



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0056]

Hours of Service of Drivers: R.J. Corman Railroad Services, Cranemasters, Inc., and National Railroad Construction and Maintenance Association, Inc.

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

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant the application of R.J. Corman Railroad Services, Cranemasters, Inc., (collectively, “the Companies”) and the National Railroad Construction and Maintenance Association, Inc. (NRC) for an exemption from the prohibition against driving a property-carrying commercial motor vehicle (CMV) after the 14th hour after coming on duty and driving after accumulating 60 hours of on-duty time in 7 consecutive days (60-hour rule), or 70 hours of on-duty time in 8 consecutive days (70-hour rule). The exemption will enable railroad employees subject to the hours-of-service (HOS) rules to respond to unplanned events that occur outside of or extend beyond the employee’s normal work hours. FMCSA concluded that granting the Companies/NRC’s application is likely to achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

DATES: The exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and expires [INSERT DATE 5 YEARS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West

Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

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, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366-4325; E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, “FMCSA-2019-0056 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, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency's decision must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The Companies and NRC requested an exemption from the HOS regulations in 49 CFR Part 395 for their employees who respond to unplanned events that affect interstate commerce, service or the safety of railway operations, including passenger rail operations. These employees transport equipment used to clear derailed or disabled trains or debris blocking tracks or railroad rights-of-way.

The Companies and NRC explained that unplanned events often occur outside of normal business hours. Although in many cases the event is local in nature, allowing local government officials to declare an emergency that would exempt the company and its drivers

from the HOS regulations, these officials have not done so. The Companies and NRC believe it would not be practical for them to do so in the future because (1) many unplanned events occur in remote locations where it may not be clear who is authorized to declare an emergency; (2) more than half of unplanned event call times occur between 4:00 p.m. and 7:00 a.m., including a large number between midnight and 7:00 a.m., making it virtually impossible for the railroads to obtain an emergency declaration before requesting a contractor to respond to the unplanned event; and (3) companies likely would not know if such an emergency declaration had been issued before they respond to a call from a railroad.

The Companies/NRC compare the work of railroad employees or contractors responding to an emergency to that of utility service employees responding to an emergency. They argue that the rationale for the statutory utility service HOS exemption applies with equal force to railroad emergency response contractors responding to unplanned events.

The applicants are seeking an exemption from the HOS regulations for the time spent by their drivers driving to the site of the unplanned event. The term “unplanned event” includes the following: a derailment; a rail failure or other report of dangerous track condition; a disruption to the electric propulsion system; a bridge-strike; a disabled vehicle on the track; a train collision; weather- and storm-related events; a matter of national security; a matter concerning public safety; a blocked grade crossing, etc. According to the Companies the exemption would be narrower than the utility service exemption, which allows drivers to drive after they complete work restoring utility service. The Companies’ application, on the other hand, would require drivers not to drive a CMV after completing work until they had obtained the required 10 hours or 34 hours of rest, depending on their cumulative hours on duty for the

day and week. The applicants request the exemption be granted for five years. A copy of the application for exemption is available for review in the docket for this notice.

IV. Public Comments

On March 8, 2019, FMCSA published a notice seeking public comment on the exemption application (84 FR 8565). The Agency received 13 comments: Association of American Railroads and the American Short Line and Regional Railroad Association (*joint submission of comments*); Brotherhood of Maintenance of Way Employees and the Brotherhood of Railroad Signalmen (*joint submission of comments*); Kentuckians for Better Transportation; Keystone State Railroad Association; Mississippi Railroad Association; Ohio Railroad Association; Mr. Kevin Phillips; Railway Association of North Carolina; Mr. Bob Stanton; Mr. C. R. Stoeckmann; Tennessee Shortline Association; Utilco Railroad Services, Inc.; and, Virginia Fire Chiefs Association;

Eight organizations and one individual supported the request for an exemption. One organization and two individuals opposed the request. One company providing services like those of the applicants expressed interest in receiving similar relief but did not comment on the applicant's request.

The commenters writing in support of the exemption request emphasized the importance of responding to railroad emergencies in a timely manner. The Association of American Railroads and the American Short Line and Regional Railroad Association stated in their joint submission to the docket:

“There is a public interest in ensuring that railroads clear blocked tracks and rights-of-way and restore service as quickly as possible. It is essential that response contractors are able to assign the drivers closet to the incident . . . so that they can get to [the] job quickly

and clear the blockage – thus enabling the railroads to remove the hazard and restore service as quickly as possible.”

The Virginia Fire Chiefs Association, Inc. explained:

“Derailments often involve leaks of crude oil, fuel and other hazardous materials, which can pollute water and air if not quickly remediated. There also may be risk of fire or explosions requiring evacuation of people from the area. Railroads rely on their response contractors who drive specialized equipment and clear blocked tracks and rights-of-way.”

The Brotherhood of Railroad Signalmen and Brotherhood of Maintenance of Way Employees Division and two individuals opposed the application. The groups stated:

“There is no logical or statistical argument from the Companies/NRC asserting that driving to an unplanned event as outlined in the application with a fatigued driver is any safer than driving from one. Furthermore, by removing the hours of service guidelines and simply stating, “no driver is required to drive a vehicle if feeling fatigued” puts the responsibility of not driving solely on the employed driver. Said driver is working in a historically retaliatory nonunion working environment. . . .”

