determine whether they are crafted effectively to solve current problems, and evaluate whether they potentially burden the development or use of domestically produced energy resources” (82 FR 45750). As part of these reviews, DOT sought public comment on existing rules that are good candidates for repeal, replacement, suspension, or modification. The HOS regulations and ELDs were the most common substantive topics discussed in response to the DOT Notification of Regulatory Review. The HOS regulations were identified as an area for potential modifications in

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<sup>46</sup> See footnote 4, above.

2018, due to changes in tracking HOS brought about by the implementation of the ELD rulemaking (80 FR 78292, Dec. 16, 2015). Consistent with these processes and with the goal of improving regulatory efficiency, the Agency proposes to revise the HOS requirements applicable to CMV drivers.

*The Objectives of and Legal Basis for the Proposed Rule.*

In response to public comments received on the ANPRM and to the listening sessions held by FMCSA, the proposed rule would (1) change the short-haul exception available to certain CMV drivers by lengthening the drivers' maximum on-duty period from 12 to 14 hours and extending from 100 air miles to 150 air miles within which the driver may operate; (2) modify the adverse driving conditions exception by extending by 2 hours the maximum window during which driving is permitted; (3) provide flexibility for the 30-minute break rule by tying the break requirement to 8 hours of driving time without an interruption of at least 30 minutes and allowing the break to be satisfied by a driver using on-duty, not-driving status, rather than off duty; (4) modify the sleeper-berth exception to allow drivers to split their required 10-hours off duty into two periods, one of at least 7 consecutive hours in the sleeper berth and the other of not less than 2 consecutive hours, either off duty or in the sleeper berth, with neither period counting against the driver's 14-hour driving window; and (5) allow one off-duty break of at least 30 minutes, but not more than 3 hours, that would pause a truck driver's 14-hour window, provided the driver takes 10 consecutive hours off-duty at the end of the work shift. This NPRM is based on authority derived from the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984. *See* heading IV, Legal Basis for Rulemaking, above.

*A Description of, and where Feasible an Estimate of, the Number of Small Entities to which the Proposed Rule Will Apply.*

“Small entity” is defined in 5 U.S.C. 601(3) as having the same meaning as “small business concern” under Section 3 of the Small Business Act (SBA). This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4), likewise, includes within the definition of “small entities” not-for-profit enterprises that are independently owned and operated, and are not dominant in their fields of operation. Additionally, Section 601(5) defines “small entities” as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. Small businesses are defined by the SBA Table of Size standards, which adopts the NAICS codes for industry sectors.

This proposed rule would affect drivers, motor carriers, and the Federal government. Drivers are not considered small entities because they do not meet the definition of a small entity in Section 601 of the RFA. Specifically, drivers are considered neither a small business under Section 601(3) of the RFA, nor are they considered a small organization under Section 601(4) of the RFA.

The SBA defines the size standards used to classify entities as small. SBA establishes separate standards for each industry, as defined by the North American Industry Classification System (NAICS). It is estimated that the motor carriers that would experience regulatory relief under the proposed rule would be in industries within Subsector 484 (Truck Transportation). These industries include General Freight Trucking

(4841) and Specialized Freight Trucking (4842). Subsector 484 has an SBA size standard based on annual revenue of \$27.5 million.

FMCSA examined data from the Statistics of U.S. Businesses (SUSB) annual data tables by Enterprise Receipt size and the 2012 Economic Census, the most recent Census for which data were available, to determine the percentage of firms that have revenue at or below SBA's thresholds. Although boundaries for the revenue categories used in the Economic Census do not exactly coincide with the SBA thresholds, FMCSA was able to make reasonable estimates using these data.

Motor carrier operations in the Truck Transportation industry primarily earn their revenue via the movement of goods. According to the 2012 Economic Census, 98,312 Truck Transportation firms operated for the entire year. As shown in Table 4, according to the Economic Census, at least 98 percent of trucking firms with employment had annual revenue less than \$25 million; the Agency concluded that the percentage would be approximately the same using the SBA threshold of \$27.5 million as the boundary.



