

prepared for a proposed highway toll barrier project in Erie and Genesee Counties, New York.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Thruway Authority (NYSTA) and the New York State Department of Transportation, will be preparing an Environmental Impact Statement (EIS) on a proposal to relocate the existing New York State Thruway (Interstate 90) "Williamsville" Toll Barrier from the Town of Amherst, Erie County, New York. The proposal would involve construction of 1.2 kilometers of approach/leave roadways, new toll booths/barriers and administration building and an access connection to the local highway system.

The toll barrier relocation is considered necessary because of safety and operational problems at the existing location, recurring congestion and community concerns over noise and air pollution. The objectives of the proposed action are to provide a toll barrier that has sufficient capacity to ensure suitable customer service, maintains public and employee safety, incorporates advances technologies, and addresses impacts to natural and human resources.

Alternatives under consideration include (1) taking no action; (2) improving the toll barrier at its current location; and (3) replacing the toll barrier with a new facility to be constructed at a suitable location between Interchange 49 (Transit Road) in the Town of Cheektowaga, Erie County, New York and Interchange 48A (Pembroke) in the Town of Pembroke, Genesee County, New York. The latter alternative may also involve the elimination of the existing toll facility at Interchange 49.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. A formal NEPA scoping meeting will be held between February and March 2000. Public notice of the date(s) and location(s) will be given. In addition, a public hearing will be held in the future at a time and place to be announced. The draft EIS, when prepared, will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA, NYSTA or NYSDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Authority: 23 U.S.C. 315; 23 CFR 771.123.

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Douglas P. Conlan,

District Engineer, Federal Highway Administration, Albany, New York.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-99-6585]

Hours-of-Service of Drivers; Pilot Program for Drivers Delivering Home Heating Oil

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

ACTION: Notice of proposal to initiate a pilot program; request for comments.

SUMMARY: The FMCSA is announcing its proposal to initiate a pilot program in which the agency would grant an exemption from the weekly hours-of-service restrictions for drivers of commercial motor vehicles (CMVs) making home heating oil deliveries that occur within 100 air-miles of a central terminal or distribution point, during the winter months. The FMCSA also intends to allow States to grant temporary exemptions from the weekly

restrictions in their intrastate hours-of-service regulations for the transportation of home heating oil during the winter months for the purpose of enabling intrastate motor carriers conducting such operations to do so under terms and conditions identical to those used in the FMCSA's pilot program. The intrastate carriers would be required by the States in which they operate to report certain accident data to the FMCSA so that the agency can monitor their safety performance, combine the intrastate data with the interstate data, and analyze the results. Under the current regulations, drivers may not drive after being on duty 60 hours in any seven consecutive days if the motor carrier does not operate CMVs every day of the week (60-hour rule), or after being on duty 70 hours in any eight consecutive days if the motor carrier operates CMVs every day of the week (70-hour rule). During the pilot program, participating motor carriers would be allowed to "restart" calculations for the 60-hour or 70-hour rule, whichever is applicable, after the driver has an off-duty period encompassing two consecutive nights off-duty that include the period of midnight to 6 a.m. This action is in response to a request from the Petroleum Marketers Association of America (PMAA). The exemption, if granted, would preempt inconsistent State and local requirements applicable to interstate commerce.

DATES: Comments must be received on or before April 17, 2000.

ADDRESSES: Submit written, signed comments with the docket number appearing at the top of this document to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Bus and Truck Standards and Operations, (202) 366-4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Electronic Access Internet users may access all

comments that are submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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Creation of New Agency

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (Public Law 106-159, 113 Stat. 1748). The new statute established the FMCSA in the Department of Transportation. On January 4, 2000, the Office of the Secretary published a final rule notice rescinding the authority previously delegated to the former Office of Motor Carrier Safety (OMCS) (65 FR 220). This authority is now delegated to the FMCSA.

The motor carrier functions of the OMCS's Resource Centers and Division (*i.e.*, State) Offices have been transferred to FMCSA Resource Centers and FMCSA Division Offices, respectively. Rulemaking, enforcement, and other activities of the Office of Motor Carrier Safety while part of the FHWA, and while operating independently of the FHWA, will be continued by the FMCSA. The redelegation will cause no changes in the motor carrier functions and operations previously handled by the FHWA or the OMCS. For the time being, all phone numbers and addresses are unchanged.

Background

National Highway System Designation Act—Home Heating Oil Program

Section 346 of the National Highway System Designation Act (NHS Act) (Public Law 104-59, 109 Stat. 568, at 615, November 28, 1995) required the Secretary to develop and implement a Winter Home Heating Oil Delivery State Flexibility Program (Heating Oil Program). The NHS Act required that the drivers of vehicles making intrastate home heating oil deliveries within 100 air-miles of a central terminal or distribution point of the delivery of such oil be allowed to restart

calculations of the 60-hour or 70-hour rule, whichever is applicable, after the driver has been off-duty for a period of 24 or more consecutive hours. The NHS Act allowed the Secretary to approve up to five States to participate in the program during the winter heating season beginning November 1, 1996, without jeopardizing Motor Carrier Safety Assistance Program (MCSAP) funding to those States. The participating States were required to meet criteria set forth in the NHS Act. These included having a substantial number of citizens relying upon home heating oil (which implied that the current hours-of-service regulations may endanger the welfare of these citizens by impeding timely deliveries of home heating oil) and ensuring that participating motor carriers maintain a level of safety equal to or greater than that produced by compliance with the current regulations through proper monitoring of their safety performance and reporting their performance to the FHWA.

