

The Agency reviews the safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must specify the effective period (up to 5 years) and explain its terms and conditions. The exemption may be renewed (49 CFR 381.300(b)).

### III. Request for Exemption

The following companies applied for this exemption: HEPACO, LLC; Heritage Environmental Services, LLC; Lewis Environmental, Inc. and Moran Environmental Recovery, LLC. They all are members of the Spill Control Association of America (SCAA), which filed the exemption application on their behalf. Together, the four companies have 758 commercial driver's license holders and 840 commercial motor vehicles (CMVs). In responding to emergency incidents, these companies work alongside a mix of both private industry and public agencies. Often, their work often has a direct impact on protecting both public safety and the environment. They are required contractually to provide direct assistance to responsible parties who are experiencing actual or potential environmental emergencies, defined as a sudden threat to the public health or the well-being of the environment, arising from the release of oil, radioactive materials, or hazardous chemicals into the air, land or water. Their employees are hybrid driver/operator/technicians, whose work challenges the limits on total on-duty time, especially after hours. In addition, the applicant references the current driver shortage and argues that obtaining drivers with the necessary additional skills and experience is problematic.

The applicants requested relief from 49 CFR 395.3(a)(2), commonly known as the "14-hour rule." The applicants state that the HOS limitations have always been an issue for emergency response companies. They request this exemption to allow these four companies to respond to a release or threat of a release of oil and other hazardous materials, subject to the following conditions for each driver:

- The on-duty period may not exceed 4.5 additional hours for a total of 18.5 hours of non-consecutive on-duty time before the required reset;
- Driving time for drivers who exceed the 14-hour period may not exceed 8 hours;
- Driving is not permitted after 70 hours on duty in 8 days;
- Drivers must take 10 hours off duty following the duty day; and
- All drivers must comply with the electronic logging device rule.

According to the applicants, the initial response hours are the most critical in an environmental emergency and the ability to quickly respond is vital. These companies' drivers typically drive 1–2 hours each way to and from the incident. In no case, would these companies' drivers exceed 8 hours of drive time per incident. SCAA states that if the exemption is not granted, there could be a disruption of national/regional commerce, including delays in power restoration and protection of interstate commerce and infrastructure.

The applicants believe that the proposed relief, and the parameters in which their drivers operate, would continue to provide the highest level of safety and compliance, while prudently responding to incidents that threaten public safety and the environment. A copy of the application for exemption is available for review in the docket for this notice.

### IV. Public Comments

On August 9, 2018, FMCSA published notice of this application and requested public comment (83 FR 39498). The Agency received six comments—two from spill response contractors and four from individuals. Three individuals and both spill response contractors support the proposed exemption.

One commenter opposed the application, stating "[p]lease do not allow this exemption. This is a wonderful opportunity to hire more employees, should they need to work more than 14 hours in a day. This has been in effect for many years, and for safety no driver should be allowed to work more than 14 hours."

### V. FMCSA Decision

FMCSA has evaluated SCAA's application and the public comments submitted and hereby denies the exemption. When the Agency established the rules mandating HOS, it relied upon research indicating that the rules improve CMV safety. These regulations put limits in place for when and how long an individual may drive to ensure that drivers stay awake and

alert while driving and to reduce the possibility of driver fatigue.

Based on the body of research underlying the HOS requirements, there is no basis for granting an exemption that would allow an individual to drive after the 18th hour of coming on duty. Although SCAA explained that drivers would not exceed 8 hours of driving time during a work shift, the Agency does not believe there is a basis for concluding that the 8-hour limit on driving time offsets the potential increase in safety risks associated with an 18.5 hour driving window.

Except for the limit on driving time, the applicants would comply with all the other applicable HOS requirements, including using electronic logging devices and requiring drivers to take 10 consecutive hours off-duty at the end of the work shift. The applicants are essentially requesting that the 14-hour rule be extended by 4.5 hours in exchange for a 3-hour reduction in the driving time limit. The Agency does not find this safety tradeoff to be persuasive.

The SCAA application does not analyze the safety impacts the exemption may cause nor does it provide countermeasures to ensure that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulations. Furthermore, the applicant did not clearly define the conditions that would trigger the exemption.

Issued on: November 5, 2019.

**Jim Mullen,**

*Deputy Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA–2019–0066]

### Petition for Waiver of Compliance and Notice of Public Hearing

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a letter dated April 23, 2019, the National Railroad Passenger Corporation (Amtrak) petitioned the Federal Railroad Administration (FRA) for an exemption from certain requirements of chapter 203, title 49 of the United States Code (U.S.C.). FRA assigned the petition Docket Number FRA–2019–0066.

