



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0368]

Hours of Service of Drivers: North Shore Environmental Construction, Inc.; Application for Exemption

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

ACTION: Notice of Final Disposition.

SUMMARY: FMCSA announces its decision to deny North Shore Environmental Construction, Inc.'s (North Shore) application for exemption from the "14-hour rule" of the hours-of-service (HOS) regulations for drivers responding to actual and potential environmental emergencies. FMCSA analyzed the exemption application and the public comments and determined that the applicant will not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366-4325; 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-2018-0368 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 also 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 Agency's decision 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 its terms and conditions. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

North Shore Environmental Construction, Inc. (North Shore) seeks an exemption from the "14-hour rule" [49 CFR 395.3(a)(2)] for its drivers responding to environmental emergencies. North Shore employs 12 commercial driver's license holders and its total number of commercial

motor vehicles (CMVs) is 15. In responding to emergency incidents, North Shore's technicians work alongside a mix of private industry and public agencies; their work often has a direct impact on the protection of both public safety and the environment. North Shore advises that it is contractually required to provide direct assistance to responsible parties who are experiencing actual or potential environmental emergencies. North Shore's employees are hybrid driver/operator/technicians. Their duties include industrial maintenance, spill response, sampling, lab packing, and waste management. Per North Shore, with the current driver shortage, obtaining drivers with these additional skills and experience has become problematic.

North Shore requested relief from the "14-hour rule." North Shore states that the hours-of-service (HOS) rules have always been an issue for emergency response companies. It requests this exemption to allow the company to respond to a release or threat of a release of oil and other hazardous materials (HM), subject to the following conditions for each driver:

- On-duty period will not exceed 4.5 additional hours for initial response;
- Any driver who exceeds the 14-hour period would in no case exceed a total of 8 hours' drive time;
- Drivers would not exceed 70 hours on duty in 8 days;
- Drivers would be required to take 10 hours off duty, subsequent to the duty day; and
- All activities would be subject to the electronic logging device rule.

According to North Shore, the initial response hours are the most critical in an environmental emergency. North Shore believes that a tightly managed exemption provides a risk averse situation by discouraging potentially unmanaged risk taking. If the exemption is not granted, there could be a disruption of nation/regional commerce activities, including power restoration activities and protection of interstate commerce and infrastructure.

A copy of the North Shore application for exemption is available for review in the docket for this notice.

IV. Method to Ensure an Equivalent Level of Safety

To ensure an equivalent level of safety North Shore offers to implement policies on fatigue and transportation management. North Shore also offers the maintenance of a multitude of safety, security, annual medical surveillance, and training plans, as well as comprehensive drug and alcohol programs compliant with multiple Department of Transportation regulations.

V. Public Comments

On December 18, 2018, FMCSA published notice of this application and requested public comment (83 FR 64925). The Agency received three comments, all opposing the exemption. The Commercial Vehicle Safety Alliance (CVSA) argued that the request is both unjustified and impractical. According to CVSA, “first and foremost, exemptions from federal safety regulations have the potential to undermine safety, while also complicating the enforcement process. The Federal Motor Carrier Safety Regulations (FMCSRs) and HM Regulations exist to ensure that those operating in the transportation industry are equipped to do so safely. If granted, this exemption would place an excessive burden on the enforcement community and negatively impact safety. The federal HOS requirements exist to help prevent and manage driver fatigue.”

The Agency also received comments from Mr. Brian Fuller and Mr. Michael Millard. Both opposed exemptions from the HOS rules in general. Mr. Millard also argued that the requested exemption is duplicative of the emergency relief rule under § 390.23.

VI. FMCSA Response and Decision

FMCSA has evaluated North Shore's application for exemption 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 the Agency has relied upon in developing the HOS requirements, there is no basis for granting an exemption that would allow an individual to drive after the 18th hour after coming on duty when there is no mandatory off-duty time included within the 18-hour period. Although the applicant 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.

The applicant is 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 equivalency claim to be persuasive.

The North Shore application does not analyze the safety impacts the requested exemption from the HOS regulations 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 provide clear parameters that would have to be met to trigger the exemption.

For these reasons, FMCSA denied the request for exemption.

Issued on: November 14, 2019

Jim Mullen
Deputy Administrator

[FR Doc. 2019-25340 Filed: 11/20/2019 8:45 am; Publication Date: 11/21/2019]