Participating States were required to submit a plan to the FHWA describing the conditions of eligibility for participating carriers and the means the State would employ to monitor performance, mitigate safety risks, and evaluate the merits of the program. Each State had to accept responsibility for monitoring the performance of the motor carriers it determined to be eligible and for enforcing the conditions it imposed.

On October 2, 1996 (61 FR 51486), the FHWA published a notice in the **Federal Register** requesting comments on the development and implementation of the program and State applications to participate in the program. The FHWA published the notice of final determination on January 29, 1997 (62 FR 4372). States were authorized to begin granting exemptions on January 29, 1997. This authorization expired April 30, 1997.

Because of delays in completing the notice-and-comment process necessary for establishing the program, the States and motor carriers were limited to a 90-day time-frame for participation. The information available at the end of the program was not sufficient to draw any conclusions about the potential safety impacts of allowing a 24-hour restart for motor carriers delivering home heating oil.

PMAA Request for Home Heating Oil Delivery Flexibility Program

The PMAA requested that the FMCSA implement a three-year Winter Home Heating Oil Delivery Flexibility Program. A copy of the request is

included in the docket. The PMAA requested that the new program be available to interstate and intrastate motor carriers operating in any State. The association indicated that elements of the previous heating oil program could be used to address most of the guidelines for the new program, as well as satisfy most of the rules in 49 CFR 381.505, concerning minimum requirements for a pilot program. The PMAA believes a home heating oil program would benefit many citizens and will help to ensure that consumers are not deprived of an essential product during severe weather, without compromising safety.

Although the PMAA letter did not provide details about the need for the program (*i.e.*, a description of exactly how the current hours-of-service regulations prevent motor carriers from delivering heating oil to meet customer demands), the FMCSA believes the previous Congressional mandate to conduct a home heating oil program, and correspondence from the Senate Committee on Commerce, Science and Transportation, Senate Committee on Environment and Public Works, and the House Committee on Transportation and Infrastructure suggests that the agency should, at a minimum, consider initiating a program under the TEA-21 authority. A copy of the correspondence from the chairmen of the committees is in the docket referenced at the beginning of this notice. The agency has carefully considered the PMAA request and believes a pilot program may provide benefits to the home heating oil industry and consumers by providing motor carriers with greater flexibility than the current rules allow, to better respond to consumer demands during severe cold weather. Severe cold weather alone may not necessitate the declaration of an emergency (as defined in 49 CFR 390.5), which would enable motor carriers making home heating oil deliveries to take advantage of the emergency relief provision (49 CFR 390.23). However, severe cold weather would certainly increase the demand for home heating oil and make it less likely that motor carriers could meet consumer demands without some form of hours-of-service flexibility, or hiring additional qualified drivers. The FMCSA requests public comment on the need for a home heating oil pilot program.

FMCSA Authority Concerning Pilot Programs

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA-21) (Public Law 105-178, 112 Stat. 107). Section 4007 of

TEA-21 amended 49 U.S.C. 31315 and 31136(e) concerning the Secretary of Transportation's (the Secretary's) authority to grant waivers from the FMCSRs for a person(s) seeking regulatory relief from those requirements. The statute provides the Secretary with the authority to grant waivers and exemptions. The duration of a waiver is limited to three months and the Secretary may grant the waiver without requesting public comment.

By contrast, an exemption may be up to two years in duration, and may be renewed. The Secretary must provide the public with an opportunity to comment on each exemption request prior to granting or denying the request.

Section 4007 also provides the Secretary with authority to conduct pilot programs, research studies in which an exemption(s) would be granted to allow innovative alternatives to certain Federal Motor Carrier Safety Regulations (FMCSRs) to be tested. These programs may include exemptions from one or more regulations. The FMCSA must publish, in the **Federal Register**, a detailed description of each pilot program, including the exemptions being considered, and provide notice and an opportunity for public comment before the effective date of the program. The agency is required to ensure that the safety measures in the pilot programs are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved through compliance with the safety regulations. The duration of pilot programs is limited to three years from the starting date.

The FMCSA is required to immediately revoke participation of a motor carrier, a CMV, or a driver for failure to comply with the terms and conditions of the pilot program, or to immediately terminate a pilot program if its continuation is inconsistent with the goals and objectives of the safety regulations issued under the authority of 49 U.S.C. chapter 313, or 49 U.S.C. 31136.

