



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2020-0171]

Hours of Service of Drivers: Association of American Railroads and American Short Line and Regional Railroad Association; Application for Exemption

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

ACTION: Notice of final disposition; grant of exemption.

SUMMARY: FMCSA announces its decision to grant the application submitted by the Association of American Railroads and the American Short Line and Regional Railroad Association and member railroads (collectively “the Associations”) for an exemption from the prohibition against driving after the 14th hour from the beginning of the work shift (the 14-hour rule) and the prohibition against driving after accumulating 60 hours of on duty time within seven consecutive days, or 70 hours of on duty time within 8 consecutive days (the 60-hour/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 an employee’s normal work hours. FMCSA concluded that granting the Associations’ 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 December 18, 2025.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Dockets Operations, U.S. Department of Transportation, 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. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

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; (202) 366-4325; MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this notice as being available in the docket, go to www.regulations.gov and insert the docket number, “FMCSA-2020-0171 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 Dockets Operations 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. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

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. Background

Under 49 CFR 395.3(a) a property carrying commercial motor vehicle (CMV) driver may not drive without first taking 10 consecutive hours off duty. Additionally, the driver may only drive a total of 11 hours during a period of 14 consecutive hours after coming on duty following 10 consecutive hours off duty. Under 49 CFR 395.3(a)(3)(ii) driving is not permitted if more than 8 hours of driving time have passed without at least a consecutive 30-minute interruption in driving status. The 30-minute break may be taken as off-duty, on-duty/not-driving, or sleeper-berth time, or any combination thereof. Under 49 CFR 395.3(b) no motor carrier shall permit or require a driver of a property-carrying CMV to drive, nor shall any driver drive a property-carrying CMV, regardless of the number of motor carriers using the driver's services, for any period after having been on

duty 60 hours in any period of 7 consecutive days or having been on duty 70 hours in any period of 8 consecutive days.

IV. Request for Exemption

The Associations believe the HOS prohibitions on driving after the 14th hour after coming on duty, and after 60 or 70 hours on duty in a moving 7- or 8-day “week,” inhibit the ability of a railroad to respond expeditiously to certain types of emergency situations. The Associations requested that a railroad employee responding to an unplanned event that affects railroad operations, including passenger rail operations, and that occurs outside of or extends beyond the employee’s normal shift, be exempt from those requirements. Unplanned events include 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; and a blocked grade crossing.

The Associations’ request mirrors the request submitted by R.J. Corman Railroad Services, Cranemasters, Inc., and the National Railroad Construction and Maintenance Association, Inc. (the Contractors), which FMCSA granted on March 4, 2020 (85 FR 12818). The Associations’ request provides that, while operating under this exemption, drivers and carriers would be allowed to extend the 14-hour duty period in § 395.3(a)(2) to no more than 17 hours; would not be allowed to exceed 11 hours of driving time following 10 consecutive hours off duty; would be allowed to extend the 60- and 70-hour rule in § 395.3(b) by no more than 6 hours; and, drivers would not be allowed to travel more than 300 air miles from their normal work-reporting location or terminal.

In addition, drivers covered by the Associations’ request would comply with the applicable HOS limits after arriving at the site and would record all time working to restore rail service as on duty, not driving. Drivers would also have the benefit of

FMCSA's personal conveyance guidance when travelling between the unplanned event work site and nearby lodging or dining facilities. To the extent that guidance is not applicable, CMV drivers who have reached the HOS limits would be transported from the work site after on-site duties are completed by an individual who is not subject to HOS restrictions, or would use a vehicle that does not meet FMCSA's definition of a CMV at § 390.5.

Furthermore, drivers operating under the exemption would receive resources on fatigue management appropriate to the rail working environment and emergency response to unplanned events. Specifically, drivers would complete the Driver Education Module 3 and Driver Sleep Disorders and Management Module 7 of the North American Fatigue Management Program (NAFMP).

FMCSA notes that the rail industry already utilizes many resources to educate and assist its workforce, including its CMV drivers, about preventing operator fatigue. The DOT's Federal Railroad Administration hosts a website, the "Railroaders Guide to Healthy Sleep" (<https://railroaderssleep.fra.dot.gov/>) which provides information, strategies, and resources to help railroad employees manage fatigue. Railroads subject to this exemption request could direct their employee CMV drivers to that railroad-specific and existing FRA fatigue-management resource as another method of compliance under an exemption.

