



**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 application for exemption; request for comments.

**SUMMARY:** FMCSA announces that it has received an application from R.J. Corman Railroad Services, Cranemasters, Inc., (“Companies”) and the National Railroad Construction and Maintenance Association, Inc. requesting a limited exemption from the regulatory hours-of-service (HOS) maximum driving time requirements for drivers of property-carrying vehicles. The applicants request the exemption to enable affected railroad employees, subject to the HOS rule, to respond to an unplanned event that occurs outside of or extends beyond the employee’s normal work hours. FMCSA requests public comment on the Companies’ application for exemption.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA-2019-0056 by any of the following methods:

- Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). See the Public Participation and Request for Comments section below for further information.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to [www.regulations.gov](http://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](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://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 and Request for Comments**

FMCSA encourages you to participate by submitting comments and related materials.

#### Submitting Comments

If you submit a comment, please include the docket number for this notice (**FMCSA-2019-0056**), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket number, "FMCSA-2019-0056" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-

addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

## **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 decision of the Agency 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**

R.J. Corman Railroad Services, Cranemasters, Inc., (“Companies”) and the National Railroad Construction and Maintenance Association, Inc. is requesting an exemption from the HOS regulations in 49 CFR Part 395 for their employees who transport equipment used to clear derailed or disabled trains or debris blocking tracks or

railroad rights-of-way when they are responding to unplanned events that affect interstate commerce, service or the safety of railway operations, including passenger rail operations.

The Companies assert that many unplanned events occur outside of normal business hours and in many instances the situation is locally contained. In that case, while a local government official could declare an emergency that would exempt the company and its drivers from the HOS regulations, local government officials have not done so and it would not be practical for them to do so in the future. This is because (1) many unplanned events occur in remote locations where it may not be clear who a railroad should contact to declare an emergency; (2) more than half of unplanned event call times typically occur between 4:00 p.m. and 7:00 .a.m., including a large number between midnight and 7:00, making it virtually impossible for the railroads to contact an official to request an emergency declaration before they request a contractor to respond to the unplanned event; and (3) companies likely would not know if such an emergency declaration had been made before they respond to a call from a railroad.

In their application, the Companies compare the work of railroad employees responding to an emergency situation to that of utility service employees responding to an emergency situation. Utility service vehicles are exempt from the HOS regulations. According to the Companies, the rationale for the utility service vehicle exemption applies with equal force to railroad emergency response contractors when they respond to unplanned events.

The Companies are seeking an exemption from the HOS regulations only for the time spent by their drivers driving to the site of the unplanned event. The term

“unplanned event” includes, but is not limited to some of 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; or a matter concerning public safety; a blocked grade crossing, etc. The Companies said that the exemption would be narrower than the utility service exemption, which allows drivers to drive after they complete work restoring utility service. The Companies wrote that they would ensure their drivers would not drive a CMV after completing work until the drivers 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.

#### **IV. Method to Ensure an Equivalent or Greater Level of Safety**

The Companies state that they have and will continue to take the following steps to ensure that safety is not compromised by the exemption. The Companies will do the following:

- Ensure drivers will have at least one hour of lead time before mobilizing equipment and actively begin driving;
- During one-hour lead time, drivers can participate in stretching and light exercise to improve alertness prior to driving;
- Drivers will drive in a convoy using escort vehicles in the front and back;
- Vehicles will be equipped with two-way radios and supervisors conduct routine radio checks every 30 to 45 minutes requiring response from drivers; and

- Ensure supervisors train employees to recognize fatigue and that drivers adhere to policy that no driver is required to drive a vehicle if feeling fatigued.

The applicants believe that the exemption, if granted, would not pose a safety risk since the drivers drive relatively short distances on public roads to get to the site of an unplanned event and do not drive after completing work at a site until requisite rest is obtained. A copy of the application for exemption is available for review in the docket for this notice.

**Issued on:** March 1, 2019.

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Larry W. Minor,  
Associate Administrator for Policy.

[FR Doc. 2019-04189 Filed: 3/7/2019 8:45 am; Publication Date: 3/8/2019]