At the conclusion of each pilot program, the FMCSA must report to the Congress its findings, conclusions, and recommendations of the program, including suggested amendments to laws and regulations that would enhance motor carrier, CMV, and driver safety and improve compliance with the FMCSRs.

On August 20, 1998, the FHWA held a public meeting at the Department of Transportation headquarters to solicit information from interested parties on issues the agency should consider in implementing section 4007 of TEA-21.

A notice announcing the meeting was published on July 29, 1998 (63 FR 40387). The notice also provided interested parties with an opportunity to submit written comments to the docket.

On December 8, 1998 (63 FR 67600), the FHWA published an interim final rule adopting regulations to implement section 4007 of TEA-21. The regulations establish the procedures persons must follow to request waivers and to apply for exemptions from the FMCSRs, and the procedures the FHWA will use to process the requests for waivers and applications for exemptions. The regulations also codify statutory requirements concerning the FHWA's administration of pilot programs.

As indicated earlier in this notice, the Secretary has rescinded the authority previously delegated to the FHWA to carry out motor carrier functions and operations. Therefore, the regulations issued by the FHWA are now regulations of the FMCSA. On December 29, 1999 (64 FR 72959), the Office of the Secretary issued a final rule amending the heading for chapter III, title 49 of the Code of Federal Regulations, to reflect the organizational changes.

Use of Pilot Program Authority for the PMAA Request

Although the PMAA requested that the FMCSA consider its request under 49 CFR part 381, section 4007 of the TEA-21 and the implementing regulations generally are applicable only to pilot programs concerning motor carriers engaged in interstate commerce. The only two exceptions are the authority of the FMCSA to grant waivers and exemptions, and to conduct pilot programs, concerning the commercial driver's license and controlled substances and alcohol testing rules. Since these rules are applicable to employers and drivers operating in interstate and intrastate commerce, the FMCSA authority to grant waivers and exemptions from these requirements could be used for intrastate motor carrier operations.

The FMCSA intends to exercise its authority under TEA-21 to initiate a pilot program in which the agency would grant an exemption from the weekly limitation in the Federal hours-of-service regulations for drivers of CMVs making home heating oil deliveries in interstate commerce. The program would cover deliveries that occur within 100 air-miles of a central terminal or distribution point, during the winter months. Deliveries between terminals and distribution points would not be covered by the exemption. The exemption to enable interstate motor carriers to participate in the pilot

program would preempt inconsistent State hours-of-service requirements applicable to interstate commerce.

With regard to the PMAA request that the pilot program include drivers making intrastate deliveries of home heating oil, the FMCSA must request assistance from the States in which these drivers operate. The agency intends to allow States to grant temporary exemptions from the weekly limitations provisions of their intrastate hours-of-service regulations for the transportation of home heating oil during the winter months for the purpose of enabling intrastate motor carriers conducting such operations to do so under State-established terms and conditions identical to those used by the FMCSA.

Intrastate motor carriers transporting home heating oil in States that have established identical terms and conditions for the temporary hours-of-service exemption would submit all required information to the FMCSA. The FMCSA would in turn, provide the respective States with lists of the intrastate motor carriers and drivers the FMCSA believes should be considered eligible for the States' approval for participation. The States would allow the intrastate motor carriers and drivers to operate under the terms and conditions of the study based on recommendations from the FMCSA. This process is necessary because the FMCSA does not have the authority to grant intrastate exemptions. The States would be allowed to grant the intrastate exemptions without jeopardizing MCSAP funding to those States. The FMCSA is requesting public comment on allowing the States to grant exemptions because the Tolerance Guidelines for the MCSAP do not provide guidance to States concerning temporary exemptions from intrastate regulations to enable motor carriers to participate in pilot projects or programs.

Tolerance Guidelines for the MCSAP

The objective of the MCSAP is to reduce the number and severity of accidents and hazardous materials incidents involving CMVs by establishing a nationally uniform, consistent program of commercial vehicle safety enforcement to significantly increase the likelihood that safety defects, driver deficiencies and unsafe carrier practices will be detected and corrected. Part 350 of title 49, Code of Federal Regulations, prescribes requirements for MCSAP grants to the States for programs to adopt and enforce Federal rules, regulations, standards and orders applicable to CMV safety or

compatible State rules, regulations, standards and orders.

Among the requirements for receiving a basic grant, States must agree to adopt, and to assume responsibility for enforcing 49 CFR parts 390 through 399. However, some flexibility is provided in appendix C to part 350, Tolerance Guidelines for Adopting Compatible State Rules and Regulations. Appendix C establishes the limits within which a State's deviations or variances in adopting motor carrier safety and hazardous materials rules may extend and still be considered compatible for funding purposes under the MCSAP. Paragraph number 3 of appendix C provides limits or tolerances for State rules and regulations where the U.S. Department of Transportation regulations are not applicable, *i.e.*, generally in intrastate commerce.

