The Association of American Railroads and the American Short Line and Regional Railroad Association (jointly, “the Railroads”), on behalf of themselves and their member railroads, submit the following comments in response to FMCSA’s proposed amendments to its hours-of-service (“HOS”) requirements for drivers of commercial motor vehicles (“CMVs”).

Many railroad employees who operate CMVs ancillary to work performed on railroad rights-of-way are subject to the FMCSA HOS regulations. The work of these employees can be time-critical when a railroad must restore rail service after events like a derailment or grade crossing incident. However, the current FMCSA HOS prohibitions on driving after a 14-hour duty period, or exceeding 60 or 70 hours on duty in a 7- or 8-day week without the required off-duty period, limit a railroad’s ability to respond expeditiously to these types of emergency situations.

The Railroads’ limited exemption request from the HOS requirements is currently pending before FMCSA and is provided as an attachment to these comments.

While the proposed provisions pertaining to the short-haul exception available to certain CMV drivers under 49 CFR § 395.1 would generally not provide relief in the majority of railroad scenarios, two proposed provisions have the potential to provide limited relief and are therefore

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1 AAR is a trade association whose membership includes freight railroads that operate 83% of the line-haul mileage, employ 95% of the workers, and account for 97% of the freight revenues of all railroads in the United States; and passenger railroads that operate intercity passenger trains and provide commuter rail service. ASLRRRA is a non-profit trade association representing the interests of over 500 short line and regional railroad members and railroad supply company members in legislative and regulatory matters. Short lines operate 50,000 miles of track in 49 states, touching in origination or termination one out of every four cars moving on the national railroad system, servicing customers who otherwise would be cut off from the national rail network. 84 Fed. Reg. 44,190 (Aug. 22, 2019).

2 49 C.F.R. Parts 390 and 395.

3 49 C.F.R. § 395.3(a)(2), which states in part that a driver may not drive after the end of a 14-consecutive-hour period without first taking 10 consecutive hours off duty. While a railroad may appeal to a local official in the event of an emergency for relief from the regulations, this process is not well-defined nor are any assurances provided that a request made at off-hours would be reviewed in a timely manner.

supported by the Railroads: the proposal to increase the maximum driving window due to adverse weather conditions, and the split-duty proposal.

**Adverse Weather Conditions Driving Window**

Section 395.1(b)(1) currently provides a covered driver two additional hours of driving time for “adverse driving conditions,” defined by FMCSA as “snow, sleet, fog, other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions, none of which were apparent on the basis of information known to the person dispatching the run at the time it was begun.” While the current regulation extends the maximum allowable driving time, it does not extend the total amount of time on-duty. This provision therefore currently does not provide relief to railroad drivers, who typically do not spend a high percentage of their time on-duty actually driving. FMCSA’s proposal would allow a driver up to a 16-hour duty-period for property-carrying CMVs and a 17-hour duty period for passenger-carrying CMVs if the driver encounters adverse driving conditions. The proposed additional time on-duty of two and three hours, respectively, could potentially provide limited relief to railroad employees responding to an unplanned event due to a weather-related incident.

In response to FMCSA’s additional questions regarding this proposal, the railroads anticipate that this change will not cause railroad drivers to travel further in adverse conditions. As explained above, covered railroad employees typically drive ancillary to work performed on railroad rights-of-way. However, the definition of “adverse driving conditions” should be broadened to encompass high winds and heavy rains, which can adversely impact not only driving conditions on the highway but can also cause unplanned events that require immediate remediation on the railroad. Finally, FMCSA should remove the restriction of “lack of advance knowledge at the time of dispatch,” as this could inadvertently serve as a disincentive to the company and/or driver to use the most accurate tools to predict adverse weather conditions.

**Split-Duty Period**

Under 49 CFR § 395.3(a)(3)(iii), after being off-duty for 10 or more consecutive hours, a driver of a property-carrying CMV is allowed a period of 14 consecutive hours in which to drive up to 11 hours. The 14-hour window currently may not be extended by off-duty breaks that may occur during the duty period. FMCSA’s proposal would allow a single break of duty-time, ranging from 30 minutes to no more than 3 consecutive hours, to be excluded from the 14-hour duty period, provided that the driver has at least 10 consecutive hours off duty before the start of his or her next duty period. Accordingly, a driver could be on-duty for 14 hours during a 17-hour period, provided that the driver takes 3 hours off as a single break.

The Railroads anticipate that this proposal will not impact the number of driving hours within a single driving window for railroad drivers. Unlike a typical CMV driver, a railroad employee is not attempting to drive a long distance during the day, but to an identified worksite on the railroad right-of-way. The railroads anticipate that they will be able to use this proposed provision to provide rest to an employee who is called out to drive equipment out to the location of an unplanned event. It would therefore provide some flexibility for situations where an unplanned event is unable to be remediated within a driver’s otherwise 14-hour window.
As noted above, while two of the proposed changes in the NPRM have the potential to provide some limited relief to railroad employees, the proposal does not provide relief urgently needed for railroad CMV drivers. Railroad employees support activities to assess damage, repair infrastructure, and restore rail operations, which in turn aid community relief, facilitate interstate commerce, and enhance employee and public safety. We urge FMCSA to grant our outstanding request to provide additional on-duty time for railroad employees responding to an unplanned event.

