



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0236]

Hours of Service of Drivers: Rota-Mill, 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 Rota-Mill, Inc. (Rota-Mill) requesting exemptions from two requirements of the hours-of-service (HOS) regulations for drivers of commercial motor vehicles (CMVs): (1) the 30-minute rest break provision and (2) the requirement that short-haul drivers utilizing the record of duty status (RODS) exception return to their work-reporting location within 12 hours of coming on duty. The first exemption would enable drivers engaged in the transportation of milled asphalt and related materials and equipment to use 30 minutes or more of on-duty “waiting time” at a jobsite to satisfy the requirement for the 30-minute rest break, provided they do not perform any other work during the break. The second exemption would allow these drivers to use the short-haul exception, but return to their work-reporting location within 14 hours instead of the current 12 hours.

FMCSA requests public comment on Rota-Mill’s application for exemptions.

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-2018-0236 by any of the following methods:

- Federal eRulemaking Portal: 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 for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to 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, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, please 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 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-2018-0236), 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-2018-0236" 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.

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

Rota-Mill seeks exemptions for all of its drivers transporting milled asphalt and related materials and equipment from the HOS 30-minute rest break provision in 49 CFR 395.3(a)(3)(ii) and the restriction of the RODS exception for short-haul operations to drivers who return to their normal work-reporting location within 12 hours [49 CFR 395.1(e)(1)(ii)(A)].

Rota-Mill employs approximately 21 commercial driver's license holders who are the operators of the heavy equipment. They drive to the job location, then operate the equipment they deliver. Their driving time for any given day would be less than 5 hours. A considerable amount of Rota-Mill's jobs are between one and one-and-a-half hours away. If the job is for 8 hours, these drivers can easily return to Rota-Mill's facility within the 12-hour limit of the short-haul exception in 395.1(e). The issue arises when Rota-Mill's crews arrive on a job, and the job increases in size as a result of some unforeseen circumstance. In this case, the Rota-Mill drivers are sometimes required to work longer than 12 hours.

The first exemption from the HOS rest break provision, if granted, would enable drivers engaged in the transportation of milled asphalt and related materials to use 30 minutes or more of on-duty "waiting time" to satisfy the requirement for the 30-minute rest break, provided they do not perform any other work during the break. This would apply when the drivers are not eligible for the short-haul exception. According to Rota-Mill, the requirement for the 30-minute break after the first 8 hours on duty is difficult for their drivers, because the time actually driving a CMV is typically only a few hours per day, with the rest of the day assigned to some other task. Rota-Mill dump truck operators are required to wait at quarries and various other locations, and cannot get out of line to take their required 30-minute break. Extending the short-haul exception without the 30-minute mandatory break would help make Rota-Mill's system run more efficiently and ultimately be safer.

The second exemption, if granted, would allow these same drivers to use the short-haul RODS exception but with a 14-hour duty period instead of 12 hours. Rota-Mill advises that providing the requested relief would allow all of their drivers to get home in

a compliant amount of time without the burden of having to maintain a full record of duty status or taking the currently required 30-minute break if they exceed the 12-hour work day. Additionally, granting these requested exemptions would ease confusion and provide clarity for Rota-Mill drivers who may mistakenly believe they are covered under the short-haul exception.

Rota-Mill states in its application that drivers would receive sufficient rest due to the nature of their operations that limits driving to an average of six to seven hours per day or less during the road milling season. Rota-Mill believes that granting these exemptions would achieve the same level of safety provided by the two HOS rules. In an effort to ensure the same level of safety is maintained by complying with the regulations, Rota-Mill will add fatigue management training for its drivers. The requested exemptions are for 5 years. A copy of Rota-Mill's application for exemptions is available for review in the docket for this notice.

Issued on: Oc

Larry W. Minor,
Associate Administrator for Policy.

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