



A bold voice for transportation workers

January 17, 2019

Ms. Pearlie Robinson
FMCSA Driver and Carrier Operations Division;
Office of Carrier, Driver and Vehicle Safety Standards
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

**RE: Hours of Service of Drivers; Exemption Applications: Association of American Railroads and American Short Line and Regional Railroad Association
FMCSA-2018-0367-0003**

Dear Ms. Robinson,

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the exemption filed by the Association of American Railroads (AAR) and American Short Line and Regional Railroad Association (ASLRRA). TTD consists of 32 affiliate unions representing workers in all modes of transportation, including commercial motor vehicle operators in the railroad industry covered by FMCSA hours of service requirements.¹ We therefore have a vested interest in this exemption.

AAR/ASLRRA requests an exemption to on-duty time requirements under FMCSA's hours of service (HOS) regulations for drivers of property-carrying vehicles. According to the applicants, this would affect approximately 21,000 CMV drivers in the railroad sector. Specifically, AAR/ASLRRA state that the HOS prohibitions on driving after a 14-hour period on duty, and after 60 or 70 hours on duty in a 7- or 8-day week is too restrictive and must be modified. The applicants request that railroads be given the unilateral power to declare the existence of an "unplanned event" and be thus permitted to schedule shifts as long as twenty-four hours. This proposal is unambiguously unsafe, and the underlying logic behind it is deeply flawed. It does not come close to meeting the regulatory safety equivalence requirement at 49 CFR 381.305, and FMCSA should therefore dismiss the request.

¹ Attached is a complete list of TTD's 32 affiliate unions.

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As mentioned, AAR/ASLRRRA seek permission to require shifts as long as twenty-four hours, ten hours longer than current regulations allow under normal circumstance. AAR/ASLRRRA do not seek an exemption to the drive time limit of eleven hours, so we assume that the applicants expect the drivers to be performing other non-driving duties during this time. In their request, AAR/ASLRRRA make no effort to address the question of employee fatigue over the course of a twenty-four hour shift.

The mere existence of FMCSA's current limit represents the federal government's view that after such a period of time, risks including those presented by fatigue become untenable. If FMCSA were to entertain the possibility of a near doubling of allowable shift time, it would be incumbent on an applicant to show that safety and fatigue risks are mitigated during the shift. AAR/ASLRRRA has not, and cannot do so. The applicant's effort to comply with 49 CFR 381.305 are limited to an extended off-duty time after extreme shifts. While such time off would surely be required, this band-aid is a half solution as it only addresses fatigue *between shifts*. Given the extraordinary amount of time that AAR/ASLRRRA requests workers to remain on duty for, the issue of fatigue *during shifts* cannot be ignored.

If AAR/ASLRRRA's exemption were to be granted, an employee could be required to drive a commercial motor vehicle after an already prolonged shift. It defies logic to assume that drivers operating a vehicle on their 22nd, 23rd, or 24th hours of duty time are likely to be anything but extremely fatigued, and at much greater risk. Further, we note that an employee's fatigue level does not correlate to the existence of an "unplanned event". As mentioned above, AAR/ASLRRRA do not make mention of actual drive time requirements, but it is possible they expect that the fourteen-hour period will also be extended so that employees can perform their driving duties during these so-called emergency shifts. In that circumstance, a driver could be required to drive for eleven hours consecutively, after already being on duty for thirteen. In either scenario, such operations carry unnecessary risks for both employees and others. For this reason alone, AAR/ASLRRRA's request should be rejected.

AAR/ASLRRRA cite the following as "unplanned events" which would necessitate these shifts.

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.

However, AAR/ASLRRRA fail to mention that expanded hours of service are already permitted in regulation for many of these events, including weather, national security matters, and disabled vehicles on the track.² AAR/ASLRRRA does not make a case that these existing allowances are

² 49 CFR 395.1(a) and (b)

inadequate. Therefore, there is no compelling reasons for FMCSA to make further regulatory adjustments to accommodate the applicant's supposed needs.

