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## DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

### 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 application for exemption; request for comments.

**SUMMARY:** FMCSA announces that it has received an application from Waste Management Holdings, Inc., (WMH) requesting an exemption from the requirement of the hours-of-service (HOS) regulations that drivers of commercial motor vehicles (CMVs) qualifying for the “short-haul – 100 air-mile radius driver” exception must return to the original work reporting location within 12 hours of coming on duty. WMH asks that its short-haul CMV drivers be permitted to return within 14 hours without losing their short-haul status. FMCSA requests public comment on WMH’s application for exemption.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA-2018-0181 by any of the following methods:

- Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). See the Public Participation and Request for Comments section below for further information.
- 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. E.T., Monday through Friday, except Federal holidays.

- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number of this notice. DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including personal information in a comment. Please see the Privacy Act heading below.

Docket: To read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) 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 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) at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, please contact Mr. Robert Schultz, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366-2718; E-mail: [MCPSD@dot.gov](mailto: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-2018-0181), the specific section of this document to which the comment applies, and provide reasons for suggestions or recommendations. You may submit 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 your document so the Agency can contact you if it has questions about your submission.

To submit your comments online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket number, “FMCSA-2018-0181” in the “Keyword” box, and click “Search.” When the new screen appears, click on the “Submit a Formal Comment” button and type your comment into the text box in the following screen. Indicate 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 deny this application based on your comments.

#### **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 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 the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### **III. Request for Exemption**

Drivers qualifying for the HOS short-haul exception in 49 CFR 395.1(e)(1) do not have to maintain a record of duty status (RODS) on board the vehicle, provided that (among other things) they return to their normal work reporting location and are released from work within 12 hours after coming on duty. 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)(49 CFR 395.8(a)(1)(i)).

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

exemption to allow its drivers to continue to qualify for the short-haul exception up to the 14<sup>th</sup> hour after coming on duty.

WM states that ELDs delay and distract its drivers working to collect waste and recycling materials because they require excessive interaction. The exemption application states that, as a result of frequent stops to pick up trash, its drivers re 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 also states that the ELDs do not accurately capture the duty status of its drivers. According to the application, WMH has been actively working with its ELD 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, Jan. 26, 2018]. It asserts that WMH’s operations are similar to these industries because its drivers “spend a significant portion of their days conducting non-driving duties.” It states that 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. More commonly, WMH managers assess the driver's overall lifestyle and health, including his or her off-duty activities and medical history, and counsel the individual on changes he or she can undertake to ameliorate fatigue. WMH managers also ride with each employee-driver several times a year to observe his or her performance.

WMH requests a 5-year exemption. WMH's application for exemption, including a list of its 84 operating companies, is available for review in the docket for this notice.

**Issued on:** June 22, 2018

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**Larry W. Minor.**  
Associate Administrator for Policy

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