

The Federal Motor Carrier Safety Administration (FMCSA) should reject the exemption sought by the National Star Route Mail Contractors Association (NSRMCA), which represents subcontractors that transport mail for the U.S. Postal Service (USPS), from the "14 hour rule." The 14-hour rule, found in 49CFR 395.3(a)(2), prohibits a property-carrying commercial motor vehicle (CMV) driver from driving a CMV after the 14th hour on duty following 10 consecutive hours off duty.

The Agency is required by statute (49 U.S.C. 31136 and 31315(b)) to ensure that each exemption is likely to achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The exemption sought by the NSRMCA would not.

The NSRMCA is requesting an exemption that would expand the 14-hour period to 15 for its commercial motor vehicle (CMV) drivers, and reduce their consecutive hours off duty from 10 to 8 hours.

The NSRMCA exemption request is contrary to the purpose and intent of the "14-hour rule" and "10-hour off duty period," which is to promote driver health and improve CMV transportation safety. Furthermore, there is no information on record or that was provided by NSRMCA that would justify or support a finding that such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. Therefore, the NSRMCA exemption request should be denied.

It should be noted, the same premise (focusing on split shifts) that NSRMCA is arguing in support of an exemption in this case (to expand the 14-hour driving period to 15 and reduce the 10-hour off-duty period) was previously argued and submitted by motor carriers that transport mail for the USPS during the rulemaking process. FMCSA considered and rejected in its final rule published on August 25, 2005.

The record also shows that the Agency already denied a previous exemption request (Docket No. FMCSA-2005-22660) on January 16, 2009, which was (1) submitted on behalf of motor carriers that transport mail under contract for the USPS, and (2) used the same premise focusing on split shifts. The main difference between the two applications for exemption is that the earlier one was submitted by the USPS, and the current one by NSRMCA. However, the arguments are the same. In other words, they're seeking a second bite at the apple.

FMCSA published its final rule on August 25, 2005, (Document Citation: 70 FR 49978), after an extensive rulemaking process and thorough consideration of the research studies, crash analysis reports, operational survey data, and comments to the notice of proposed rulemaking (NPRM). Comments were also submitted by motor carriers that transport mail under contract for the USPS who opposed the current 14-hour provision. However, the Agency decided to prohibit driving after 14 consecutive hours after coming on duty. The Agency concluded, among other things, that the information is clear on the need to limit the cumulative hours that a driver may work and continue to drive. The Agency found that "because there is a good deal of evidence that hours of continuous wakefulness are a better predictor of fatigue than driving time, a 14-hour non-extendable driving window will help to reduce driver fatigue, compared to the extendable 15-hour window included in the pre-2003 rule."

The Agency also adopted a 10-hour off-duty requirement (previous regulations only required 8-hours off-duty) for CMV drivers, in conjunction with the 14-hour driving window. The Agency concluded "scientific research is clear on the need for 7 to 8 hours of sleep to maintain alertness and performance. Lack of sufficient sleep results in greater risk of involvement in a fatigue-related crash, and is associated with health-related complications. To ensure that drivers are afforded the opportunity to obtain 7 to 8 hours of sleep, the rule must afford a period of time greater than the minimum required for sleep".

Moreover, the Agency concluded that a "14-hour non-extendable duty tour, in combination with the longer off-duty period, enhances the opportunity for drivers to achieve restorative daily sleep compared to the pre-2003 rule by eliminating the opportunity for the duty period to be extended. Ensuring that drivers have the opportunity for sufficient sleep, coupled with moving toward a 24-hour schedule, will reduce driver fatigue, promote driver health and improve CMV transportation safety."

The NSRMCA has not provided any information to the contrary. Furthermore, there is no information on record that would justify or support a finding that the requested exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. Therefore, I urge the Agency to deny the NSRMCA exemption request.

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