Certain tolerances are currently provided for intrastate hours-of-service regulations. Specifically, an expansion of the 10-hour driving rule to a 12-hour driving limit is allowed provided the total period of time spent driving, and on-duty not driving does not exceed 16 hours. Also, an increase in the 60-hour and 70-hour rules such that drivers may accumulate up to 70 hours on-duty in 7 consecutive days, or 80 hours on-duty in 8 consecutive days. However, these tolerances do not appear to provide sufficient flexibility for intrastate motor carriers delivering home heating oil.

On March 9, 1999 (64 FR 11414), the FHWA published a notice of proposed rulemaking to amend the regulations governing the MCSAP by incorporating provisions of the TEA-21. This action would broaden the scope of the MCSAP beyond enforcement activities and programs by requiring participating States to assume greater responsibility for improving motor carrier safety. The proposed amendments would require States to develop performance-based plans reflecting national priorities and performance goals; revise the MCSAP funding distribution formula; and create a new incentive funding program. The tolerance guidelines concerning hours-of-service would be codified under 49 CFR 350.341(e) of the revised part 350. The substance of this specific guideline would remain unchanged.

Neither the current MCSAP regulations nor the proposed revision of 49 CFR part 350 provides guidance to the States concerning temporary exemptions from intrastate regulations to enable motor carriers to participate in pilot projects or programs. Since there are no Federal regulatory or statutory restrictions that would preclude the FMCSA from allowing the States to grant temporary exemptions to intrastate

motor carriers for the purpose of participating in a pilot program, the agency is requesting the States' cooperation in conducting the home heating oil pilot program. The FMCSA is asking that the States allow intrastate motor carriers that meet the FMCSA's eligibility criteria to participate in the study. The States would not be required to meet any criteria (*e.g.*, having an approved plan for monitoring the motor carriers, or having a substantial number of citizens relying upon home heating oil, etc.) before being allowed to grant the temporary exemptions. The FMCSA requests comments on whether the agency should limit the number of States and, if so, what criteria should be used to determine which States should be considered eligible.

Structure of the Home Heating Oil Pilot Program

The FMCSA Home Heating Oil Pilot Program is intended to be a simplified version of the intrastate program established in response to the NHS Act. The program would include interstate and intrastate motor carriers delivering home heating oil within 100 air-miles of a central terminal or distribution point, during the winter. Deliveries between terminals or distribution points would not be covered by the exemption. The exemption would cover the period between November 1 and April 30 for three consecutive heating seasons, the first of which beginning on November 1, 2000. The length of the exemption period is intended to accommodate motor carriers operating in regions of the country where there is a significant demand for heating oil before the first official day of winter, or the demand for the product continues after the first official day of spring. The FMCSA would establish the criteria for motor carriers to participate in the study and would collect and analyze data concerning the safety performance of these carriers during the study.

The FMCSA believes the terms and conditions of the pilot program will ensure that the program achieves a level of safety equivalent to, or greater than, the level of safety that would be achieved through compliance with the safety regulations. The terms and conditions, or safety measures, presented below are designed to ensure that the program does not adversely affect safety.

Alternative Hours-of-Service Restart

The FMCSA is proposing that participating motor carriers be allowed to "restart" calculations for the 60-hour or 70-hour rule, whichever is applicable, after the driver has an off-

duty period encompassing two consecutive nights off-duty that include the periods from midnight to 6 a.m. However, if the driver reached the 60- or 70-hour limit without having taken any such off-duty period, he or she would be required to do so at that time. This restart provision differs from that in the program mandated by the NHS Act where drivers were permitted statutorily to restart their calculations for the 60-hour and 70-hour rules after any off-duty period of 24 or more hours.

The FHWA proposed allowing a 24-hour restart for all motor carriers in 1992 (57 FR 37504; August 19, 1992). Nearly 68,000 comments were received in response to the NPRM. Virtually no substantive information was presented in these comments to support a change in the regulations. Except in very general terms, the agency received little discussion of potential impacts on highway safety that could result from increasing the available on-duty hours. The agency, therefore, declined to make the proposed changes to the rule and, on February 3, 1993 (58 FR 6937), withdrew the proposal and closed the docket.

On November 5, 1996 (61 FR 57252), the agency published an advance notice of proposed rulemaking (ANPRM) on all aspects of the hours-of-service regulations. The agency indicated that it was nearing the completion of several research projects and was seeking the results of other relevant research, including operational tests or pilot regulatory programs conducted anywhere in the world, that could be used in developing a revised regulatory scheme for CMV drivers' hours of service. The FMCSA has reviewed all the research reports submitted by commenters to the rulemaking docket, and scientific information obtained through other sources, and is not aware of any data that would support granting an exemption to use a 24-hour restart. Copies of all known research reports, as well as all comments submitted in response to the ANPRM, are available in FMCSA Docket No. FMCSA-97-2350 (previously FHWA Docket No. FHWA-97-2350).

The FMCSA believes there is sufficient scientific information to support allowing "restart" calculations for the 60-hour or 70-hour rule, whichever is applicable, after the driver has an off-duty period encompassing two consecutive nights off-duty that include the periods from midnight to 6 a.m. For weekly off-duty periods, certain studies indicate that at least two consecutive nights off-duty that include the periods from midnight to 6 a.m. are necessary to restore the human body

and negate the effect of accumulated week-long sleep deprivation. Drivers may need even more nights off-duty if they have severe sleep deficit.