**Table 4 Estimates of Numbers of Small Entities with Employment**

<b>NAICS Code</b>	<b>Description</b>	<b>Total Number of Firms</b>	<b>Number of Small Entities</b>	<b>% of all Firms</b>
<b>484</b>	<b>Truck Transportation</b>	<b>98,312</b>	<b>96,539</b>	<b>98%</b>
<b>484110</b>	<b>General Freight Trucking, Local</b>	<b>25,754</b>	<b>25,270</b>	<b>98%</b>
<b>484121</b>	<b>General Freight Trucking, Long-Distance, Truckload</b>	<b>25,933</b>	<b>25,268</b>	<b>97%</b>
<b>484122</b>	<b>General Freight Trucking, Long-Distance, Less Than Truckload</b>	<b>3,525</b>	<b>3,410</b>	<b>97%</b>
<b>484210</b>	<b>Used Household and Office Goods Moving</b>	<b>6,945</b>	<b>6,860</b>	<b>99%</b>
<b>484220</b>	<b>Specialized Freight (except Used Goods) Trucking, Local</b>	<b>29,048</b>	<b>28,588</b>	<b>98%</b>
<b>484230</b>	<b>Specialized Freight (except Used Goods) Trucking, Long-Distance</b>	<b>7,623</b>	<b>7,285</b>	<b>96%</b>

Source: U.S. Census Bureau. 2012 SUSB Annual Data Tables by Establishment Industry. Available at: <https://www.census.gov/data/tables/2012/econ/susb/2012-susb-annual.html>

The SUSB data includes information from most U.S. business establishments but does not include data on sole-proprietorship establishments, commonly referred to in the truck transportation industry as owner/operators. The U.S. Census Bureau also provides the Nonemployer Statistics, which is an annual series that provides subnational economic data for businesses that have no paid employees and are subject to federal income tax.

This series includes the number of establishments by the total receipts (i.e., revenue) by industry.<sup>47</sup> An establishment is a single physical location at which business is conducted. A firm, or business, may consist of multiple establishments. It is not clear if a sole-proprietorship would report a single or multiple establishments. The Nonemployer Statistics for 2016 reports a total of 587,038 establishments. This is slightly larger than expected because MCMIS contains information for a total of 493,730 active interstate freight motor carriers. The Nonemployer Statistics could include a large number of intrastate freight motor carriers that are not regulated by FMCSA. Regardless, FMCSA assumes that all owner/operator firms would be considered small under the SBA thresholds, and requests comment on the number of interstate freight motor carriers that are considered owner/operators.

FMCSA does not have exact estimates on the per-motor carrier impact of this proposal. The RIA for the NPRM estimated cost savings associated with the proposed changes to the 30-minute break requirement. For illustrative purposes within this IRFA, FMCSA developed a per-driver annual cost savings estimate. As shown below, a firm with one driver could expect a cost savings of approximately \$127 in 2020, the first year of the analysis.

**Table 5. Weighted Annual Per-Driver Cost Savings of the Proposed Changes to the 30-Minute Break Requirement**

Driver Group	Hours Saved per shift <sup>(a)</sup>	Shifts per year <sup>(b)</sup>	Annual Hours Saved per Driver <sup>(c)</sup>	Annual Per-Driver Cost Savings <sup>(d)</sup>	% of Total Hours <sup>(e)</sup>
Group 1	0.25	120	30	\$99.98	19%

<sup>47</sup> U.S. Census Bureau. 2018 Nonemployer Statistics. Available at: <https://www.census.gov/programs-surveys/nonemployer-statistics.html>

Group 2	0.50	80	40	\$133.30	81%
Group 3	0.00	60	0	0	0%
Weighted Annual Per-Driver Cost Savings					\$127.04
<sup>(a)</sup> See Table 5 in the RIA <sup>(b)</sup> See Table 6 in the RIA <sup>(c)</sup> Hours Saved per Shift × Annual Hours Saved per Driver <sup>(d)</sup> Annual Hours Saved per Driver × \$3.33 Motor Carrier Profit Margin <sup>(e)</sup> See Table 7 in the RIA, Total Hours Saved per Year, by Group ÷ Total Hours Saved per Year for All Groups					

*A Description of the Proposed Reporting, Recordkeeping and Other Compliance*

*Requirements of the Proposed Rule, Including an Estimate of the Classes of Small*

*Entities which will be Subject to the Requirement and Type of Professional Skills*

*Necessary for Preparation of the Report or Record.*

This proposed rule would not change recordkeeping requirements as compared to what is currently required by the HOS rules.

*An Identification, to the Extent Practicable, of All Relevant Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule.*

FMCSA is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule. The current HOS rules would be replaced by those in the NPRM.

