



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 final disposition; grant of application for exemptions.

SUMMARY: FMCSA announces its decision to grant ArcelorMittal Indiana Harbor, LLC (ArcelorMittal) exemptions from the hours of service (HOS) and parts and accessories rules. One exemption will allow ArcelorMittal's employee-drivers with commercial driver's licenses (CDLs) who transport steel coils between their production and shipping locations on public roads to work up to 16 hours per day and return to work with less than the mandatory 10 consecutive hours off duty. The other exemption will allow ArcelorMittal to use coil carriers that do not meet the "heavy hauler trailer" definition, height of rear side marker lights restrictions, tire loading restrictions, and the coil securement requirements.

DATES: These exemptions are effective from September 23, 2016 through September 23, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614-942-6477. E-mail: 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

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 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 of the exemption (up to 5 years), and explain its terms and conditions. The exemption may be renewed (49 CFR 381.300(b)).

Section 5206(a)(3) of the "Fixing America's Surface Transportation Act," (FAST Act) [Pub. L. 114-94, 129 Stat. 1312, 1537, Dec. 4, 2015], amended 49 U.S.C. 31315(b) by adding a new paragraph (2) which permits exemptions for no longer than 5 years from their dates of inception, instead of the previous 2 years. This statutory provision was codified in 49 CFR 381.300, effective July 22, 2016 (81 FR 47714).

III. Request for Exemptions

ArcelorMittal (USDOT 1098829) operates a steel plant in East Chicago, Indiana, its principal place of business. Several public roadways run through the plant area. Steel coils produced in one portion of the plant must be transported over two short segments of public highway to another section of the plant for further processing or shipment to customers. Both points where the vehicles cross are controlled intersections, having either traffic lights or a combination of traffic lights and signs. The first public road the CMVs cross is Riley Road. The crossing is controlled by a 4-way traffic signal. The distance traveled is 80 feet. The average number of crossings at this intersection is 24 per day. The second crossing is at Dickey Road and 129th Street. The distance traveled here is .2 miles. The trucks cross 129th Street 24 times per day.

The trailers are specially designed with cradles to hold steel coils in place. The trailers have a bed height and width of 68 and 114 inches, respectively, and a maximum height of 14 feet.

Unloaded, these tractor-trailer combinations have a gross weight of 77,000 pounds. When fully loaded their gross weight is 263,171 pounds. The trailers have off-road tires to distribute this weight and avoid damaging roads, both inside and outside the plant. The tractors' maximum speed is 30-35 mph, but only 15 mph when moving a fully loaded trailer. 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.

All employee-drivers are required to hold CDLs and adhere to the regulations that apply to CMV drivers. When employee-drivers move these vehicles, they are fully marked as an "oversize load" and have flags on the front of the tractor. Driving these vehicles amounts to 10 percent of the employee-drivers' total work day. ArcelorMittal contends that these employee-drivers do not 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 as employee-drivers 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 number of employees who drive the CMVs make it difficult to schedule moves. ArcelorMittal anticipates that only 3 of the 24 crossings at each noted intersection would occur after the 14th hour on-duty.

ArcelorMittal requested a complete exemption from 49 CFR part 395 for its “internal logistics” drivers to enable them to follow the same schedule as the employees in the production and shipping areas. The applicant could then minimize the chances of possible shortages of coils for shipping or processing. ArcelorMittal advised that it would ensure that 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.

As previously noted, the vehicles used to transport steel coils have many of the same features as a typical tractor and trailer, but do not meet all of the requirements for parts and accessories in 49 CFR part 393. ArcelorMittal therefore requested exemptions for its coil-carrier trailers from the heavy hauler trailer definition in § 393.5; the required 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.

According to ArcelorMittal, its equipment was designed for in-facility use and very limited road use. Public roadways are crossed only when necessary, and oversize-overweight permits are obtained from local authorities when required. The applicant advises that it has never had an issue with its equipment or drivers at the crossings mentioned above. The coils are well-secured in the trailers due to the design of the cradles. The time needed to secure the coils in compliance with part 393 would be longer than the transit time from one part of the plant to another.

IV. Method to Ensure an Equivalent or Greater Level of Safety

ArcelorMittal asserted that it has taken additional precautions to use public roadways for the shortest possible distances and only at controlled intersections. The

applicant ensures that all lights are properly working on both the tractor and trailer. It also flags and marks the vehicles as “oversize” loads. Trailers have conspicuity tape down the entire side to make them more visible to other traffic. The applicant believes that its additional precautions ensure a level of safety that is equivalent to or exceeds the level of safety achieved by following the regulations.

ArcelorMittal acknowledged in its application that these “internal logistics” drivers would remain 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.

V. Public Comments

On March 22, 2016, FMCSA published notice of this application and requested public comment (81 FR 15217). Four comments were submitted.

