



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0240]

**Hours of Service of Drivers: DPN USA, LLC dba Matrix Medical Network;
Application for Exemption**

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

ACTION: Notice of final disposition; denial of application.

SUMMARY: FMCSA announces its decision to deny an application for an exemption from the hours-of-service (HOS) provisions submitted by DPN USA, LLC, doing business as Matrix Medical Network (Matrix). Matrix requested an exemption to allow its employee-drivers known as “Mobile Team Leads” to have a 16-hour window within which to operate CMVs during their work shift and to return to work with less than the mandatory 10 hours off duty. The Agency has concluded that the terms and conditions of the exemption would not achieve a level of safety equivalent to or greater than would be achieved by compliance with the HOS rules.

DATES: FMCSA denies this application for exemption effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES:

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: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 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-2019-0240” 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., EST., 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 Docket Operations.

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

III. Request for Exemption

Under 49 CFR 395.3(a)(1), a driver is prohibited from operating a commercial motor vehicle (CMV) without first taking 10 consecutive hours off duty. Section 395.3(a)(2) prohibits a driver from operating a CMV after the end of the 14th hour after coming on duty.

Matrix requests a limited exemption for its mobile clinic drivers, known as "Mobile Team Leads," from the 10-hour off-duty rule and the 14-hour driving window. Matrix requests that these employee-drivers be permitted to rest for 8 instead of 10 hours, and to operate CMVs during a window of 16,

instead of 14, hours.

Matrix reports that it operates a fleet of mobile medical clinics used to assist Medicare Advantage organizations. These services include, but are not limited to, providing patients with comprehensive health assessments and evaluations, and ongoing management of complex chronic conditions.

Matrix explained that it generally hosts patients during “events,” which are usually held two to three times per week. Patients are seen at a mobile clinic throughout an event day, usually between 7:00 a.m. and 6:00 p.m., but the events do not always end on time. Each mobile clinic operates with a minimal crew consisting of (1) a Mobile Team Lead, (2) a registered nurse or nurse practitioner, (3) a mammography technician, and (4) a medical technician or cardiovascular technician. The Mobile Team Lead is an integral part of the healthcare service delivery team and has duties akin to those of an office manager. In addition, he or she is responsible for driving the mobile clinic to and from an event location and the hotel used by the team. The proposed exemption would cover approximately 50 Mobile Team Leads for the 40 mobile clinics in the applicant's fleet. The exemption, if granted, would be used on event days only.

Matrix explains that patients may cancel or arrive late or that an appointment may require additional time with the team, causing an event to go beyond 6:00 PM. Matrix argues that compliance with sections 395.3(a)(1) and (2) would sometimes require Matrix to cancel patient appointments to have enough time to reach the next event location. According to the applicant, the need to maximize patient engagement is the underlying reason for this exemption request. It would allow an event to

continue past its scheduled end time and allow the Mobile Team Lead to drive the mobile clinic to a hotel that would allow the next day's event to begin at 7:00 a.m.

IV. Method to Ensure an Equivalent or Greater Level of Safety

Matrix argues that an equivalent level of safety would be maintained through short driving duration and distances, and driving at off-peak commuting times. Matrix believes that an equivalent level of safety will be sustained as Mobile Team Leads are trained on fatigue awareness and HOS compliance expectations, and have completed training programs from both the North American Fatigue Management Program and the Commercial Vehicle Training Alliance. Matrix states that Mobile Team Leads drive less than one-sixth of their work day. The rest of their day is spent performing non-clinical, management, and administrative services. A copy of Matrix's application is available for review in the docket for this notice.

V. Public Comments

On October 31, 2019, FMCSA published notice of this application and requested public comment (84 FR 58447). Two comments were submitted. Mr. Michael Millard wrote, "I appreciate the issues that DPN USA, LLC faces, however, poor prior planning and neglecting to develop an adequate business plan to fulfill its mission is not an excuse to ask for leniency in complying with the HOS after the fact. DPN USA, LLC's request presents multiple hazards to the public and should be denied." The Commercial Vehicle Safety Alliance (CVSA) stated:

If this exemption is granted, CVSA recommends that, as a condition of the exemption, all drivers, managers, dispatchers and relevant staff be required to complete the North American Fatigue Management Program training developed in partnership by FMCSA, Transport Canada and industry stakeholders as a comprehensive approach for managing fatigue. Required participation in the

program by all relevant staff will help mitigate the impact on safety the additional exposure to fatigue causes.

VI. FMCSA Decision

The HOS regulations limit when and how long an individual may drive to ensure that drivers stay awake and alert and to help reduce the possibility of driver fatigue. The Agency reaffirmed the “core” HOS provisions in the HOS final rule published on June 1, 2020 [85 FR 33396] increasing flexibility without changing the 10-hour off-duty rule or the 14-hour driving window (except during “adverse driving conditions”). FMCSA has reviewed the application and the public comments and determined that it would be inappropriate to grant the exemption. Matrix did not demonstrate how its CMV operations under such an exemption would achieve a level of safety equivalent to, or greater than, the level of safety obtained in the absence of the exemption [49 CFR 381.305(a)]. The applicant did not provide data to support that 8 hours off duty following a 16-hour driving window would give a driver enough time to avoid cumulative fatigue. The exemption application is denied.

James W. Deck,
Deputy Administrator.

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