Smiley, A. & Heslegrave, R. (1997)¹ cited several scientific studies dealing with recovery time as a portion of their review of scientific literature on rest and recovery requirements. The review was conducted to evaluate the potential adequacy of a 36-hour cumulative-fatigue-recovery provision that had been proposed by motor carrier industry groups to Transport Canada. Smiley and Heslegrave cited a 1967 study by Lille (Lille, F. (1967), "Le sommeil de jour d'un groupe de travailleurs de nuit," *Le Travail Humain*, Vol. 30) suggesting that a single day off was insufficient for night workers to recover after a sleep debt accumulated over five days. Other studies they cited indicated a preference, in terms of recovery, for a three-day rest period compared to a two-day period after three 12-hour night shifts; one such example was a study (Hildebrandt *et al.* (1974))² that illustrated the advantage of two days and three days off, compared to one day off, in operator performance (locomotive engineers with inadequate rest missed multiple in-cab warning signals that resulted in automatic braking being triggered). A 1994 literature review indicated that two nights of sleep are usually sufficient to allow near full recovery after extended periods of sleep loss. Smiley and Heslegrave concluded that, "nevertheless, although the available research is sparse, it is sufficient to raise concerns about a 36-hour reset that would allow drivers to accumulate up to 92 hours on-duty within a seven-day period, particularly for night driving. It is also clear that there is insufficient scientific foundation on which to base prescriptive solutions for appropriate rest periods." (p. 14)

O'Neill, T. *et al.* (1999)³ studied drivers on long (14-hour) daytime duty schedules in a driving simulator. The drivers did not appear to have accumulated significant sleep loss during the study, but their amount of measured sleep increased and their sleep latency—the duration of time

between turning off the lights and falling asleep by polysomnographic criteria—decreased on their first off-duty days. The researchers suggest "the effectiveness of a full two nights and one day off (that is, 'Friday night' to 'Sunday morning' as a minimum safe restart period " about 32 hours off-duty) under the conditions tested." (p. 48)

Smiley, A. & Heslegrave, R. (1997), O'Neill, T. *et al.* (1999), and Rosekind, M.R. (1997)⁴ came to the same conclusion. As Rosekind wrote, "It is important to maintain an optimal sleep opportunity every 24 hours and also address the potential for cumulative effects. Therefore, appropriate recovery time should be allowed per week (days or rolling hours). Scientific studies show that two nights of recovery sleep are typically needed to resume baseline levels of sleep structure and waking performance and alertness." (p. 7.6).

The FMCSA believes an off-duty period that includes two consecutive midnight to 6 a.m. periods to obtain restorative sleep would ensure a level of safety that is equivalent to, or greater than, the level of safety that would be achieved by complying with the current weekly limitations in the hours-of-service regulations. A minimum 32 to 56-hour break that includes the minimum of two consecutive nights of sleep would provide drivers a full day off with two sleep periods between the hours of midnight and 6 a.m.

The minimum off-duty periods are intended to afford the drivers the opportunity for restorative sleep based on the amount of driving and other work they perform. The "weekend" may be longer depending on when the motor carrier releases the driver from duty on the last workday of the workweek. The alternative "restart" in the pilot program would allow drivers to take as few as 32 consecutive hours off-duty on a "weekend," provided the time period includes two consecutive midnight to 6 a.m. periods to obtain restorative sleep and the driver is released from work at exactly 11 p.m. on the last workday of the workweek.

It is unreasonable to expect that a driver will get full advantage of two consecutive midnight to 6 a.m. sleep periods if he/she is released at or just before midnight, and required to return to work at or just after 6 a.m. Therefore, the FMCSA has chosen 11 p.m. as the latest time drivers could get off work and still get to sleep for the first full midnight to 6 a.m. period on the first

night of a "weekend." Likewise, the agency has chosen 7 a.m. as the earliest time drivers could start a new workweek and still sleep the last full midnight to 6 a.m. period on the last night of a "weekend."

Generally, drivers would be off duty for more than the minimum 32 consecutive hours, but fewer than the 63 consecutive hours in a "normal weekend" (5 p.m. Friday to 8 a.m. Monday). A driver completing a workweek at 11 p.m., for example, could take the minimum 32 hours before beginning the next workweek. A driver completing a workweek at 11:10 p.m., though, would have to be off-duty for approximately 56 hours before beginning the next workweek.

The FMCSA is not suggesting that participating motor carriers provide only 32 hours that include the two consecutive midnight to 6 a.m. periods. That is the minimum off-duty time. The FMCSA expects the participating motor carriers to provide, and drivers to take, as much time as necessary to recover from any sleep debts and other conditions resulting from cumulative weekly fatigue.

The agency requests comments on the alternative restart for calculations of the 60-hour and 70-hour rules during the pilot program.

