



## Owner-Operator Independent Drivers Association

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November 2, 2020

The Honorable Wiley Deck  
Deputy Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

### **Re: Docket # FMCSA-2020-0098, "Hours of Service of Drivers; Pilot Program to Allow Commercial Drivers to Pause Their 14-Hour Driving Window"**

Dear Deputy Administrator Deck:

The Owner-Operator Independent Drivers Association (OOIDA) is the largest trade association representing the views of small-business truckers and professional truck drivers. OOIDA has over 150,000 members located in all fifty states that collectively own and operate more than 240,000 individual heavy-duty trucks. OOIDA's mission is to promote and protect the interests of its members on any issues that might impact their economic well-being, working conditions, and the safe operation of commercial motor vehicles (CMVs) on our nation's highways.

In 2018, the Federal Motor Carrier Safety Administration (FMCSA) commenced an Hours-of-Service (HOS) rulemaking process to give professional truckers much needed flexibility in their daily and weekly schedules. We applauded the agency's approach which solicited input from the actual men and women who are required to work and live by the regulations. This outreach, through public comment, listening sessions, and direct stakeholder engagement, resulted in updated HOS regulations that better reflect the realities of trucking and improve safety for all highway users. We encourage FMCSA to maintain this approach as the agency continues its efforts to expand HOS reforms.

OOIDA commends FMCSA for proposing the Split Duty Period Pilot Program. Our 2018 petition for a daily off-duty pause of up to three hours initiated the recently finalized HOS changes. While we advocated that the Final HOS Rule should have included the Split Duty provision, we believe this Pilot Program can provide substantive data to permanently give drivers more control over their schedules. Allowing drivers to pause their 14-hour clock would give truckers greater flexibility to rest when tired and avoid congestion, adverse weather conditions, or other factors that make driving unsafe. As proposed, the Split Duty provision would not increase maximum driving time, maximum on-duty time, or decrease minimum off-duty rest periods between shifts. Additionally, drivers would have more chances to get sufficient rest and would not be as stressed to "beat the 14-hour clock." This would result in positive outcomes for driver health and highway safety.

OOIDA members have indicated that they would benefit from the Split Duty provision in a variety of ways. According to surveys conducted in 2018 and 2019 by the OOIDA Foundation<sup>1</sup>, OOIDA members said that they would use the split-duty period an average of 2.55 times per week. The additional flexibility would allow drivers to utilize their drive time more efficiently, enabling drivers to complete more trips without extending their driving time. This is important because truckers do not necessarily want to drive more hours, but would rather use their hours more efficiently so they don't feel compelled to drive in unsafe conditions.

OOIDA members voiced that their work would be less stressful, as they would have the flexibility to not only avoid hazardous driving situations, but could also better handle other issues outside of their control. Hence, drivers would feel less pressure to speed or to operate when they are fatigued. One driver said, "If you need a nap, you could take it without losing work or drive time." Several drivers commented that they would be less agitated and more relaxed while driving, less worried about making appointment times, and able to simply pause their day in order to have a healthy meal. 27% of survey respondents said they would utilize time sleeping in the cab, while 6% said personal time. 55% said both sleep and personal time, while 12% responded with other.

The Pilot Program will benefit highway safety because an off-duty pause will result in more flexibility, efficiency, and rest for drivers. OOIDA agrees with FMCSA's efforts to gather more information concerning real-world actions and decisions among drivers, employers, and shippers and receivers to reach a common understanding of how to give drivers more rest and increased efficiency. We support the advancement of the Pilot Program, but also believe the agency can enhance the study parameters in order to attain statistically significant participation and better data quality. Moving forward, OOIDA will continue working with FMCSA to ensure the Pilot Program is conducted in a productive manner so additional HOS improvements can be implemented as soon as possible.

OOIDA submits the following responses and recommendations regarding FMCSA's proposed Split Duty Period Pilot Program.

