



4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2010-0027]

Hours of Service of Drivers: WestRock, Application for Renewal of Exemption

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

ACTION: Notice of application for renewal of exemption; request for comments.

SUMMARY: WestRock, formerly known as RockTenn has requested a renewal of its exemption from certain provisions of the hours-of-service (HOS) requirements for drivers of property-carrying vehicles. WestRock currently holds an exemption for the period April 17, 2014, through April 16, 2019 for 11 shipping department employees and occasional substitute commercial driver's license (CDL) holders who transport paper mill products over a 275-foot stretch of public road between its shipping and receiving locations. WestRock requested an exemption from the 14-hour rule and the requirement for 10 consecutive hours off duty before the start of the workday. The renewal of the exemption would allow these individuals occasionally to drive after the 14th hour after coming on duty and allow them to return to work following eight consecutive hours off-duty. FMCSA requests public comment on WestRock's application for exemption.

DATES: If granted, this exemption would be effective during the period of April 17, 2019 through April 16, 2024. Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2010-0027 by any of the following methods:

- Federal eRulemaking Portal: 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, 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, 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, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at 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: 202-366-4225. 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 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-2010-0027), 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 and put the docket number, “FMCSA-2010-0027” 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 and insert the docket number, “FMCSA-2010-0027” 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 the safety analyses and the public comments, 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 reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. WestRock Application for Exemption

WestRock (USDOT 153734) operates a paper mill located in Chattanooga, Tennessee, its principal place of business. Its shipping and receiving departments are on opposite sides of the paper mill, requiring driver/employees to travel on a public road to shuttle trailers as needed. These drivers utilize this public road – Compress Street – an average of forty times per day to go from their shipping to receiving department and to load their trailers in the shipping department. These drivers do not transport any material farther than the paper mill lots and/or Compress Street. The distance traveled on Compress Street is approximately 275 feet in one direction, and one tractor is used to perform this work. Because the material being transported is received from or destined for other States, the local travel is interstate in nature.

The initial WestRock exemption application for relief from the HOS rule was submitted in 2009; a copy of the application is in the docket. That application fully described the nature of shipping operations encountered by CMV drivers employed by WestRock. On May 29, 2012, FMCSA granted WestRock the proposed exemption (77 FR 31684). FMCSA has since renewed this limited exemption [April 22, 2014 (77 FR 22571; and July 25, 2016 (81 FR 48496)]. The current exemption expires on April 16, 2019.

WestRock's shipping department currently works 12-hour shifts for 4 days, and then allows employees 4 days off duty. The schedule is subject to change. Usually there are two shipping department employees on each shift. One employee drives a fork-lift truck loading trailers with finished goods, and the other operates the tractor shuttling trailers. These employees do not drive a CMV continuously during their shift(s).

At times, WestRock may operate on three 8-hour shifts with employees working a double (16-hour) shift when "rotating back." According to WestRock, the problem arises because of the double-shift, and also on occasion when a shipping department driver does not report for work as scheduled. On a Monday, for example, if an individual worked the weekend, his or her shift would normally have to "hurry back" within 8 hours. As a result of the mandatory 10 hours off-duty requirement for drivers, without the exemption WestRock would be required to schedule these drivers' shifts to start later than other employees. This would create at least 2 hours when the company cannot load or transport trailers with finished goods due to the absence of the drivers. Furthermore, as a result of the 14-hour driving windows, they would "work short" without the exemption, creating on-time delivery issues for other employees, who are allowed to work an entire "double shift" (16 hours) when necessary.

WestRock requested renewal of its exemption from 49 CFR part 395 for its shipping department CMV drivers, as well as others with a valid CDL who on occasion must substitute, allowing all such drivers to drive as late as the 16th hour since coming on duty and return to work with a minimum of at least 8 hours off duty. If exempt from the normal HOS requirements, these employees could follow the same work schedule as other WestRock employees on their shift, and would be able to work for the full 16 hours of a “double shift.” WestRock could therefore minimize the chances of delayed shipments that might occur if their drivers were not allowed to work the same schedule as other employees.

WestRock acknowledged in its application that these drivers would still be subject to all of the other FMCSRs, including possessing a CDL, random drug testing, medical certification, and other driver-qualification requirements.

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

Terms of the Exemption

Period of the Exemption

The requested exemption is proposed to be effective April 17, 2019, through 11:59 p.m. on April 16, 2024, for drivers employed by WestRock operating CMVs on Compress Street in Chattanooga, Tennessee, between the company’s shipping and receiving departments.

Extent of the Exemption

The exemption would be restricted to drivers employed by WestRock operating CMVs on the route specified above. This exemption would be strictly limited to the provisions of 49 CFR 395.3(a)(1), referring to a required minimum of 10 hours off duty

before the start of a duty period, and 395.3(a)(2), commonly referred to as the “14-hour rule.” When operationally necessary, drivers would be allowed up to a 16-hour duty period and no fewer than 8 hours off duty prior to the duty period.

Preemption

During the period this exemption would be in effect, no State would be allowed to enforce any law or regulation that conflicted with or was inconsistent with this exemption with respect to a firm or person operating under the exemption (49 U.S.C. 31315(d)).

Notification to FMCSA

WestRock would be required to 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 would be required to include the following information:

- a. Name of the Exemption: “WestRock”
- b. Date of the accident,
- c. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,
- d. Driver’s name and driver’s license State, number, and class,
- e. Co-Driver’s name and driver’s license State, number, and class,
- f. Vehicle company number and power unit license plate State and 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.

Reports filed under this provision would be e-mailed to MCPSD@DOT.GOV.

Termination

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

Issued on: February 13, 2019.

Larry W. Minor,

Associate Administrator for Policy.

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