Mr. Keith Case wrote, “There are other options to handle this situation that do not include having a special exemption for one company. The company can hire additional drivers/workers to do this.” Ms. Ingrid Harris commented, “I do not think that it’s ok to give any company waivers to have drivers work longer hours. At the end of the day the driver still has to drive home and is tired. This will just cause more issues.” Mr. Scott Olson stated, “I do not support any exemptions for anybody for any

reason. If we make a rule, everybody needs to abide by it. If we don't like the rule, get rid of it.”

The Advocates for Highway and Auto Safety stated that “ArcelorMittal’s request for an exemption from the HOS regulations should be denied as granting such an exemption would result in a substantial reduction in the level of safety currently provided by the regulations. In addition, there is practical and common sense alternative readily available to the company other than the exemption. Finally, while Advocates does not oppose ArcelorMittal’s request for an exemption for its vehicles from certain sections of 49 CFR part 393, FMCSA must be explicit that such an exemption is strictly limited in its scope to those vehicles and roadways described in the application.”

VI. FMCSA Response and Decision

Prior to publishing the **Federal Register** notice announcing the receipt of ArcelorMittal’s exemptions request, FMCSA ensured that the motor carrier possessed an active USDOT registration, minimum required levels of insurance, and was not subject to any “imminent hazard” or other out-of-service orders. The Agency conducted a comprehensive investigation of the safety performance history of the motor carrier during the review process. As part of this process, FMCSA reviewed its Motor Carrier Management Information System safety records, including inspection and accident reports submitted to FMCSA by State agencies.

The FMCSA has evaluated ArcelorMittal’s application for exemptions and the public comments. The Agency believes that ArcelorMittal’s overall safety performance, as well as a number of other factors discussed below, will enable it to achieve a level of

safety that is equivalent to, or greater than the level of safety achieved without the exemptions (49 CFR 381.305(a)).

These exemptions are being granted under extremely narrow conditions. One exemption is restricted to ArcelorMittal's employee-drivers to enable them to work up to 16 consecutive hours in a duty period and return to work with a minimum of at least 8 hours off duty when necessary. This is somewhat comparable to current HOS regulations that allow certain "short-haul" drivers a 16-hour driving "window" once a week (49 CFR 395.1(o)) and other non-CDL short-haul drivers two 16-hour duty periods per week (49 CFR 395.1(e)(2)), provided specified conditions are met. However, current regulations require a minimum of 10 hours off duty between duty periods.

Section 381.305(a) specifies that motor carriers "...may apply for an exemption if one or more Federal Motor Carrier Safety Regulations prevents you from implementing more efficient or effective operations that would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption."

The other exemption is restricted to ArcelorMittal's coil carriers as described in its application. The exemption enables ArcelorMittal's CMVs that do not meet the parts and accessories requirements in part 393 to use two short segments of public highway to move coils from one part of the plant to another for shipment to its customers. The CMVs operated by ArcelorMittal's drivers will be exposed to other traffic for very brief periods. The CMVs cross Riley Road, where they travel 80 feet. The length of the crossing at Dickey Road and 129th Street is .2 mile. The CMVs cross both points 24 times per day.

Terms of the Exemptions

Period of the Exemption

The exemptions from the requirements of 49 CFR part 395 and certain sections in 49 CFR part 393 (§§ 393.5; 393.11 Table 1—Footnote 4; 393.75(f); and 393.120) are granted for the period from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through [INSERT DATE 5 YEARS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER], for drivers employed by ArcelorMittal and certain CMVs used by ArcelorMittal to transport coils.

Extent of the Exemptions

The exemption from the requirements of 49 CFR part 395 is restricted to ArcelorMittal's internal logistics drivers. Drivers utilizing the exemption may work up to 16 consecutive hours in a duty period and return to work with a minimum of at least 8 hours off duty when necessary.

The exemption from certain sections in 49 CFR part 393 (§§ 393.5; 393.11 Table 1—Footnote 4; 393.75(f); and 393.120) is restricted to ArcelorMittal's CMVs that transport coils. The CMVs must only cross on Riley Road, where they travel 80 feet and Dickey Road and 129th Street where they travel .2 miles to move coils from one part of the plant to another for shipment to its customers. All drivers must have CDLs and drivers and vehicles must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations. ArcelorMittal must maintain any oversize-overweight permits required by local authorities.

Preemption

In accordance with 49 U.S.C. 31315(d), during the period these exemptions are in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with these exemptions with respect to a firm or person operating under these exemptions.

Notification to FMCSA

ArcelorMittal must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of these exemptions. The notification must be by email to MCPSD@DOT.GOV, and include the following information:

- a. Exemption Identifier: "ArcelorMittal"
- b. Name and USDOT number of the motor carrier,
- c. Date of the accident,
- d. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,
- e. Driver's name and driver's license number,
- f. Vehicle number and State license number,
- g. Number of individuals suffering physical injury,
- h. Number of fatalities,
- i. The police-reported cause of the accident,
- j. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and
- k. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

Termination

The FMCSA does not believe the motor carrier, the drivers, and CMVs covered by the exemptions will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemptions. The FMCSA will immediately revoke the exemptions for failure to comply with its terms and conditions.

Issued on: September 15, 2016

T.F. Scott Darling, III
Administrator

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