**1. Are any additional safeguards needed to ensure that the pilot program provides a level of safety equivalent to that without the 14-hour on-duty window pause exemption?**

The Pilot Program does not increase maximum driving time, maximum on-duty time, or decrease minimum off-duty rest periods between shifts. The option of an off-duty pause will permit drivers to operate more efficiently and give them more opportunities to rest when necessary. As such, the Pilot Program will achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved through compliance with current regulations.

FMCSA should clearly emphasize that discretion of the Split Duty provision belongs to the driver and any attempts made by shippers, receivers, or carriers to coerce drivers into using the off-duty pause in an inappropriate manner will be considered unlawful. Rather than taking away flexibility from drivers, the agency and the industry should work to address the underlying issues with detention time.

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<sup>1</sup> Following the release of an Advanced Notice of Proposed Rulemaking in August 2018 and a Notice of Proposed Rulemaking in August 2019, the OOIDA Foundation conducted general surveys of OOIDA members regarding the various HOS provisions in order to answer some of the Agency's questions and to provide relevant data.

Detention time is both a safety and a financial concern for small-business truckers and professional drivers. Besides the lost hours and wages, there are other hidden costs throughout the supply chain that are detrimental to highway safety and the economics of the profession. Logistical uncertainties from detention time prevent drivers from accurately planning trips, finding safe places to park, and making it in time to pick-up their next load. This contributes to increased driver dissatisfaction and turnover which undermines the overall safety and efficiency of the industry.

FMCSA should use the Split Duty Pilot Program to assist in executing the recommendations from the January 2018 Department of Transportation Office of Inspector General's (IG) report, which analyzed the safety impacts and costs of detention time.<sup>2</sup> The IG specifically called on FMCSA to "collaborate with industry stakeholders to develop and implement a plan to collect and analyze reliable, accurate, and representative data on the frequency and severity of driver detention times."<sup>3</sup> We believe that the Pilot Program would provide accurate data on the frequency and severity of detention times under current HOS regulations as well as uncover ways that shippers/receivers might try to exploit drivers with the Split Duty option.

Given industry concerns that drivers would be pressured to use the pause to cover detention time, FMCSA must establish a meaningful method for participants to report excessive detention times due to their use of the Split Duty break. Current channels, such as the Coercion Rule and the National Consumer Complaint Database, have proven inadequate outlets to curb detention times or deliver timely feedback for drivers. We encourage FMCSA to prioritize the collection of detention time data during the Pilot Program and once again stress that any use of the Split Duty break should be at the sole discretion of the driver.

## **2. Are the data collection efforts proposed for carriers and drivers so burdensome as to discourage participation?**

The currently proposed data collection efforts could limit participation from many motor carriers and drivers. First, the Pilot Program should be open to all owner-operators, not just those leased to a single carrier who obtain the carrier's approval. Furthermore, the redundant technological monitoring systems could discourage many drivers from signing up for the Pilot Program.

While we agree that accurate data collection is essential for the study, we question if the combination of onboard monitoring systems (OBMS), wrist actigraphy devices, and Psychomotor Vigilance Test (PVT) equipment is necessary. Certainly, many drivers are not accustomed to using these systems during the normal course of their work day, and their mandatory presence might dissuade them from taking part in the Pilot Program. We think the agency should employ less burdensome techniques in order to encourage more representative involvement. This could include daily or weekly communications with drivers or other less intrusive methods that would be more comparable with the participant's natural working environment.

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<sup>2</sup> U.S. DOT Office of Inspector General, *Estimates Show Commercial Driver Detention Increases Crash Risks and Costs, but Current Data Limit Further Analysis*, U.S. Department of Transportation (Jan 2018).

<sup>3</sup> *Ibid*, page 13.

**3. Should team drivers be allowed to participate in the pilot program? Would there be additional considerations for team drivers?**

Team drivers should have the option to participate in the Pilot Program, but their presence should not be mandatory to conduct the study.