We also note that frequently in the event of severe safety issues such as an accident resulting in the loss of life, or an ignition of hazardous materials, it is primarily the duty of first responders to address the circumstances, not the railroad. Therefore, AAR/ASLRRA's request is essentially a request to order extreme shifts to mitigate a business or financial emergency, as opposed to a true safety concern. While it is unfortunate for the railroad's bottom line if it must delay operations due to a track or electrical issue, FMCSA must not give railroads the ability to demand dangerously long shifts in any circumstance in which it would be convenient for their business purposes. Hours of service regulations exist to promote safety and cannot be abridged because doing so would be cost-effective for an employer. If AAR/ASLRRA railroads feel that they do not have the capacity to deploy drivers to incidents then we suggest they consider increasing their workforce to cover these shortages, as opposed to seeking dangerous regulatory relief.

Finally, AAR/ASLRRA try to make the case that their requested relief is no different from the exemption carved out for utility workers at 49 CFR 395.1(n). While there are similarities in that both types of workers may be dispatched in repair functions following "unexpected" events, they are clearly not analogous. Ensuring the function of public utilities and the distribution of those utilities, such as electricity and water, has an impact on the populace many times the magnitude of the vast majority of the unexpected issues railroads might face. Ensuring the prompt resumption of the railroad's business interests following an incident cannot be considered to be of the same necessity as restoring and repairing public utility service. Therefore, AAR/ASLRRA's request fails to demonstrate a convincing equivalence between this exemption and the existing exemption for utility workers.

In this request, AAR/ASLRRA propose regulatory relief in extreme excess of what current regulations and statute provide. Given this, it is incumbent on the applicant to demonstrate the necessity of the exemption and strong evidence for the promotion of equivalent safety. AAR/ASLRRA have achieved neither, and for this reason, FMCSA must reject the request. We appreciate the opportunity to comment on this request, and we look forward to continuing to work with the agency going forward.

Sincerely,



Larry I. Willis
President



Transportation Trades Department, AFL-CIO
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TTD MEMBER UNIONS

Air Line Pilots Association (**ALPA**)
Amalgamated Transit Union (**ATU**)
American Federation of Government Employees (**AFGE**)
American Federation of State, County and Municipal Employees (**AFSCME**)
American Federation of Teachers (**AFT**)
Association of Flight Attendants-CWA (**AFA-CWA**)
American Train Dispatchers Association (**ATDA**)
Brotherhood of Railroad Signalmen (**BRS**)
Communications Workers of America (**CWA**)
International Association of Fire Fighters (**IAFF**)
International Association of Machinists and Aerospace Workers (**IAM**)
International Brotherhood of Boilermakers, Iron Ship Builders,
Blacksmiths, Forgers and Helpers (**IBB**)
International Brotherhood of Electrical Workers (**IBEW**)
International Longshoremens' Association (**ILA**)
International Organization of Masters, Mates & Pilots, ILA (**MM&P**)
International Union of Operating Engineers (**IUOE**)
Laborers' International Union of North America (**LIUNA**)
Marine Engineers' Beneficial Association (**MEBA**)
National Air Traffic Controllers Association (**NATCA**)
National Association of Letter Carriers (**NALC**)
National Conference of Firemen and Oilers, SEIU (**NCFO, SEIU**)
National Federation of Public and Private Employees (**NFOPAPE**)
Office and Professional Employees International Union (**OPEIU**)
Professional Aviation Safety Specialists (**PASS**)
Sailors' Union of the Pacific (**SUP**)
Sheet Metal, Air, Rail and Transportation Workers (**SMART**)
SMART-Transportation Division
Transportation Communications Union/ IAM (**TCU**)
Transport Workers Union of America (**TWU**)
UNITE HERE!
United Mine Workers of America (**UMWA**)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service
Workers International Union (**USW**)

These 32 labor organizations are members of and represented by the TTD