The groups also argue the “[p]etitioners have offered no data showing the frequency with which drivers run out of allowable working hours during any one of these incidents.” The groups discussed several research studies and reports, concluding that a substantial body of evidence indicates that a chronic reduction in sleep time is associated with many long-term health problems. They also argue that “scientific studies have established that driver fatigue and performance are dynamically influenced by the regulation of sleep need and endogenous circadian rhythms, including the need to obtain enough sleep to ensure recovery from work schedules that might induce either acute or chronic sleep deprivation.”

V. FMCSA Response to Comments and Decision

FMCSA Response

FMCSA agrees that the Companies need to respond to unplanned events in a timely manner. The Agency believes there is a public interest in ensuring that railroads clear blocked tracks and rights-of-way and restore service as quickly as possible. The exemption would provide flexibility for the Companies to address urgent situations that disrupt rail services.

The Agency acknowledges the safety concerns raised by the Brotherhood of Maintenance of Way Employees and the Brotherhood of Railroad Signalmen. However, the Agency does not believe the requested relief would compromise safety when used occasionally to respond to unplanned events. The exemption would enable the Companies to reach the site of such events within a limited distance from their drivers' normal work-reporting location. Once the crews arrive at the scene, all CMV operations would be conducted in full compliance with the applicable hours-of-service (HOS) regulations. Likewise, when normal rail operations have been restored, drivers would be required to comply with the HOS requirements during the return trip.

Because the relief is limited to the trip to the scene of the unplanned event and such events would happen only occasionally and not during a predictable number of times per week or per month, drivers would not operate CMVs after the 14th hour of coming on duty as a regular part of their schedules. Similarly, drivers would not regularly operate CMVs after accumulating 60 hours or 70 hours of on-duty time during seven or eight consecutive days. Drivers' standard schedules would include adherence to the 14-hour rule and adherence to the 60- and 70-hour rules.

Based on the information provided by the applicants, the Companies responded to more than 2,000 derailments and other unplanned events between January 2017 and October 2018

which would be an average of approximately 95 unplanned events at various locations in the country each month. R.J. Corman Railroad Services has 20 divisions. Cranemasters has 11 divisions. Therefore, this demand would be handled by more than 30 divisions between the Companies, which suggests that the need would truly be unpredictable in any given division.

The exemption request would neither increase nor decrease drivers' responsibility under 49 CFR 392.3 to cease operations if their ability to safely operate a CMV is impaired by illness or fatigue.

FMCSA and the U.S. Department of Labor are responsible for implementing Federal statutes and regulations providing protection for drivers; any driver operating under the exemption would have the right to seek assistance, if needed.

FMCSA Decision

FMCSA grants the exemption because it would provide needed flexibility without compromising highway safety; the terms and conditions of the exemption would achieve the requisite level of safety.

VI. Terms and Conditions of the Exemption

A. This exemption is restricted to individuals employed by the Companies while driving CMVs to the site of an "unplanned event" which includes the following:

- a derailment;
- a rail failure or other report of a dangerous track condition;
- a track occupancy light;
- a disruption to the electric propulsion system; a bridge-strike;
- a disabled vehicle on the train tracks;
- a train collision;

- weather- and storm-related events including, fallen trees and other debris on the tracks, snow, extreme cold or heat, rock and mud slides, track washouts, and earthquakes;
- a matter concerning national security or public safety, including a blocked grade crossing.

B. When operating under this exemption, drivers and carriers:

- a. May extend the 14-hour duty period in § 395.3(a)(2) to no more than 17 hours;
- b. May not exceed 11 hours of driving time, following 10 consecutive hours off duty;
- c. May extend the 60- and 70-hour rule in § 395.3(b) by no more than 6 hours;
- d. May not travel more than 300 air miles from the normal work-reporting location or

terminal.

C. Drivers must comply with the applicable HOS limits after arriving at the site – drivers must record all time working to restore rail service as on duty, not driving.

D. Drivers may take advantage of the Agency’s personal conveyance regulatory guidance travelling between the unplanned event work site and nearby lodging or dining facilities (June 7, 2018; 83 FR 26377). If that guidance is not applicable to the trip, CMV drivers who have reached the HOS limits must be transported from the work site by an individual who is not subject to HOS restrictions or use a vehicle that does not meet FMCSA’s definition of a CMV (49 CFR 390.5) when they leave the site.

E. Drivers must complete the Driver Education Module 3 and the Driver Sleep Disorders and Management Module 8 of the North American Fatigue Management Program (NAFMP) (www.nafmp.org) prior to operating under the exemption; and

F. Motor carriers and drivers must comply with all other provisions of the Federal Motor Carrier Safety Regulations.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Notification to FMCSA

Under the exemption, the Companies must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must include the following information:

- a. Identifier of the Exemption: "The Companies and NRC,"
- b. Name of operating carrier and USDOT number,
- c. Date of the accident,
- d. City or town, and State, in which the accident occurred, or closest to the accident scene,
- e. Driver's name and license number,
- f. Co-driver's name (if any) and license number
- g. Vehicle number and state license number,
- h. Number of individuals suffering physical injury,
- i. Number of fatalities,
- j. The police-reported cause of the accident, if provided by the enforcement agency,

- k. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and
- l. The total on-duty time accumulated during the 7 consecutive days prior to the date of the accident, and the total on-duty time and driving time in the work shift prior to the accident.

VII. Termination

The FMCSA does not believe the motor carriers and drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Issued on: February 27, 2020

Jim Mullen
Acting Administrator

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