*A Description of any Significant Alternatives to the Proposed Rule which Accomplish the Stated Objectives of Applicable Statutes and which Minimize any Significant Economic Impact of the Proposed Rule on Small Entities.*

In developing this proposal, FMCSA considered alternatives that would involve: (1) requiring an off-duty 30-minute break following 8 hours of driving, (2) eliminating the 30-minute break requirement entirely; (3) continuing to allow and 8/2 sleeper berth option, but excluding the shorter rest period from the calculation of the 14-hour driving

window; (4) allowing both an 8/2 and a 7/3 sleeper berth option, but continuing to include the shorter rest period in the calculation of the 14-hour driving window; (5) allowing drivers to maintain eligibility for the short-haul exception if they return to their work reporting location within 14 hours, but maintaining the current air-mile radius; and (6) a “no-action” alternative for both the split-duty period and adverse driving condition proposals. These alternatives generally would be more restrictive, reduce or eliminate any cost savings associated with the proposal, and would not provide any additional safety benefits relative to the preferred alternative. FMCSA requests comments, with supporting data, on these and any other alternatives that would meet the intent of the statutes and prove cost beneficial for small entities.

*Requests for Comment to Assist Regulatory Flexibility Analysis.*

FMCSA requests comments on all aspects of this IRFA and on the cost and benefit impacts that small business may experience as a result of this rule.

FMCSA is not a covered agency as defined in Section 609(d)(2) of the Regulatory Flexibility Act, and has taken no steps to minimize the additional cost of credit for small entities.

**D. Assistance for Small Entities**

In accordance with section 213(a) of the SBREFA, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of

contact, Richard Clemente, listed in the **For Further Information Contact** section of this proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

**E. Unfunded Mandates Reform Act of 1995**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector, of \$161 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2017 levels) or more in any 1 year. Because this proposed rule would not result in such an expenditure, a written statement is not required. However, the Agency does discuss the costs and benefits of this proposed rule elsewhere in this preamble.

**F. Paperwork Reduction Act**

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). This proposed rule would not

modify the existing approved collection of information (OMB Control Number 2126-0001, HOS of Drivers Regulations, approved Jun. 13, 2016, through Jun. 30, 2019).

**G. E.O. 13132 (Federalism)**

A rule has implications for federalism under section 1(a) of E.O.13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” FMCSA determined that this proposal would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

**H. E.O. 12988 (Civil Justice Reform)**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**I. E.O. 13045 (Protection of Children)**

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), requires agencies issuing “economically significant” rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation’s environmental health and safety effects on children. The Agency determined this proposed rule is economically significant, however it does not

anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

**J. E.O. 12630 (Taking of Private Property)**

FMCSA reviewed this proposed rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it would not effect a taking of private property or otherwise have taking implications.

**K. Privacy**

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a), requires the Agency to conduct a Privacy Impact Assessment of a regulation that will affect the privacy of individuals. The assessment considers impacts of the rule on the privacy of information in an identifiable form and related matters. The FMCSA Privacy Officer has evaluated the risks and effects the rulemaking might have on collecting, storing, and sharing personally identifiable information and has evaluated protections and alternative information handling processes in developing the rule to mitigate potential privacy risks. FMCSA determined that this rule does not require the collection of individual personally identifiable information.

Additionally, the Agency submitted a Privacy Threshold Assessment analyzing the rulemaking and the specific process for collection of personal information to the DOT, Office of the Secretary's Privacy Office. The DOT Privacy Office has determined that this rulemaking does not create privacy risk.

The E-Government Act of 2002, Pub. L. 107-347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a Privacy Impact Assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information because of this proposed rule.

**L. E.O. 12372 (Intergovernmental Review)**

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

**M. E.O. 13211 (Energy Supply, Distribution, or Use)**

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

**N. E.O. 13783 (Promoting Energy Independence and Economic Growth)**

E.O. 13783 directs executive departments and agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources, and to appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources. In accordance with E.O. 13783, DOT prepared and submitted a report to the Director of OMB that provides specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency action that burden domestic energy production. This proposed rule has not



been identified by DOT under E.O. 13783 as potentially alleviating unnecessary burdens on domestic energy production.