Amtrak's request for relief relates to its planned operation of new high-speed trainsets built to Tier III passenger equipment safety standards (49 CFR part

238, subpart H) and intended to be operated at speeds above 125 miles per hour. This equipment is the subject of a separate FRA waiver proceeding in Docket Number FRA–2014–0124.

In its April 23, 2019, request, Amtrak asks FRA to exercise its authority under 49 U.S.C. 20306 to exempt this new passenger equipment from the requirements of 49 U.S.C. 20302, mandating that railroad vehicles be equipped with (1) secure sill steps and efficient hand brakes; (2) secure grab irons or handholds on vehicle ends and sides for greater security to individuals coupling and uncoupling vehicles; and (3) the standard height of drawbars. *See* 49 U.S.C. 20302(a)(1)(B), (a)(2), and (a)(3).

In support of its request for relief, Amtrak notes that in lieu of handbrakes, the trainsets will be equipped with spring actuated parking brake technology that can be manually set or released from the engineer's control stand from an active cab and automatically applied when there is no active cab in the train or there is a loss of trainline brake continuity. Amtrak further notes that grab irons and handholds on the ends and sides of the subject equipment are not required for the security or safety of individuals coupling and uncoupling the vehicles because by design, the individual passenger vehicles and power cars can only be disconnected from each other in repair facilities where personnel can work on, under, or between units under protections afforded by 49 CFR part 218, subpart B. In addition, Amtrak asserts that side steps, end handholds, and side handholds are not required at the leading and trailing ends of high-speed trainsets because the trainsets are equipment with technology for the safe coupling of one trainset to another (*i.e.*, each end will have automatic self-centering couplers that couple to other trainsets on impact and uncouple by mechanisms that do not require a person to go between trainsets or the activation of a traditional uncoupling lever). Finally, Amtrak asserts that because the equipment is a fixed train consist in which individual vehicles are semi-permanently coupled and, as noted above, individual vehicles can only be disconnected in repair facilities where personnel can work on, under, or between units under protections afforded by 49 CFR part 218, subpart B, having drawbars at the statutorily-prescribed height is unnecessary. Further, as this technology is intended to operate at high-speeds, the inclusion of these appurtenances would have a significant and detrimental impact on the aerodynamics of the trainset. This

increase in the aerodynamic footprint would negatively impact both efficiency and aerodynamic noise emissions. In sum, Amtrak asserts that requiring compliance with the identified statutory requirements would “serve as an impediment to the introduction of the advanced technology represented by the trainset design.”

Under 49 U.S.C. 20306, FRA may exempt Amtrak from the above-identified statutory requirements based on evidence received and findings developed at a hearing demonstrating that the statutory requirements “preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations under existing law.” Accordingly, to receive evidence and develop findings to determine whether FRA should invoke its discretionary authority under 49 U.S.C. 20306 in this instance, a public hearing is scheduled for December 11, 2019, at 9 a.m., at the National Association of Home Builders, 1201 15th St. NW, Washington, DC 20005. Interested parties are invited to present oral statements at the hearing.

For information on facilities or services for persons with disabilities or to request special assistance at the hearing, contact FRA Staff Director, Motive Power and Equipment Division, Gary Fairbanks, by telephone, email or in writing, at least five business days before the date of the hearing. Mr. Fairbanks' contact information is as follows: FRA, Office of Railroad Safety, 1200 New Jersey Ave. SE, Washington, DC 20590; telephone 202–493–6322; email [Gary.Fairbanks@dot.gov](mailto:Gary.Fairbanks@dot.gov).

The hearing will be informal and will be conducted by a representative designated by FRA in accordance with FRA's Rules of Practice (49 CFR 211.25). The hearing will be a non-adversarial proceeding; therefore, there will be no cross examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make a brief rebuttal will be given the opportunity to do so in the same order in which initial statements were made. Additional procedures, as necessary for the conduct of the hearing, will be announced at the hearing.

The petitioner should be present at the hearing and prepared to present evidence that any requirements of chapter 203, title 49, U.S.C., for which exemption is sought “preclude the development or implementation of more efficient railroad transportation

equipment or other transportation innovations under existing law.”

A copy of the petition, as well as any written communications concerning the petition, is available for review online at [www.regulations.gov](http://www.regulations.gov) and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by participating in the hearing and/or submitting written views, data, or comments to the FRA docket identified above.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- **Website:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** 202–493–2251.
- **Mail:** Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- **Hand Delivery:** 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 26, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacyNotice> for the privacy notice of regulations.gov.

Issued in Washington, DC.

**John Karl Alexy,**  
Associate Administrator for Railroad Safety,  
Chief Safety Officer.

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