Management of the Program

The FMCSA would manage the home heating oil program, including the collection and analysis of all data, and the monitoring of all motor carriers participating in the program. The States would make compliance with the FMCSA's monitoring requirements a condition of their waiving the intrastate hours-of-service requirements. The agency would ensure that there is a pilot program plan which includes the elements specified in 49 CFR 381.505. However, prior to preparing that plan, the FMCSA requests public comment on determining a reasonable number of participants necessary to yield statistically valid findings about the impact of the alternative restart on the home heating oil segment of the motor carrier industry. The FMCSA also requests public comment on the development of a data collection and safety analysis plan that identifies a method of comparing the safety performance for participating motor carriers and drivers, with the safety performance of motor carriers and drivers that comply with the current regulations.

Ideally, in order to make a comparison between motor carriers in the program and those complying with the regulations, as required by TEA-21,

¹ Smiley, A. & Heslegrave, R. (1997), "A 36-Hour Recovery Period for Truck Drivers: Synopsis of Current Scientific Knowledge," (Report No. TP 13035E) Montreal: Transport Canada.

² Hildebrandt, G., Rohmert, W., & Rutenfranz, J. (1974), "12 & 24 H Rhythms in Error Frequency of Locomotive Drivers and the Influence of Tiredness," *International Journal of Chronobiology* 2: 175-180.

³ O'Neill, T.R., Krueger, G.P., & Van Hemel, S.B. (1999), "Effects of Operating Practices on Driver Alertness," Report No. FHWA-MC-99-140, Federal Highway Administration.

⁴ Rosekind, M.R., Neri, D.F., & Dinges, D.F. (1997), "From Laboratory to Flightdeck: Promoting Operational Alertness, Fatigue and Duty Time Limitations " An International Review:" 7.1-7.14

the agency would have two groups—a group of carriers operating under the terms and conditions of the exemption, and a control group. However, the FMCSA does not believe it is practicable to structure the pilot program in this manner. First, there is no short-term incentive for motor carriers in the control group. Second, motor carriers operating under the pilot program exemption would have a competitive edge against those in the control group.

The FMCSA would review participating carriers' accident data from the three-years prior to entering the pilot program, and compare this pre-pilot program safety performance data with data collected during the program. The agency believes this before-and-after comparison will provide a practical and effective means of determining whether the alternative restart provision affects safety performance, provided there are no other significant changes in the operating practices of the participating carriers that could also affect safety performance. The FMCSA requests public comments on the plan to conduct a before-and-after comparison of the safety performance of the participating carriers.

Eligibility Criteria for Motor Carriers to Participate

The FMCSA is proposing that interstate motor carriers meet all of the eligibility criteria listed below for participating in the pilot program. The States granting temporary exemptions would require that intrastate carriers meet the same eligibility requirements in order to take advantage of the exemption. The purpose of the eligibility criteria is to keep motor carriers with questionable safety performance and/or safety management controls out of the program. Participating motor carriers—

1. Must be either "unrated" by, or have a current safety rating of "Satisfactory" issued by the FMCSA (or the FHWA or OMCS prior to the establishment of the FMCSA), or a State;
2. Must not have been the subject of a Federal or State investigation resulting in penalties or fines for violations of motor carrier safety or hazardous materials transportation regulations or laws within the last three years;
3. Must not currently be the subject of any Federal or State investigation of alleged violations of motor carrier safety or hazardous materials transportation regulations or laws; and
4. Must not have had, during the last three years, any accidents (as defined in 49 CFR 390.5) in which a determination was made by a Federal, State, or local

official responsible for investigating the cause of CMV accidents, that the motor carrier's CMV was in unsafe operating condition (i.e., a condition likely to cause an accident, or breakdown of the vehicle) and the mechanical condition was a contributing factor in the accident, or that the driver was cited for violation of Federal or State motor carrier safety regulations or laws (whichever were applicable at the time of the accident) and the driver's violation of those regulations or laws was a contributing factor in the accident.

The FMCSA would also have criteria for participating drivers. Participating drivers must not have committed, during the past three years, any disqualifying offences listed in 49 CFR 383.51 concerning commercial driver's license disqualifications and penalties, 49 CFR 391.15 concerning disqualification of drivers operating CMVs in interstate commerce, or comparable State regulations or laws concerning disqualifications of individuals operating CMVs.

The FMCSA believes the first criterion is necessary to ensure that a motor carrier determined by Federal or State officials to be either "unsatisfactory" or "conditional" is prevented from participating. A safety rating of unsatisfactory is an indicator the motor carrier has significant deficiencies in its safety management controls. A safety rating of conditional means that a motor carrier is not unfit, but is not an indication that all is well with the safety management controls for the carrier's operations. As such, there is little reason to believe that carriers rated either unsatisfactory or conditional could be relied upon to comply with the terms and conditions for participating in the pilot program. The agency requests comments on this criterion, particularly the prospect that motor carriers without safety ratings would be allowed to participate in the study.