**O. E.O. 13175 (Indian Tribal Governments)**

This proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

**P. National Technology Transfer and Advancement Act (Technical Standards)**

The National Technology Transfer and Advancement Act (note following 15 U.S.C. 272) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

**Q. Environment (CAA, NEPA)**

FMCSA completed an environmental assessment (EA) pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), 40 CFR parts 1500 - 1508, Council on Environmental Quality Regulations for Implementing NEPA, as amended, FMCSA Order 5610.1, *National Environmental Policy Act Implementing*

*Procedures and Policy for Considering Environmental Impacts*, March 1, 2004, and DOT Order 5610.1C, *Procedures for Considering Environmental Impacts*, as amended on July 13, 1982 and July 30, 1985. The EA is in the docket pertaining to this rulemaking. As discussed in the EA, FMCSA also analyzed this proposed rule under the Clean Air Act, as amended, section 176(c), (42 U.S.C. 7401 et seq.) and implementing regulations promulgated by the Environmental Protection Agency. FMCSA concludes that the issuance of the proposed rule would not significantly affect the quality of the human environment. Therefore, an environmental impact statement process is unnecessary. FMCSA requests comments on this analysis.

**List of Subjects in 49 CFR Part 395**

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA proposes to amend 49 CFR part 395.

**PART 395—HOURS OF SERVICE OF DRIVERS**

1. The authority citation for part 395 continues to read as follows:

AUTHORITY: 49 U.S.C. 504, 31133, 31136, 31137, 31502; sec. 113, Pub. L. 103-311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106-159 (as added and transferred by sec. 4115 and amended by secs. 4130-4132, Pub. L. 109-59, 119 Stat. 1144, 1726, 1743, 1744); sec. 4133, Pub. L. 109-59, 119 Stat. 1144, 1744; sec. 108, Pub. L. 110-432, 122 Stat. 4860-4866; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; sec. 5206(b), Pub. L. 114-94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

2. Amend § 395.1 by revising paragraphs (b)(1), (e)(1), (g)(1) and (h) to read as follows:

**§ 395.1 Scope of rules in this part.**

\* \* \* \* \*

(b) *Driving conditions*—(1) *Adverse driving conditions*. Except as provided in paragraph (h)(3) of this section, a driver who encounters adverse driving conditions, as

defined in § 395.2, and cannot, because of those conditions, safely complete the run within the maximum driving time or duty time during which driving is permitted under §§ 395.3(a) or 395.5(a) may drive and be permitted or required to drive a commercial motor vehicle for not more than 2 additional hours beyond the maximum allowable hours to complete that run or to reach a place offering safety for the occupants of the commercial motor vehicle and security for the commercial motor vehicle and its cargo.

\* \* \* \* \*

(e) *Short-haul operations*—(1) *150 air-mile radius*. A driver is exempt from the requirements of §§ 395.8 and 395.11 if:

(i) The driver operates within a 150 air-mile radius (172.6 miles) of the normal work reporting location;

(ii) The driver, except a driver-salesperson, returns to the work reporting location and is released from work within 14 consecutive hours;

(iii)(A) A property-carrying commercial motor vehicle driver has at least 10 consecutive hours off duty separating each 14 hours on duty;

(B) A passenger-carrying commercial motor vehicle driver has at least 8 consecutive hours off duty separating each 14 hours on duty; and

(iv) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:

(A) The time the driver reports for duty each day;

(B) The total number of hours the driver is on duty each day;

(C) The time the driver is released from duty each day; and

(D) The total time for the preceding 7 days in accordance with § 395.8(j)(2) for drivers used for the first time or intermittently.

\* \* \* \* \*

(g) *Sleeper berths*—(1) *Property-carrying commercial motor vehicle*—(i)

*General.* A driver who operates a property-carrying commercial motor vehicle equipped with a sleeper berth, as defined in § 395.2, and uses the sleeper berth to obtain the required off duty time must accumulate:

(A) At least 10 consecutive hours off duty;

(B) At least 10 consecutive hours of sleeper-berth time;

(C) A combination of consecutive sleeper-berth and off-duty time amounting to at least 10 hours;

(D) A combination of sleeper-berth time of at least 7 consecutive hours and up to 3 hours riding in the passenger seat of the vehicle while the vehicle is moving on the highway, either immediately before or after the sleeper berth time, amounting to at least 10 consecutive hours; or

(E) The equivalent of at least 10 consecutive hours off duty calculated under paragraph (g)(1)(ii) and (iii) of this section.

(ii) *Sleeper berth.* 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, but less than 10, 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).

(iii) *Calculation.* The 14-hour driving window for purposes of § 395.3(a)(2) does not include qualifying rest periods under paragraph (g)(1)(ii) of this section.

