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[4910-EX-P]

## 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 application for exemption; request for comments.

**SUMMARY:** FMCSA announces that it has received an application from the Association of American Railroads and American Short Line and Regional Railroad Association (the Associations) on behalf of themselves and member railroads for an exemption from the following hours of service (HOS) provisions: (1) driving a property-carrying commercial motor vehicle (CMV) without first taking 10 consecutive hours off duty, (2) driving after the 14<sup>th</sup> hour after coming on duty, (3) driving more than 11 hours during the 14-hour period after coming on duty, (4) driving if more than 8 hours have passed since the end of the last off-duty or sleeper-berth period of at least 30 minutes, and (5) 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 would enable railroad employees subject to the HOS rules to respond to unplanned events that occur outside of or extend beyond the employee's normal work hours. FMCSA requests public comment on the Associations' 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-2020-0171 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. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations. 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) 366-4225; E-mail: [MCPSD@dot.gov](mailto: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-2020-0171), 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-2020-0171” 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. Background**

Under 49 CFR 395.3(a) a property carrying commercial motor vehicle 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. Section 395.3(a)(3)(ii) currently prohibits driving if more than 8 hours have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes. However, under the amended rule adopted on June 1, 2020 [85 FR 33396], which becomes effective on September 29, 2020, 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 commercial motor vehicle to drive, nor shall any driver drive a property-carrying commercial motor vehicle, 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.

On October 11, 2018, the Associations submitted a similar exemption request (83 FR 64929.) The request was later withdrawn by the Associations and a new request has been submitted. The Associations contend that the HOS prohibitions on driving after a 14-hour period, and after 60 or 70 hours on duty in a moving 7- or 8-day “week” inhibit a railroad’s ability to respond expeditiously to certain types of emergency situations. For this reason the Associations request that a railroad employee responding to an unplanned event that affects interstate commerce, service or the safety of railway operations,

including passenger rail operations, and that occurs outside of or extends beyond the employee's normal shift, be exempt from the provisions in 49 CFR part 395.3(a) and (b).

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

### **Request for Comments**

In accordance with 49 U.S.C. 31315(b)(6), FMCSA requests public comment from all interested persons on the Associations' exemption application. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the "Addresses" section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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