The second criterion is intended to keep out motor carriers that have had serious violations of Federal or State motor carrier safety or hazardous materials regulations within the past three years. If the motor carrier's operating practices are such that an investigation followed by penalties or fines was necessary, the safety management controls are not adequate for the purposes of the pilot program. The FMCSA believes this criterion should be used irrespective of the motor carrier's safety rating and requests public comment.

The criterion concerning current investigations would be used to keep

out motor carriers that may have problems with their safety management controls. These carriers would not be considered eligible for the duration of the investigation. If the completed investigation does not result in penalties or fines, the motor carrier would then be allowed to participate in the pilot program.

The accident criterion would be used as a means of evaluating motor carriers' accidents during the past three years. If any of the accidents involved a CMV that was in unsafe operating condition which contributed, in whole or in part, to the accident, or a driver that was cited for violating Federal or State regulations and the violations contributed, in whole or in part, to the accident, the motor carrier could not participate in the program. The fact that the motor carrier allowed its vehicle to be operated in a condition resulting in an accident suggests that it would be inappropriate to allow the motor carrier to participate in the pilot program. Similarly, if a driver is cited for violation of Federal or State motor carrier safety regulations or laws and the failure to comply with those regulations was a contributing factor in the accident, the FMCSA believes the accident is a reflection on the motor carrier's management of its drivers, and the motor carrier should not be allowed to participate in the program. The FMCSA requests comments on this criterion.

The driver criteria are intended to prevent unsafe drivers from participating in the pilot program. This determination would be made independent of any decision concerning the motor carrier's eligibility. If the driver has committed a disqualifying offense within the last three years, the driver could not be included in the participating carrier's pool of drivers that use the alternative restart.

Process for Motor Carriers to Apply for Participation in the Pilot Program

In order to be considered for the pilot program interstate motor carriers (or intrastate motor carriers operating in States that agree to grant exemptions consistent with the requirements and conditions of this program) must submit, in writing, the following to the FMCSA:

- (1) The name of the motor carrier;
- (2) USDOT Number, MC Number, and State-issued motor carrier identification number;
- (3) The address for the principal place of business, telephone number, and fax number;

(4) Name and title of company official who will serve as the carrier's point of contact for inquiries from the FMCSA;

(5) A driver roster consisting of names and driver license numbers and State of licensure for all participating drivers;

(6) The number of home heating oil delivery vehicles that will be operated by drivers using the alternative restart;

(7) The total number of accidents for each of the previous three calendar years, and the number of accidents that occurred during each of the previous winters seasons (November 1 through April 30);

(8) The following certification signed by a motor carrier official: I certify that (*Name of the motor carrier*) operates CMVs used to deliver home heating oil, and is not currently rated "Unsatisfactory" or "Conditional" by the FMCSA (or the FHWA prior to the establishment of the FMCSA), or a State. I certify that each of the drivers listed on the roster is eligible to participate in the project, that each operates a CMV used to transport home heating oil, and that we have verified that the driving record of each driver does not include any convictions within the past three years of any disqualifying offense. I have read and agree to be bound by the requirements for notification and submission of information to the FMCSA outlined in the section entitled "The Agreement" in this notice of final determination of this project. I certify under penalty of perjury pursuant to 28 U.S.C. 1746 that the foregoing is true and correct. Executed on (*Date*)

Signature _____
Name _____
Title _____
Name of Motor Carrier _____

Intrastate motor carriers operating in States that provide a temporary exemption would also submit their requests for participation to the FMCSA. The FMCSA would provide the State with a list of the motor carriers and drivers for the State's approval for participation in the Study. If the State agrees with the FMCSA's recommendation, the carriers and drivers would be allowed to participate in the study and must agree to submit required accident information to the FMCSA during the study.

The Agreement

If the FMCSA determines that a motor carrier applicant is qualified to participate in the pilot program, the agency would notify the carrier by letter. The agency would notify intrastate motor carriers after the State in which they operate approves their participation in the study. A copy of the

letter would then be made available by the motor carrier to each driver. By agreement, participating motor carriers must do the following:

1. Within 10 business days following an accident (as defined in 49 CFR 390.5) or any unintentional discharge of home heating oil that requires the submission of the Department of Transportation Hazardous Materials Incident Report (DOT Form F 5800.1) (see 49 CFR 171.16) involving any of the motor carrier's CMVs, irrespective of whether the CMV was being operated by a participating driver, the motor carrier must submit the following information:

- (a) Date of the accident,
- (b) City or town in which the accident occurred, or city or town closest to the scene of the accident,
- (c) Driver's name and license number,
- (d) Vehicle number and State license number,
- (e) Number of injuries,
- (f) Number of fatalities, and
- (g) Whether hazardous materials, other than fuel spilled from the fuel tanks of the motor vehicles involved in the accident, were released,
- (h) The police-reported cause of the accident,

but, if no earlier date is fixed, then on the second Tuesday in April (i) Whether the driver was cited for violating any traffic laws, motor carrier safety regulations, or hazardous materials discharge.