\* \* \* \* \*

(h) *State of Alaska—(1) Property-carrying commercial motor vehicle.* (i) *In general.* The provisions of § 395.3(a) and (b) do not apply to any driver who is driving a commercial motor vehicle in the State of Alaska. A driver who is driving a property-carrying commercial motor vehicle in the State of Alaska must not drive or be required or permitted to drive:

(A) More than 15 hours following 10 consecutive hours off duty;

(B) After being on duty for 20 hours or more following 10 consecutive hours off duty;

(C) After having been on duty for 70 hours in any period of 7 consecutive days, if the motor carrier for which the driver drives does not operate every day in the week; or

(D) After having been on duty for 80 hours in any period of 8 consecutive days, if the motor carrier for which the driver drives operates every day in the week.

(ii) *Off-duty periods.* Before driving, a driver who operates a property-carrying commercial motor vehicle equipped with a sleeper berth, as defined in § 395.2, and uses

the sleeper berth to obtain the required off-duty time in the State of Alaska must accumulate:

(A) At least 10 consecutive hours off duty;

(B) At least 10 consecutive hours of sleeper-berth time;

(C) A combination of consecutive sleeper-berth and off-duty time amounting to at least 10 hours;

(D) A combination of consecutive sleeper-berth time and up to 3 hours riding in the passenger seat of the vehicle while the vehicle is moving on a highway, either immediately before or after a period of at least 7, but less than 10, consecutive hours in the sleeper berth; or

(E) The equivalent of at least 10 consecutive hours off duty calculated under paragraph (h)(1)(iii) of this section.

(iii) *Sleeper berth.* A driver who uses a sleeper berth to comply with the Hours of Service regulations 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 15 hours; and

(2) Does not violate the 20-hour duty period under paragraph (h)(1)(i)(B) of this section.

(iv) *Calculation.* The 20-hour duty period under paragraph (h)(1)(i)(B) does not include off-duty or sleeper-berth time.

(2) *Passenger-carrying commercial motor vehicle.* The provisions of § 395.5 do not apply to any driver who is driving a passenger-carrying commercial motor vehicle in the State of Alaska. A driver who is driving a passenger-carrying commercial motor vehicle in the State of Alaska must not drive or be required or permitted to drive—

(i) More than 15 hours following 8 consecutive hours off duty;

(ii) After being on duty for 20 hours or more following 8 consecutive hours off duty;

(iii) After having been on duty for 70 hours in any period of 7 consecutive days, if the motor carrier for which the driver drives does not operate every day in the week; or

(iv) After having been on duty for 80 hours in any period of 8 consecutive days, if the motor carrier for which the driver drives operates every day in the week.

(3) *Adverse driving conditions.* (i) A driver who is driving a commercial motor vehicle in the State of Alaska and who encounters adverse driving conditions (as defined in § 395.2) may drive and be permitted or required to drive a commercial motor vehicle for the period of time needed to complete the run.

(ii) After a property-carrying commercial motor vehicle driver completes the run, that driver must be off duty for at least 10 consecutive hours before he/she drives again; and

(iii) After a passenger-carrying commercial motor vehicle driver completes the run, that driver must be off duty for at least 8 consecutive hours before he/she drives again.

\* \* \* \* \*

3. Amend § 395.3 by revising paragraphs (a)(2) and (3) to read as follows:

**§ 395.3 Maximum driving time for property-carrying vehicles.**

(a) \* \* \*

(2) *14-hour period.* Except as provided in paragraph (a)(3)(iii) of this section, a driver may not drive after a period of 14 consecutive hours after coming on duty following 10 consecutive hours off duty.

(3) *Driving time and interruptions of driving periods.* (i) *Driving time.* A driver may drive a total of 11 hours during the period specified in paragraph (a)(2) of this section.

(ii) *Interruption of driving time.* Except for drivers who qualify for either of the short-haul exceptions in § 395.1(e)(1) or (2), driving is not permitted if more than 8 hours of driving time have passed without at least a 30-minute consecutive interruption in driving status, either off duty or on duty.

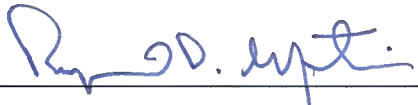
(iii) *Split duty period.* (A) A driver may take one off-duty break of at least 30 minutes, but not more than 3 hours, during the driver's 14-hour period specified in paragraph (a)(2) of this section and extend the 14-hour period for the length of the driver's off-duty break.



(B) An off-duty break under paragraph (a)(3)(iii)(A) of this section does not affect the requirement that a driver take 10 consecutive hours off duty under paragraph (a)(1) of this section.

\* \* \* \* \*

Issued under authority delegated in 49 CFR 1.87 on:



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Raymond P. Martinez

Administrator.