The Associations requested the exemption be granted for 5 years. The exemption would cover 20,000 drivers and 11,000 CMVs.

A copy of the exemption application is available for review in the docket for this notice.

V. Public Comments

On August 20, 2020, FMCSA published a notice seeking public comment on the exemption application (85 FR 51546). The Agency received nine comments from the

following respondents: The Brotherhood of Maintenance of Way Employees Division (BMWED); Commercial Vehicle Safety Alliance (CVSA); Justin Fowler; Michael Millard; National Railroad Construction and Maintenance Association, Inc. (NRC); Lisa and Lee Schmidt (*joint submission of comments*); MJ Thorne; Transportation Trades Department, AFL-CIO; and the Truckload Carriers Association (TCA).

The NRC and one individual supported the request for an exemption. The NRC commented:

The drivers fulfill a critical safety function where it is often difficult to know how long a job will take or when such duties might need to occur. Safety will not be negatively impacted as these employees typically drive for a small percentage of their on-duty time and often only drive short distances. Further, the drivers who have reached the HOS limits would not drive a CMV after the on-site work was completed. The driving in these instances is just incidental to the actual railroad work performed by the employees to clear rail incidents and restore essential rail transportation services, which presents its own set of safety benefits.

Four organizations and three individuals opposed the request for an exemption.

The BMWED 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 argued that “scientific studies have established that driver fatigue and performance are dynamically influenced by the regulation of sleep, including the need to obtain enough sleep to ensure recovery from work schedules that might induce either acute or chronic sleep deprivation.”

CVSA registered its opposition by noting:

The FMCSRs are put into place to provide a framework of the minimum requirements to operate commercial motor vehicles safely. An exemption to those safety regulations should not be granted simply because they don’t fit a particular industry’s business model. If an expedited response to these ‘unplanned events’ are as critical as AAR and ASLRRRA suggest in their application, then their member companies should design their business models to respond quickly while still operating within the safety regulations.

TCA opposed the exemption and wrote:

Adding another exemption to the already over-regulated CMV sphere would only serve to muddy the waters and confuse drivers who may not be familiar with the nuances of the federal regulations. Furthermore, increasing the number of HOS

exemptions also increases the opportunities for them to be abused, leading to a decrease in overall safety. TCA encourages the Agency to consider these potentially unintended consequences that may correspond with adding to the already large number of HOS exemptions.

VI. FMCSA Response to Comments and Decision

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 Associations to address urgent situations that disrupt rail services.

The Agency acknowledges the safety concerns raised by the BMWED, CVSA, TCA, and other organizations and individuals opposing the exemption. 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 Associations 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 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 or 70 hours of on-duty time during 7 or 8 consecutive days. Drivers' standard schedules would include adherence to the 14-hour rule and the 60- and 70-hour rules.

The exemption would not 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 Decision

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

VIII. Terms and Conditions of the Exemption

A. This exemption is restricted to individuals employed by the Associations 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; and
- A matter concerning national security or public safety, including a blocked grade crossing.

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

- May extend the 14-hour duty period in § 395.3(a)(2) to no more than 17 hours;
- May not exceed 11 hours of driving time, following 10 consecutive hours off duty;

- May extend the 60- and 70-hour rule in § 395.3(b) by no more than 6 hours; and
- 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 when traveling 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 NAFMP) (www.nafmp.org) prior to operating under the exemption; railroads subject to the exemption could direct CMV drivers to the DOT’s Federal Railroad Administration’s website, the “Railroaders’ Guide to Healthy Sleep” (<https://railroadersleep.fra.dot.gov/>) as an alternative resource if NAFMP’s website is unavailable; 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 Associations must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the CMVs operating under the terms of this exemption. The notification must include the following information:

- a. Identifier of the Exemption: “The Associations;”
- 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 records of duty status for date of the accident and the 7 consecutive days prior to the date of the accident, accompanied by a summary statement of 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.

IX. Termination

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. FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

James W. Deck,
Deputy Administrator.

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