



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0246]

Hours of Service of Drivers: HEPACO, LLC; Heritage Environmental Services, LLC; Lewis Environmental, Inc.; and Moran Environmental Recovery, LLC; Application for Exemption

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

ACTION: Notice of Final Disposition.

SUMMARY: FMCSA announces its decision to deny the joint application from HEPACO, LLC; Heritage Environmental Services, LLC; Lewis Environmental, Inc.; and Moran Environmental Recovery, LLC, for exemption from the hours-of-service (HOS) regulations for drivers engaged in providing direct assistance in actual and potential environmental emergencies. FMCSA analyzed the exemption application and the public comments received in response to the Agency's August 9, 2018, notice announcing receipt of the request. The Agency has concluded there is no basis for determining that the terms and conditions of an exemption would achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: This decision is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION 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

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-2018-0246 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 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 provide an opportunity for public comment on the request.

The Agency reviews the 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 specify the effective period (up to 5 years) and explain its terms and conditions. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The following companies applied for this exemption: HEPACO, LLC; Heritage Environmental Services, LLC; Lewis Environmental, Inc. and Moran Environmental Recovery, LLC. They all are members of the Spill Control Association of America (SCAA), which filed the exemption application on their behalf. Together, the four companies have 758 commercial driver's license holders and 840 commercial motor vehicles (CMVs). In responding to emergency incidents, these companies work alongside a mix of both private industry and public agencies. Often, their work often has a direct impact on protecting both public safety and the environment. They are required contractually to provide direct assistance to responsible parties who are experiencing actual or potential environmental emergencies, defined as a sudden threat to the public health or the well-being of the environment, arising from the release of oil, radioactive materials, or hazardous chemicals into the air, land or water. Their employees are hybrid driver/operator/technicians, whose work challenges the limits on total on-duty time, especially after hours. In addition, the applicant references the current driver shortage and argues that obtaining drivers with the necessary additional skills and experience is problematic.

The applicants requested relief from 49 CFR 395.3(a)(2), commonly known as the “14-hour rule.” The applicants state that the HOS limitations have always been an issue for emergency response companies. They request this exemption to allow these four companies to respond to a release or threat of a release of oil and other hazardous materials, subject to the following conditions for each driver:

- The on-duty period may not exceed 4.5 additional hours for a total of 18.5 hours of non-consecutive on-duty time before the required reset;
- Driving time for drivers who exceed the 14-hour period may not exceed 8 hours;
- Driving is not permitted after 70 hours on duty in 8 days;
- Drivers must take 10 hours off duty following the duty day; and
- All drivers must comply with the electronic logging device rule.

According to the applicants, the initial response hours are the most critical in an environmental emergency and the ability to quickly respond is vital. These companies’ drivers typically drive 1-2 hours each way to and from the incident. In no case, would these companies’ drivers exceed 8 hours of drive time per incident. SCAA states that if the exemption is not granted, there could be a disruption of national/regional commerce, including delays in power restoration and protection of interstate commerce and infrastructure.

The applicants believe that the proposed relief, and the parameters in which their drivers operate, would continue to provide the highest level of safety and compliance, while prudently responding to incidents that threaten public safety and the environment. A copy of the application for exemption is available for review in the docket for this notice.

IV. Public Comments

On August 9, 2018, FMCSA published notice of this application and requested public comment (83 FR 39498). The Agency received six comments – two from spill response contractors and four from individuals. Three individuals and both spill response contractors support the proposed exemption.

One commenter opposed the application, stating “[p]lease do not allow this exemption. This is a wonderful opportunity to hire more employees, should they need to work more than 14 hours in a day. This has been in effect for many years, and for safety no driver should be allowed to work more than 14 hours.”

V. FMCSA Decision

FMCSA has evaluated SCAA’s application and the public comments submitted and hereby denies the exemption. When the Agency established the rules mandating HOS, it relied upon research indicating that the rules improve CMV safety. These regulations put limits in place for when and how long an individual may drive to ensure that drivers stay awake and alert while driving and to reduce the possibility of driver fatigue.

Based on the body of research underlying the HOS requirements, there is no basis for granting an exemption that would allow an individual to drive after the 18th hour of coming on duty. Although SCAA explained that drivers would not exceed 8 hours of driving time during a work shift, the Agency does not believe there is a basis for concluding that the 8-hour limit on driving time offsets the potential increase in safety risks associated with an 18.5 hour driving window.

Except for the limit on driving time, the applicants would comply with all the other applicable HOS requirements, including using electronic logging devices and requiring drivers to take 10 consecutive hours off-duty at the end of the work shift. The applicants are essentially requesting that the 14-hour rule be extended by 4.5 hours in exchange for a 3-hour reduction in the driving time limit. The Agency does not find this safety tradeoff to be persuasive.

The SCAA application does not analyze the safety impacts the exemption may cause nor does it provide countermeasures to ensure that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulations. Furthermore, the applicant did not clearly define the conditions that would trigger the exemption.

Issued on: November 5, 2019.

Jim Mullen,

Deputy Administrator.

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