Respectfully Submitted,

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October 21, 2019
Re: Exemption Request – Railroad Maintenance-of-Way Employees from the Hours of Service Restrictions

Dear Administrator Martinez:

The Association of American Railroads (“AAR”) and American Short Line and Regional Railroad Association (“ASLRRA”), on behalf of themselves and their member railroads, requests that the Federal Motor Carrier Safety Administration (“FMCSA”) grant an exemption pursuant to 49 C.F.R. § 381.300 et. seq. from the FMCSA hours of service operation restrictions at 49 C.F.R. § 395.3(a) and (b). The railroads request that this exemption be granted for five years pursuant to 49 C.F.R. § 381.300(b). This request covers approximately 21,000 individual drivers and 11,000 commercial motor vehicles (“CMV”s).

The Railroad Industry

Today’s railroads are a safety success story. Operating across nearly 140,000 miles, U.S. freight railroads manage a complex nationwide rail system efficiently, reliably and affordably. As a result, the U.S. is home to the most efficient and cost-effective rail system in the world, benefitting U.S. businesses and consumers. The 2017 rail safety statistics continue a string of record-setting years, showing this period has been the safest ever for the rail sector. According to December 2017 Federal Railroad Administration (“FRA”) data based on per million train miles, since 2000 the train accident rate is down 41%, the equipment-caused accident rate is down 34%, the derailment rate is down 42%, and the track-caused accident rate is down 53% to an all-time low.

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Many railroad employees who operate CMVs are subject to the FMCSA hours of service ("HOS") regulations.² Although there are specific exceptions for railroad signal employees, all other railroad employees who operate CMVs are subject to FMCSA HOS regulations.³ Railroad employees typically drive motor vehicles ancillary to work performed on railroad rights-of-way. The work of these employees is especially crucial when a railroad must coordinate efforts to restore rail service after incidents such as a derailment or grade crossing incident. However, the FMCSA HOS prohibitions on driving after a 14-hour period, and 60 or 70 hours on duty in a 7- or 8-day week without the required off-duty period, inhibit a railroad’s ability to respond expeditiously to these types of emergency situations.⁴

As a point of comparison, utility service vehicles are exempt from the FMCSA HOS restrictions.⁵ A utility service vehicle is defined as any commercial motor vehicle used to repair, maintain or operate any structures or any other physical facility necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, cell phone, and television cable or community antenna service.⁶ The work of railroad employees responding to an emergency situation is in all pertinent respects the same as the work of utility employees. As is the case for utility employees, the affected railroad employees use vehicles as mobile supply facilities, transporting personnel, equipment and material needed for the driver to use at worksites within a region. As is the case with utility workers, these drivers will have unpredictable work hours when needed to address operational emergencies. In most cases, these employees drive for a very limited percentage of their total time on-duty. The work done by these employees supports the railroad’s effort to restore essential interstate commerce as well as, in the event of a grade crossing incident, restoring road and pedestrian access to the public. This work also allows for the restoration of passenger rail operations following an incident. There is no principled distinction between railroad employees responding to an unplanned event and those who operate utility service vehicles.

Currently, railroads work with local officials who have the authority to declare an emergency in the case of unplanned events.⁷ However, this process is not well-defined nor are any assurances provided that a request made at off-hours must be reviewed in a timely manner. For example, one of AAR’s member railroads reports that they have an internal process that often involves coordination among multiple jurisdictions due to the nature of the interstate railroad system. Despite the railroad’s best efforts, a delay in response from a designated official outside

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² 49 C.F.R. Parts 390 and 395.
³ 49 C.F.R. § 395.2. This exemption stems from the Rail Safety Improvement Act ("RSIA"), which states that the “hours of service, duty hours, and rest periods of signal employees shall be governed exclusively by this chapter.” 49 U.S.C. § 21104(e). See also 49 C.F.R. § 395.1(n).
⁴ 49 C.F.R. § 395.3(a)(2), which states in part that a driver may not drive after the end of a 14-consecutive-hour period without first taking 10 consecutive hours off duty. While a railroad may appeal to a local official in the event of an emergency for relief from the regulations, this process is not well-defined nor are any assurances provided that a request made at off-hours would be reviewed in a timely manner.
⁵ 49 C.F.R. § 395.1(n).
⁶ 49 C.F.R. § 395.2. The utility vehicle must be engaged in an activity necessarily related to the ultimate delivery of such public utility services to consumers.
⁷ 49 C.F.R. § 390.23.
of the normal work day can reportedly cause up to a five to seven-hour delay in the railroad’s efforts to resolve the unplanned event. This type of delay can have a crippling impact to the rail network, especially in congested areas of the country like the Northeast Corridor and Chicago.

**Requested Exemption**

The railroads 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 extending beyond the employee’s normal shift, be exempt from the provisions in 49 C.F.R. § 395.3(a) and (b). Unplanned events include but are not limited to 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 track; a train collision; weather and storm-related events, including but not limited to, trees and other debris down, snow, extreme cold or heat, rock and mud slides, track washouts, and earthquakes; a matter concerning national security; or a matter concerning public safety including, but not limited to, a blocked grade crossing.