(j) Whether the driver was participating in the pilot program, and if so, the total driving time, on-duty time since the last restart period prior to the accident, and the length of the last restart period.

2. Within 10 business days, notify the FMCSA of the addition of a new driver operating under the alternative restart pilot program, including the name, driver license number, and date of employment of the new driver,

3. Within 10 business days, notify the FMCSA when a participating driver ceases to be employed by the motor carrier, including the driver's name, license number, and date of termination,

4. Within 10 business days, notify the FMCSA when a participating driver is no longer participating in the program, including the driver's name, license number, and date participation ended.

Removal From the Project

The FMCSA does not believe that any motor carrier satisfying the eligibility criteria of this project will experience any deterioration of its safety record. However, should this occur, the FMCSA will, consistent with the statutory requirements of TEA-21, take all steps necessary to protect the public interest,

as well as the integrity of the program. Participation in this program is voluntary, and the FMCSA will immediately revoke participation of an interstate motor carrier or driver for failure to comply with the terms and conditions of the pilot program, or immediately terminate the pilot program if its continuation proves to be inconsistent with the goals and objectives of the safety regulations issued under the authority of 49 U.S.C. chapter 313, or 49 U.S.C. 31136.

With regard to intrastate motor carriers and drivers, the FMCSA would notify State officials immediately if the agency determines that the carrier or driver has failed to comply with the terms and conditions of the pilot program. The FMCSA will request that the State agency granting the temporary exemption immediately revoke participation of the intrastate motor carrier or driver.

FMCSA Use of Data

The FMCSA plans to carefully review the data in preparing a report to the Congress as required by the TEA-21. The agency would document findings, conclusions, and recommendations of the program, including whether there are any suggested amendments to laws and regulations that would enhance motor carrier and driver safety and improve compliance with the hours-of-service regulations.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this proposal is subject to the PRA and the required clearance documents will be submitted to the OMB for its approval of this information collection requirement.

This **Federal Register** notice proposes a voluntary pilot program for participation by certain motor carriers that transport home heating oil. In return for receiving an exemption to the weekly limitations in the Federal hours-of-service regulations, or comparable State hours-of-service requirements, each program motor carrier would be required to develop and/or furnish certain information about its operations, determine the eligibility of its drivers to participate in the program, provide information about past accidents, and agree to provide detailed information about accidents that occur during the pilot program. It is anticipated that the

initial application will require on average, about one hour to complete. This document is necessary to identify those motor carriers that believe they are eligible to participate in the project, and to indicate their desire to be included in the project.

Participating motor carriers would be required to submit to the FMCSA: (1) The total number of CMVs that will be operated by a driver using the alternative to the 60-hour/70-hour restart; (2) the names and driver license numbers for all drivers using the alternative restart; (3) the total number of accidents (as defined in 49 CFR 390.5) for each of the three years prior to participating in the project, including the total number of injuries and fatalities; (4) information about all accidents that occur while the carrier is participating in the program; and (5) information about the addition or removal of drivers from the project.

The most likely respondents to this information collection will be motor carriers operating CMVs transporting home heating oil during the winter, with a safety rating of satisfactory or unrated. The FMCSA does not have a precise count of the total number of carriers that would be eligible to participate in the program. However, the PMAA represents approximately 8,000 motor carriers that supply heating oil. For the purposes of estimating the information collection burden, the FMCSA will use an estimate of 8,000 motor carriers.

It is proposed that each accident involving project drivers would be reported to the FMCSA within 10 calendar days. This information is necessary in order to detect immediately those motor carriers whose safety performance is declining during the project and would also be used to assist in making the before-and-after comparison of each carrier's safety performance. The reporting and recordkeeping burden for this information is estimated to be 15 minutes per accident.

With regard to the total reporting requirement, if 8,000 motor carriers participate, a total of 8,000 hours would be expended by these carriers to apply for the project. If each of the motor carriers averages two accidents per winter, the burden for each year would be 4,000 hours (0.25 hours per accident \times (2 accidents per year \times 8,000 motor carriers) = 4,000 hours per year. The total burden for submitting accident data during the three-winter period would be 12,000 hours. Therefore, the FMCSA estimates approximately 20,000 burden hours during the pilot project.

With respect to the collection of information described above, the FMCSA invites comments on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden on the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of these collections of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Comments on this proposed information collection may be submitted to the FMCSA.

Request for Comments

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FMCSA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material.

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: February 9, 2000.

Julie Anna Cirillo,

Acting Deputy Administrator.

[FR Doc. 00-3660 Filed 2-15-00; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these

information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than April 17, 2000.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 17, Washington, D.C. 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD-20, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 35, Washington, D.C. 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130_____."

Alternatively, comments may be transmitted via facsimile to (202) 493-6265 or (202) 493-6170, or E-mail to Mr. Brogan at robert.brogan@fra.dot.gov, or to Ms. Deal at dian.deal@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 17, Washington, D.C. 20590 (telephone: (202) 493-6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD-20, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 35, Washington, D.C. 20590 (telephone: (202) 493-6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. §§ 3501-3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection