



4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0181]

Hours of Service of Drivers: Waste Management Holdings, Inc.; Application for Exemption

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

ACTION: Notice of Final Disposition.

SUMMARY: FMCSA announces its decision to grant Waste Management Holdings, Inc.'s (WMH) request for exemption from the requirement that short-haul drivers utilizing the records of duty status (RODS) exception return to their normal work-reporting location within 12 hours of coming on duty. The exemption enables all of WMH's drivers who operate commercial motor vehicles (CMVs) to collect waste and recycling materials to use the short-haul exception but return to their work-reporting location within 14 hours instead of the usual 12 hours. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: This exemption is effective October 22, 2018, through October 22, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366-2722; 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-2018-0181 in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document 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 Federal Motor Carrier Safety Regulations (FMCSRs). 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 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 also 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

Drivers qualifying for the hours-of-service (HOS) short-haul exception in 49 CFR 395.1(e)(1) are not required to maintain a record of duty status (RODS) on-board the vehicle, provided that they return to their normal work reporting location and are released from work within 12 hours after coming on duty [49 CFR 395.1(e)(1)(ii)(A)]. A driver who exceeds the 12-hour limit loses the short-haul exception and must immediately prepare RODS for the entire day, often by means of an electronic logging device (ELD). Waste Management Holdings, Inc. (WMH) seeks an exemption to allow its drivers to continue to qualify for the short-haul exception up to the 14th hour after coming on duty.

WMH seeks the exemption for approximately 18,000 drivers in 84 separate subsidiaries or affiliates who operate commercial motor vehicles (CMVs) to collect waste and recycling materials. These drivers routinely qualify for the short-haul exception in 49 CFR 395.1(e)(1); however, occasionally they cannot complete their duty day within 12 hours.

WMH states that ELDs delay and distract its drivers working to collect waste and recycling materials because they require extensive interaction. As a result of frequent stops to pick up trash, WMH's drivers are required to interact with the ELD hundreds if not thousands of times a day. WMH asserts that ELDs are not designed for

such operations and that they lack a provision for blocking service time. WMH further states that the ELDs do not accurately capture the duty status of its drivers. WMH has been actively working with its provider to improve ELD performance in this environment, but that progress has been limited. WMH also asserts that the excessive driver-ELD interaction impacts “driver safety and the safety of the communities we serve.”

WMH notes that certain CMV drivers may already operate up to 14 hours without forfeiting short-haul status, for example those in the ready-mixed concrete industry [49 CFR 395.1(e)(1)(ii)(B))] or the asphalt-paving business [83 FR 3864, January 26, 2018]. WMH asserts its operations are similar to these industries because its drivers spend a significant portion of their days conducting non-driving duties. WMH anticipates no reduction in safety from the exemption requested, and a potential for increased safety due to reduced driver distraction.

WMH cites its fatigue management program as further evidence that operations with the exemption in place would equal or exceed the level of safety under the current HOS regulations. This program includes the use of video event recorders triggered by unusual events suggestive of driver fatigue, like aggressive braking, steering, or acceleration. When WMH’s assessment of the recording indicates that driver fatigue is involved, WMH managers may discipline the driver.

A copy of the WMH’s application for exemption is available for review in the docket for this notice.

IV. Public Comments

On July 17, 2018, FMCSA published notice of this application and requested public comment (83 FR 33291). The Agency received 54 sets of comments to the docket. The Owner-Operator Independent Driver's Association (OOIDA), the National Waste and Recycling Association (NWRA), Waste Connections, and Republic Services filed comments in support of the proposed exemption, along with 19 individuals. The International Brotherhood of Teamsters (IBT), the American Federation of State, County and Municipal Employees, and the Advocates for Highway and Auto Safety (Advocates)/the Trucking Alliance for Driver Safety and Security (The Trucking Alliance), along with 25 individuals filed comments in opposition to the proposed exemption request. Three commenters had no position either for or against the WHM exemption request.

OOIDA wrote in support of the proposed exemption as follows: "The problems associated with the [ELD] mandate have been illustrated by the various industries requesting exemptions from its requirements... These issues are not just felt by WMH drivers... OOIDA has long argued that ELDs do not accurately or automatically record HOS. OOIDA is also aware of troubles other drivers have experienced related to devices, including several vendor-wide systems failures, faulty GPS tracking, engine disablements, and a worsening truck parking crisis... Extending the short-haul exception from 12 hours to 14 hours should be part of a revised HOS rulemaking that can provide better flexibility for drivers and actually improve highway safety."

The NWRA also supported the exemption request: "The adverse impacts ELDs and RODS have on safety as it relates to driver distraction is particularly troublesome. NWRA believes that [current] research supports exempting WMH and all waste and

recyclable material CMV drivers and companies from complying with the ELD mandate and the use of RODS. NWRA supports WMH's request to increase the short-haul exemption from 12 hours to 14 hours as has already been done for the ready-mix concrete and asphalt industries.”

Waste Connections supports the proposal to increase the return requirement from 12 to 14 hours: “We will continue to work diligently with our drivers to uphold safety as our #1 value and to keep the time our drivers spend on the road to a safe duration.”

The Advocates/The Trucking Alliance filed joint comments in opposition to the WMH application for exemption on the grounds “that the application does not meet the statutory and regulatory requirements for the exemption. The application fails to justify the need for the exemption, provide an analysis of the safety implications of the requested exemption, or provide information on the specific countermeasures to be undertaken to ensure that the exemption will achieve an equivalent or greater level of safety that would be achieved absent the exemption..... Granting exemptions to the HOS or ELD rules undermines the federal regulatory HOS scheme, weakens specific safety regulations, and complicates enforcement.”

The IBT opposes the exemption request: “The idea that increasing the allowable driving time for WMH drivers to 14 hours a day will have ‘no adverse safety impact’ does not align with the facts. It flies in the face of the logic behind there being a cap on allowable driving hours at all. Additional time behind-the-wheel leads to greater fatigue, which leads to a greater propensity for accidents... We strongly encourage the Agency to deny the request.”

V. FMCSA Decision

FMCSA has evaluated WMH's application and the public comments and decided to grant the exemption. The Agency believes that the drivers of WMH's CMVs used to collect waste and recycling materials who are exempted will likely achieve a level of safety that is equivalent to or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)]. The exemption will allow WMH's drivers to use the short-haul RODS exception, but with a 14-hour duty period instead of 12 hours. The Agency granted a similar exemption to the National Asphalt Paving Association [January 26, 2018, (83 FR 3864)].

Regarding the comments from the Advocates, the Trucking Alliance and the IBT, the Agency emphasizes that this exemption does not allow any additional driving time during the work shift, or allow driving after the 14th hour from the beginning of the work shift. In addition, drivers are still limited by the weekly limits, and the employer must maintain accurate time records concerning the time the driver reports for work each day, the total number of hours the driver is on duty each day, and the time the driver is released from duty each day. As the WMH explained, drivers usually return to the work reporting location within 12 hours, but the demands during certain periods necessitate work shifts going beyond 12 hours. Therefore, the exemption application should not be construed as a mechanism for the applicant to implement a new business model with all of its drivers routinely extending maximum work shifts from 12 to 14 hours. It provides limited relief to the recordkeeping requirements for HOS for short-haul drivers who find

it necessary to exceed the 12-hour limit, which impacts the type of HOS records required.

VI. Terms and Conditions for the Exemption

- Drivers must have a copy of this notice or equivalent signed FMCSA exemption document in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.
- Drivers must return to the work reporting location and be released from work within 14 consecutive hours.

Extent of the Exemption

This exemption is limited to the provisions of 49 CFR 395.1(e)(1)(ii)(A). These drivers must comply with all other applicable provisions of the FMCSRs.

Preemption

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

Notification to FMCSA

Any motor carrier utilizing this exemption 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 this exemption. The notification must include the following information:

- (a) Identity of the exemption: "Waste Management Holdings, Inc."
- (b) Name of operating motor carrier,

- (c) Date of the accident,
- (d) City or town, and State, in which the accident occurred, or closest to the accident scene,
- (e) Driver's name and 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, motor carrier safety regulations, and
- (k) The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be emailed to MCPSD@DOT.GOV.

TERMINATION

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record.

Interested parties or organizations possessing information that would otherwise show that any or all of these motor carriers are not achieving the requisite statutory level of safety should immediately notify FMCSA.

The Agency will evaluate any information submitted and, if safety is being compromised or if the continuation of this exemption is inconsistent with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA will immediately take steps to revoke the exemption of the company and drivers in question.

Issued on: October 18, 2018.

Raymond P. Martinez,
Administrator.

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