**4. What additional factors, such as gender, geographic location, age, operating types, or driver experience, should be considered when selecting participants to ensure a representative sample is achieved?**

FMCSA should consider each of the factors listed above, gender, geographic location, age, operating type, driver experience, etc., to ensure a representative sample which can truly be extrapolated to the entire trucking industry. Drivers must be sampled from small, medium, and large carriers, including owner-operators, involved in regional and long-haul operations across different truck and trailer combinations, such as flatbed, refrigerated, tanker, and dry van, and across different regions of the country to the best extent practicable. Since small carriers comprise over half the trucks and drivers within the industry, then there should be a representative percentage of participating small carriers in the program.

**5. Is the estimated sample size of 200-400 drivers sufficient to gain statistically significant findings over a period of up to 3-years? Is a 6 to 12-month period of participation by individual drivers sufficient to collect data?**

If the sample size provides an accurate representation of the factors mentioned above, then 200-400 drivers should be sufficient to gain statistically significant findings over the course of the program. This is also in harmony with the agency's previous naturalistic driving (ND) studies. The 6 to 12-month study period is also sufficient. However, 200-400 drivers would not be statistically significant if the Pilot Program is overly inclusive of medium and large carriers that employ OBMS and other technologies currently required in the study.

**6. Is a 180-day baseline period sufficient for comparison of driver performance between participating drivers in a control group operating under the current regulations against individuals operating with the exemption allowing the split duty option?**

Yes, a 180-day baseline period is sufficient for comparison of driver performance between the control group and those drivers operating with the exemption. Again, this would align with previous ND studies. Of course, the 180-day baseline period is only sufficient if the driver pool is a sound representation of the industry.

**7. Would there need to be considerations for carriers currently utilizing OBMS or other safety systems that may involve coaching? For example, should a participating carrier be required to halt utilization of coaching techniques for drivers participating in the pilot program to ensure bias is minimized across the sample?**

OOIDA supports the utilization of the Split Duty break for all drivers. The Pilot Program will be best served if it is conducted in a manner that mirrors real-world driving conditions and scenarios. In that

sense, a participating carrier should not have to halt their normal course of operations if that involves coaching techniques. However, the Pilot Program as currently proposed is much more conducive for carriers and drivers that employ OBMS in their trucks. If the data collection methods are not amended, then the study is unlikely to achieve a representative sample of varying types of carriers and/or trucking operations.

**8. Should FMCSA consider metrics other than the following when developing the data collection plan: Crashes, safety critical events (e.g., speeding, lane deviation, hard braking), fatigue levels, driver distraction, vehicle miles traveled?**

The primary mission of FMCSA is to reduce crashes, injuries and fatalities involving large trucks and buses. Hence, the Pilot Program should prioritize considering what factors actually result in crashes and fatalities. Safety-critical events *may* provide useful information when combined with careful analysis of actual crash performance data. However, various research has indicated that naturalistic driving studies mixed with safety critical event datasets are not analytically linked to crashes, neither are they representative of them. Therefore, true crash performance should be the primary metric to evaluate the safety outcomes of the pilot program.

**9. What other potential data collection tools should FMCSA use for the pilot program in addition to video-based onboard monitoring systems, actigraphs, PVTs, sleep logs, and driver health/background information?**

FMCSA must implement more naturalistic data collection tools for the Pilot Program rather than expand the proposed methods, equipment, and monitoring requirements. This would result in a more representative participant pool and promote higher involvement rates from smaller carriers and independent drivers.

OOIDA supports a Split Duty Period Pilot Program. We believe this Program, if administered justly, will provide substantive data to permanently give drivers more control over their schedules. Allowing drivers to pause their 14-hour clock will give truckers greater flexibility to rest when tired and avoid congestion, adverse weather conditions, or other factors that make driving unsafe. This would undoubtedly result in positive benefits for both highway safety and driver health.

Thank you for your consideration of our comments.

Sincerely,



Todd Spencer  
President & CEO  
Owner-Operator Independent Drivers Association, Inc.