

DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

DOCKET NO. FMCSA–2020–0118
HOURS OF SERVICE OF DRIVERS: PROPOSED REGULATORY GUIDANCE
CONCERNING THE USE OF A COMMERCIAL MOTOR VEHICLE FOR YARD MOVES

COMMENTS OF
THE ASSOCIATION OF AMERICAN RAILROADS
AND THE
AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

The Association of American Railroads (“AAR”) and the American Short Line and Regional Railroad Association (“ASLRRA”), on behalf of themselves and their member railroads, submit the following comments in response to the Federal Motor Carrier Safety Administration’s (“FMCSA”) January 4, 2021, proposed regulatory guidance under 49 C.F.R. Part 395 governing “yard moves”.¹ FMCSA proposes to update “Guidance Q&A” question number 9 on the agency’s website which interprets 49 C.F.R. § 395.2 and addresses the definition of “yard moves” for commercial motor vehicle (“CMV”) carriers and operators.² The proposal also seeks to align question 9 in the “Guidance Q&A” with a 2015 FMCSA final rule establishing that “yard

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. ASLRRA is a non-profit trade association representing the interests of approximately 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, serving customers who otherwise would be cut off from the national railroad network. 86 Fed. Reg. 176 (Jan. 4, 2021).

² See <https://www.fmcsa.dot.gov/regulations/title49/section/395.2>.

moves” are considered as time “on-duty not driving” under FMCSA hours of service regulations.³

U.S. railroads employ thousands of CMV drivers and own and operate thousands of CMVs. A significant percentage of railroad CMV drivers are subject to FMCSA hours of service regulations. Railroad employees subject to FMCSA hours of service regulations primarily inspect, repair, and maintain railroad infrastructure such as the track and bridges over which trains operate. They carry necessary tools/equipment in their CMVs to locations on railroad tracks where work needs to be performed and respond to emergency events requiring immediate response and repair.

The railroads support FMCSA’s proposal to update the guidance for § 395.2. The proposed examples provided in the notice would remove ambiguity from § 395.2 by explaining what FMCCSA considers to be “yards”. Safety will not be impacted by the proposed guidance. FMCSA is not proposing to increase the amount of time a CMV driver may be on-duty. Rather, the proposed guidance seeks only to clarify how a portion of a CMV driver’s on-duty time is recorded. This proposed guidance addresses only short duration CMV moves, generally within the confines of an intermodal yard or a motor carrier’s own property. The proposed guidance is also beneficial to CMV drivers and carriers by providing consistency of interpretation with FMCSA’s 2015 final rule addressing electronic logging devices, and that rule’s instruction to treat yard moves as time “on-duty not driving”.⁴

³ 80 Fed. Red. 78,292 (Dec. 16, 2015).

⁴ Id. at 78,394. See Appendix A to Subpart B of 49 C.F.R. Part 395.

In response to FMCSA's specific questions in the notice, the railroads concur with including examples of yard moves in any final guidance, such as a driver moving a CMV within a yard for maintenance purposes. The railroads also concur with the proposed FMCSA examples of what constitutes a "yard". Railroad CMV drivers often make yard moves within the confines of both railroad yards/terminals and railroad intermodal facilities, and the proposed guidance is helpful to ensure railroad industry understanding of, and compliance with, the relevant FMSCA hours of service regulations. The railroads support FMCSA's proposed guidance as published in notice and appreciate the agency's thoughtful consideration of these comments.

Respectfully submitted,



Kathryn D. Kirmayer
Joseph St. Peter
Counsel For the Association
Of American Railroads
425 3rd Street, SW, Suite 1000
Washington, DC 20024
(202) 639-2100



Sarah Grimmer Yurasko
General Counsel
American Short Line and Regional Railroad
Association
50 F Street NW, Suite 500
Washington, DC 20001-1597
(202) 585-3448

February 3, 2021