Further, the railroads request only an additional ten hours of duty time for any affected individual. Typically, less time will be needed, but in some remote locations, the next driver may only be available at the start of a regularly scheduled shift or it could take a longer period of time to respond and then return to the rest location. Ten additional hours of duty time during these limited circumstances would allow railroad employees to timely respond to unplanned events should a rested driver be initially unavailable. This would cover approximately 21,000 drivers and 11,000 vehicles.

**Safety Considerations**

The requested limited exemption will allow railroad employees to respond timelier to unplanned events to restore rail service without incurring extended blocked crossings, cascading effects to traffic on the rail network, delays to passenger rail operations, and delayed customer service. Additionally, railroads will be able to improve public safety to motorists and pedestrians, if they are able to expeditiously clear blocked grade crossings.

The railroads propose to provide any employee required to drive within the terms of this exemption request additional time off-duty in excess of the 10 consecutive hours required by 395.3(a)(1). For ease of recordkeeping, the railroads propose that any railroad employee responding to an unplanned event that exceeds his or her 14 hours of duty time for 5 hours or less be given 5 additional consecutive hours off-duty for a total of 15 consecutive hours off-duty before driving again. Likewise, the railroads propose that any railroad employee responding to an unplanned event that exceeds his or her 14 hours of duty time for more than 5 hours up to a maximum of 10 hours be given 10 additional consecutive hours off-duty for a total of 20 consecutive hours off-duty before driving again. Finally, the railroads propose that any employee who exceeds 60 or 70 hours on duty in a 7- or 8-day week due to unplanned event response be given 34 hours of rest, as prescribed in § 395.3(c) prior to driving again.
The AAR and ASLRA have determined, based upon a survey of their member railroads, that a typical gap in coverage between shifts for CMV drivers is approximately 4.5 hours. Therefore, the total time anticipated that could be impacted is a small portion of the day. Further, an analysis of data on FRA’s public website shows that injuries to employees while driving are very rare. In 2017, the total railroad employee on duty injuries resulting from highway vehicle collisions total 144 across all types of railroad employees. According to FRA casualty data, from 2013-2017, between 14 and 19 annual railroad MOW employee injuries occurred while driving or riding in a truck or utility van. The average over this period, 15.6 injuries per year, constitutes less than ½ of one percent of employee injuries per year. These low numbers are further appreciated in the context that railroads have lower employee injury rates than most other major industry groups and other transportation modes.

One of AAR’s member railroads conducted a further analysis to determine the percentage of CMV miles driven annually by its employees that could be impacted by the relief requested in this exemption request. According to their calculations, for rail failures, which would make up the bulk of the types of trips that would be included in the relief sought, most of the defects would require around 31 miles of driving between the rail failure and the employee’s duty location for failures occurring before the 14-hour window or after the 10-hour rest period. They multiplied this number by the number of rail failures in a year and came up with an estimate of the number of affected miles during the restricted time period. For this particular railroad, around 18,000 miles during the restricted time period were driven in response to broken rails. The total annual CMV mileage for the railroad is estimated at 18 million – making the mileage in question approximately 0.10% of the total mileage driven. Even when considering the other reasons a railroad might use the requested relief; the total percentage of miles impacted most likely will be well under 1% of the total CMV mileage for the railroad in any given year.

**Economic Benefits**

The requested exemption will promote economic growth and stability by allowing the railroads to timely respond to unplanned events. Freight railroads serve nearly every industrial, wholesale, retail, and resource-based sector of the economy. Railroads account for approximately 40 percent of intercity freight volume – more than any other mode of transportation. Service delays can compound very quickly when rapid response cannot be provided. One interruption to normal service in the wrong location at the wrong time can ripple into multiple days of congestion. An unplanned event can affect the delivery of intercity freight, including commodities necessary for water sanitation and other basic services, as well as intercity passenger and commuter train operations.

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8 See FRA Safety Data at https://safetydata.fra.dot.gov

9 Between 2013 and 2017, total employee on duty injuries ranged from 3,858 to 4,314 and averaged 4,100 per year. Note that the information in the FRA database does not distinguish incidents where the railroad employees operating the motor vehicles are not at fault (e.g., a rear-end collision at a red light).

Based upon information received from our member railroads, AAR calculates that the total annual cost savings of this exemption request is $570,326, assuming a burdened hourly wage of $68.52 (2017 AAR Fact Book) and 2 hrs. 40 min of additional employee time required to affect an employee transfer of activity and assuming an authorized employee is available to replace expired hours-of-service employee. Over 5 years, relief from this requirement would total between $2.4M - $2.7M.

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Exemption from FMCSA HOS restrictions for railroad employees who are supporting activities to assess damage, repair infrastructure, and restore operations, would aid community relief, facilitate interstate commerce, and enhance employee and public safety. The railroads respectfully request that FMCSA grant the exemption described herein from 49 C.F.R. § 395.3(a) and (b) for the maximum allowable period of five years.

Thank you for your consideration.

Sincerely,

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