



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2010-0027]**

**Hours of Service of Drivers: Application for Renewal of Exemption**

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

**ACTION:** Notice of final disposition; grant of application for exemption renewal.

**SUMMARY:** FMCSA announces its decision to grant WestRock's request for renewal of its exemption from the hours-of-service (HOS) regulations that prohibit drivers from operating property-carrying commercial motor vehicles (CMVs) after the 14<sup>th</sup> hour after coming on duty and require 10 hours off-duty before driving. FMCSA renews this limited exemption for WestRock's shipping department employees and occasional substitute commercial driver's license (CDL) holders who transport paper mill products short distances between its shipping and receiving locations on a public road. The exemption is restricted to a specific route in Chattanooga, Tennessee. This exemption will allow these individuals to occasionally work up to 16 consecutive hours and be allowed to return to work with less than the mandatory 10 consecutive hours off duty. The Agency previously determined that the CMV operations of WestRock's drivers under this exemption would likely achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

**DATES:** This exemption is effective retroactively from April 17, 2019 (12:01 a.m.), through April 16, 2024 (11:59 p.m.).

**ADDRESSES:**

Docket: For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West

Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

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).

**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).

## **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](http://www.regulations.gov) and insert the docket number, “FMCSA-2010-0027” 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 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's Application for Exemption**

WestRock (USDOT 153734) operates a paper mill located in Chattanooga, Tennessee. 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 a public road – Compress Street – an average of forty times per day to travel between WestRock's manufacturing facility, and shipping and receiving docks. 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.

WestRock (then known as RockTenn) submitted its initial exemption application for relief from the HOS rules in 2009; a copy of the application is in the docket. That application fully describes 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 exemption expired 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 window, 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 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.

### **Comments**

On February 21, 2019 (84 FR 5546), FMCSA published notice of this application, and asked for public comment. The Application received one comment from LJ Schmitt. Mr. Schmitt wrote “While I understand there is no one size fits all, the purpose of regulations from your office is to make it fair and safe for everyone. If these drivers are safe with only 8 hours of rest, so are the rest of us.”

### **FMCSA Response and Decision**

The granted exemption is restricted to CDL holders employed by WestRock who are exclusively assigned to a specific route. This route is entirely on one street (Compress Street), between the shipping and receiving departments – approximately 275 feet in one direction. The CMVs operated by WestRock’s shipping department shuttle drivers will be exposed to travel on a public road for brief periods of time. The granted exemption is comparable to current HOS regulations that allow certain “short-haul” drivers a 16-hour driving “window” once a week and other non-CDL short-haul drivers two 16-hour duty periods per week, provided specified conditions are met.

The FMCSA has evaluated WestRock's application for exemption and the public comment. The Agency believes that WestRock's overall safety performance as reflected in its "satisfactory" safety rating, and the short distance drivers will operate a commercial motor vehicle, will likely enable it to 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 enables WestRock's shipping department employees and occasional substitute CDL holders who transport paper mill products between the shipping and receiving locations 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.

### **Terms and Conditions**

The exemption from the requirements of 49 CFR 395.3(a)(1) (the 10-hour off-duty rule) and (a)(2) (the "14-hour rule") is granted for the period from 12:01 a.m. on April 17, 2019, through 11:59 p.m. on April 16, 2024. The exemption is restricted to CDL holders employed by WestRock who are exclusively assigned to a specific route. This specific route is entirely on Compress Street, between WestRock's shipping and receiving departments, approximately 275 feet in one direction.

### 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

WestRock 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. 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 shall be e-mailed to [MCPD@DOT.GOV](mailto:MCPD@DOT.GOV).

**Termination**

The FMCSA does not believe the drivers covered by this exemption 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 exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Issued on: July 23, 2019.

**Raymond P. Martinez,**  
*Administrator.*

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