



**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

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

**Hours of Service of Drivers; Parts and Accessories: Application for Exemptions**

**Renewal for Cleveland-Cliffs Steel, LLC, formerly known as ArcelorMittal Indiana Harbor, LLC**

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

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

**SUMMARY:** FMCSA renews the exemption granted Cleveland-Cliffs Steel, LLC (Cliffs), formerly ArcelorMittal Indiana Harbor, LLC, from certain hours-of-service (HOS) and cargo securement rules and requests public comment on the renewal. The renewal of the exemption allows Cliffs' employee-drivers with commercial driver's licenses (CDLs), who transport steel coils a fraction of a mile between their production and shipping locations on public roads, to continue to work up to 16 hours per day, and to operate with less than 10 consecutive hours off duty between work shifts. The renewal of the exemption also allows Cliffs to use metal coil carriers that do not meet the "heavy hauler trailer" definition, restrictions on the height of rear side marker lamps, tire loading restrictions, and the commodity-specific cargo securement requirements for metal coils. The Agency has concluded that granting the request for a renewal of the exemption will likely maintain a level of safety that is equivalent to or greater than the level of safety achieved through compliance with the specific regulatory requirements. The Agency requests comments on the Cliffs' request for a renewal of the exemption.

**DATES:** The renewal of the exemption is effective September 23, 2021. 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 Docket Number FMCSA-2016-0050 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=FMCSA-2016-0050>. Follow the online instructions for submitting comments.
- Mail: Docket Operations, 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: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.
- Fax: (202) 493-2251.

**FOR FURTHER INFORMATION CONTACT:** Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, (202) 366-5541, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (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 2021-0098), indicate the specific section of this document to which the

comment applies, and provide a reason for each suggestion or recommendation. 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 email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to [www.regulations.gov/#!docketDetail;D=FMCSA-2016-0050](http://www.regulations.gov/#!docketDetail;D=FMCSA-2016-0050), click on the “Comment Now!” button and type your comment into the text box on 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.

#### *Viewing Comments and Documents*

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov/#!docketDetail;D=FMCSA-2016-0050> and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

DOT solicits comments from the public to better inform its regulatory process, in accordance with 5 U.S.C. 553(c). 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 – Federal Docket Management System), which can be reviewed at [www.transportation.gov/privacy](http://www.transportation.gov/privacy).

## **II. Legal Basis**

Under 49 U.S.C. 31136(e) and 31315(b)(1), FMCSA may renew an exemption from the Federal Motor Carrier Safety Regulations for a 5-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.” Cliffs has requested a five-year extension of the current exemption Docket No. FMCSA-2016-0050. The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

## **III. Background**

Under 49 CFR 381.315(a), FMCSA must publish a notice of each exemption request in the **Federal Register**. The Agency must provide the public with 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)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons

receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must 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 381.315(c) and 49 CFR 381.300(b)).

#### **IV. Basis for Renewing Exemption**

Cliffs, formerly ArcelorMittal, applied to renew an exemption that allows (1) its employee-drivers with CDLs, who transport steel coils between the company's 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; and (2) to use coil carriers that do not meet the "heavy hauler trailer" definition, restrictions on the height of rear side marker lights, tire loading restrictions, and the coil securement requirements in part 393 of the FMCSRs. On September 23, 2016, FMCSA published a notice of final disposition granting the exemption until September 23, 2021 (81 FR 65574). The renewal outlined in this notice extends the exemption through September 23, 2026, and requests public comment.

#### **Equivalent Level of Safety**

With regard to the method to ensure that a level of safety equivalent to compliance with the applicable FMCSRs, the Agency indicated in its September 23, 2016 notice that the company asserted that it has taken additional precautions to use public roadways for the shortest possible distances and only at controlled intersections. The Agency explained that the company 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. FMCSA noted that 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.

The company acknowledged in its application that the drivers would remain subject to all the other applicable Federal regulations. This includes qualification of drivers, controlled substance and alcohol testing. Also, the company would ensure full compliance with the inspection, repair and maintenance rules.

FMCSA emphasizes that the renewal of the exemptions would continue under extremely narrow conditions. One exemption enables the drivers 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.

The other exemption is restricted to company’s coil carriers as described in its application. The exemption enables 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 Cleveland-Cliffs’ drivers will be exposed to other traffic for very brief periods, as discussed above.

### **Preliminary Decision to Renew the Exemption**

FMCSA is not aware of any evidence of a degradation in safety attributable to the current exemption for employee-drivers and trucks that transport metal coils. There is no indication of an adverse impact on safety while operating under the terms and conditions specified in the September 23, 2016 (81 FR 65574) notice of final determination.

The exemption is renewed subject to the requirements that only Cliff’s drivers that transport steel coil are exempted from 49 CFR part 395. 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.

In addition, 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 Cliffs' 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. Cliffs must maintain any oversize-overweight permits required by local authorities.

The exemption will be rescinded if: (1) Cliffs fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

The Agency believes that extending the exemption granted on September 23, 2016 for another five years, under the same terms and conditions, will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

## **V. Request for Comments**

FMCSA requests comments from parties with data concerning the safety record of Cliffs' steel coil drivers and their respective trucks. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke Cliff's renewal exemption.

**John Van Steenburg,**

*Executive Director.*

