



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2016-0050]**

**49 CFR Parts 393 and 395**

**Hours of Service of Drivers; Parts and Accessories: ArcelorMittal Indiana Harbor, LLC, Application for Exemptions**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemptions; request for comments.

**SUMMARY:** FMCSA announces that it has received an application from ArcelorMittal Indiana Harbor, LLC (ArcelorMittal) requesting exemptions for our regulations. The first exemption request is for ArcelorMittal's employee-drivers with commercial driver's licenses (CDLs) who transport steel coils between their production and shipping locations on public roads. ArcelorMittal requests this exemption to allow its employee-drivers to work up to 16 hours per day and be allowed to return to work with less than the mandatory 10 consecutive hours off duty. ArcelorMittal also requests exemptions in parts of our regulations for its coil carriers that do not meet all of the vehicle requirements in sections of our regulations. FMCSA requests public comment on ArcelorMittal's application for exemptions.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA-2016-0050 by any of the following methods:

- Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251

Instructions: All submissions must include the Agency name and docket number.

For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov), and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: In accordance with 5 U.S.C 553(c), DOT solicits comments from the public to better inform its rulemaking process. 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 [www.dot.gov/privacy](http://www.dot.gov/privacy).

Public participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the “help” section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325. E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation and Request for Comments**

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2016-0050), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket number, “FMCSA-2016-0050” in the “Keyword” box, and click “Search.” When the

new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

#### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to [www.regulations.gov](http://www.regulations.gov) and insert the docket number, “FMCSA-2016-0050” in the “Keyword” box and click “Search.” Next, click “Open Docket Folder” button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

## **II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been

conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews 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 also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### **III. Request for Exemption**

Under 49 CFR 395.3(a)(2), a property-carrying commercial motor vehicle (CMV) driver is prohibited from operating a CMV after having been on duty for 14 consecutive hours following 10 or more consecutive hours off duty. Once an individual has reached the end of this 14 consecutive-hour period, he or she cannot drive a CMV again without taking a minimum of 10 consecutive hours off duty.

ArcelorMittal (USDOT 1098829) operates a steel plant that is located in East Chicago, Indiana, its principal place of business. The plant currently encompasses an area which has several public roadways that run through its present location. Steel coils produced in one portion of the plant require driver-employees to travel on public roadways at two points to move the coils to another portion of the plant for further processing or for shipment to customers. Both points are controlled intersections, having either traffic lights or a combination of traffic lights and signs in the area, where

the vehicles cross. The first public road the CMVs cross is Riley Road. The crossing is controlled by a traffic signal in both directions. The distance traveled at this crossing is 80 feet in length. The average number of crossings at this intersection is 24 per day. The second crossing is at Dickey Road and 129<sup>th</sup> Street. The distance traveled at this crossing is .2 miles. The trucks cross 129<sup>th</sup> Street 24 times per day.

All employee-drivers are required to hold CDLs and adhere to the regulations that apply to CMV drivers. Specialized equipment and trailers are used to move steel coils due to the size of the coils. The tractors maximum speed is 30-35 miles per hour, but when moving a fully loaded trailer the maximum speed is 15 miles per hour.

Trailer beds are configured in such a way as create a cradle to hold the steel coils in place on the bed of the trailer. The trailers have a bed height of 68 inches, and bed width of 114 inches. The trailers maximum height is 14 feet.

The tractors and trailer in combination unloaded have a gross combination weight of 77,000 pounds. When fully loaded the gross combination vehicle weight is 263,171 pounds. Additionally, the trailers have off-road tires. These types of tires are necessary to operate both inside and outside the plant safely, given the type of roadway surface inside the plant area and the weight of the loads. These vehicles have many of the same features of a typical tractor and trailer, but do not meet all of the parts and accessories requirements in 49 CFR Part 393.

When employee-drivers move these vehicles, they are fully marked as an “oversize load” and have flags on the front of the tractor. The driving of these vehicles amounts to 10 percent of the employee-drivers total work day. ArcelorMittal contends that none of these employee-drivers work more than 16 hours per day and advises that a 16-hour work day is the exception, not the rule.

According to ArcelorMittal, the current hours-of-service (HOS) regulations create problems for employee-drivers as these employees typically work an 8-hour shift plus overtime while employees in the production and shipping areas work 12-hour shifts. Employee-drivers must go home under the current arrangement leaving a 4-hour gap between production and the driver's schedule, creating a possible shortage of coils for shipping or processing. ArcelorMittal asserts that the limited amount of employees used to drive the CMVs make it difficult to schedule when the vehicles move. ArcelorMittal anticipates only 3 of the 24 crossings at each noted intersection would occur after the 14<sup>th</sup> hour on-duty.

ArcelorMittal requests an exemption from 49 CFR part 395 for its employee-drivers. Under a waiver of the HOS regulations, employee-drivers would be able to follow the same schedule as the employees in the production and shipping areas. ArcelorMittal could then minimize the chances of possible shortages of coils for shipping or processing. ArcelorMittal advises that it would ensure all employee-drivers would not work more than 16 hours per shift, would receive 8 hours off duty between shifts, and would not be allowed to drive more than 10 percent of their total work day.

ArcelorMittal also requests exemptions for its coil carriers from certain sections in 49 CFR part 393 as follows: the heavy hauler trailer definition in § 393.5; the height of rear side marker lights in § 393.11 Table 1 – Footnote 4; the tire loading restrictions in § 393.75(f); and the coil securement requirements in § 393.120. As previously noted, the vehicles used to transport steel coils have many of the same features of a typical tractor and trailer, but do not meet all of the parts and accessories requirements in 49 CFR part 393.

According to ArcelorMittal, its equipment was designed for in-facility use and very limited road use. Public roadways are crossed due to operational necessity.

ArcelorMittal advises that they have never had an issue at the crossings mentioned with their equipment or drivers. The coils are well-secured in the vehicles with the cradle design of their trailers. The time it would take to secure the coils per the regulations would be longer than the transit time it takes to move the coils from part of the plant to another.

ArcelorMittal asserts that it has taken additional precautions to make sure the public roadway crossings are at the shortest points and only at controlled intersections. ArcelorMittal ensures all lights are properly working on both the tractor and trailer. They also flag and mark the vehicles as “oversize” loads. Trailers have conspicuity tape down the entire side to make them more visible to other traffic. ArcelorMittal believes that the additional precautions ensure a level of safety that is equivalent to or exceeds the level of safety achieved by following the regulations.

ArcelorMittal acknowledges in its application that these drivers would still be subject to all of the other applicable Federal regulations. This includes qualification of drivers, controlled substance and alcohol testing and inspection, and maintenance and repair of vehicles.

Included in ArcelorMittal’s application are illustrations of the plant’s location, public roads crossed, and pictures of the tractors and trailers used to transport the steel coils. A copy of ArcelorMittal’s application for the exemptions is available for review in the docket for this notice.

Issued on: March 16, 2016

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Larry W. Minor

Associate Administrator for Policy

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