



A bold voice for transportation workers

September 21, 2020

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
Docket No. FMCSA-2020-0171-0002**

Dear Ms. Robinson,

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the exemption request filed by the Association of American Railroads (AAR) and American Short Line and Regional Railroad Association (ASLRRA). TTD consists of 33 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.

The petitioners request an exemption from FMCSA hours of service (HOS) operation requirements at 49 C.F.R. § 395.3(a)-(b) for property-carrying CMV drivers. According to the exemption request, railroads represented by AAR and ASLRRA require this waiver to ensure that CMV drivers employed by member railroads are able to respond to so-called “unplanned events” to

¹ Attached is a complete list of TTD’s 33 affiliate unions.

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Larry I. Willis, President / Greg Regan, Secretary-Treasurer



quickly restore rail service or address other operational challenges. This request is a modified version of a request previously filed on this issue, which TTD strenuously opposed. Despite these modifications, our opposition to the petitioner's request is unchanged and we urge the agency to reject the exemption.²

In requesting this exemption, the petitioners have refined their request to more closely mirror an exemption of a similar nature FMCSA previously granted to R.J. Corman, and the National Railroad Construction and Maintenance Association (NRC) and the attendant terms that FMCSA required as a condition of granting the exemption.³ In short, under the granted petition, an employer is permitted to extend duty periods to 17 hours, and extend weekly restrictions that prevent drivers from accumulating 60 hours or 70 hours of on-duty time during seven or eight consecutive days. As both granted and requested, the exemption would not permit an extension of the 11-hour drive time period, except as otherwise allowed under existing regulation.

While we are pleased that the Petitioners have been disabused of the notion that 24-hour shifts for employees are anything other than gross abuse of drivers and a threat to safety, we continue to believe that the request introduces unacceptable safety risks to railroads' CMV operations. Further, it is our opinion that the agency erred in granting the previous petition to R.J. Corman and the NRC.

To date, and despite the claims of the agency, there has been no meaningful demonstration that substantially increasing duty times will result in an equivalent level of safety. First, as TTD noted in our original comments, HOS protections do not only envision the impacts of fatigue as they relate to drive time, they also consider the cumulative effects over the time that an employee is on duty. Continuing to restrict drive time to 11 hours is a welcome proposal, but we are left wanting any material justification that a potential 17-hour duty window is likely to maintain equivalent levels of safety. In its granting of the R.J. Corman/NRC request the Agency states that

“... 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”.

It is unclear to TTD what part of FMCSA's regulations suggest that allowing potentially dangerously fatigued (and unnecessary) driving is an acceptable safety outcome as long as it is done occasionally. Further, FMCSA's response states that R.J. Corman and NRC alone respond to 95 unplanned events per month. Given the substantial amount of drivers and railroads that would be brought under these exemption terms if this waiver were to be granted, it is reasonable to

² 24-Hour Shifts for Railroad CMV Drivers Are Unsafe And Unreasonable, FMCSA-2018-0367-0003.

³ Docket No. FMCSA-2019-0056

conclude that this number is likely to increase very significantly. It is incumbent on FMCSA to recognize that having a fatigued driver at any of these events is a safety risk, and one that there is no need to introduce.

In an effort to ameliorate fatigue and safety concerns in its response to R.J. Corman/NRC, FMCSA wrote that “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”. It is unclear why this determination on frequency should mitigate any concerns—a dangerous condition is a dangerous condition regardless of the regularity. Finally, the petitioners’ insistence that data reflecting low injury rates among MOW employees in trucks or vans under current HOS is inherently applicable to operations with substantially longer duty times is an unsupported assertion. The position that the length of duty times will have no impact on safety is in direct conflict with the very principles by which the FMCSA promulgates and enforces HOS requirements.

We also continue to oppose proposals to allow employers to arbitrarily extend duty times for amorphous “unplanned events”. While both the current and granted petitions do list acceptable circumstances in which this trigger can be used, these instances remain as broad as “weather events” or “matters concerning public safety”. As proposed, these “restrictions” are no restrictions at all, and will allow railroads to expand duty times at will—regardless of sound justification, and without oversight of their actions.

In its current request, the petitioners do finally note the existence of existing regulation that already provides HOS flexibility in certain circumstances.⁴ However, AAR/ASLRRRA complain that due to the nature and timing of their unplanned events it can be challenging to get in touch with an FMCSA representative to authorize the use of the flexibility. If FMCSA agrees that its current systems are not compatible with the needs of railroads, then the petitioners and the agency should consider embarking on a regulatory proposal to improve FMCSA’s ability to respond to unplanned events, as opposed to giving regulated entities unfettered discretion over the application of HOS requirements.

Additionally, as discussed in TTD’s original filing, we do not believe that any petitioner has made a compelling case that the operations they describe are akin to utility workers and require similar carve outs or treatment under the existing HOS regime. As we previously stated, “AAR/ASLRRRA’s request is essentially a request to order extreme shifts to mitigate a business or financial emergency... Hours of service regulations exist to promote safety and cannot be abridged because doing so would be cost-effective for an employer”. The petitioners have provided no new information in this request to justify such a similarity, and we disagree with the agency’s findings in the R.J. Corman/NRC docket.

⁴ 49 CFR 395.1(a) and (b)

Finally, we believe strongly that it is the responsibility of the petitioners to seek business solutions to operational difficulties before they request or receive regulatory relief on key safety protections. If AAR/ASLRRRA member railroads require this relief to avoid circumstances wherein the railroad lacks available drivers who have not exhausted their HOS, TTD strongly encourages these entities to increase their workforce to appropriate levels to cover these shortages instead of requesting the federal government permit them to impose grueling shifts on employees.

We urge FMCSA to reverse course on this matter and deny the petitioner's unfounded request for regulatory relief at the cost of safety. We appreciate the opportunity to comment on this request, and we look forward to continuing to work with the agency going forward.

Sincerely,

A handwritten signature in black ink that reads "Larry I. Willis". The signature is written in a cursive, flowing style.

Larry I. Willis
President



Transportation Trades Department, AFL-CIO
A bold voice for transportation workers

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 Longshoremen's Association (ILA)
International Organization of Masters, Mates & Pilots (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 Automobile, Aerospace and Agricultural Implement Workers of America (UAW)
United Mine Workers of America (UMWA)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service
Workers International Union (USW)

These 33 labor organizations are members of and represented by the TTD

