

SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. 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.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

The two individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the

statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the two applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The two drivers in this notice remain in good standing with the Agency. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of October 22, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Richard A. Carter (MD) and Donnie Lamar McEntire, Jr. (GA).

The drivers were included in docket number FMCSA–2014–0387. Their exemptions are applicable as of October 22, 2109, and will expire on October 22, 2021.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must report any crashes or accidents as defined in § 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable

CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the two exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41 (b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: November 14, 2019.

Larry W. Minor,

Associate Administrator for Policy.

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DEPARTMENT OF TRANSPORTATION

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; Email: 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.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0235]

Hours of Service of Drivers: Wolfe House Movers, LLC and Wolfe House Movers of Indiana, LLC; Application for Exemption

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

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny Wolfe House Movers, LLC and Wolfe House Movers of Indiana, LLC (Wolfe) an exemption from the hours-of-service (HOS) 60-hour/7-day rule for its drivers engaged in transporting steel beams and dollies to and from various job sites for lifting and moving buildings. FMCSA has analyzed the exemption application and public comments, and has determined that the applicant would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. FMCSA therefore denies Wolfe's application for an exemption.

DATES: This decision is effective November 21, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. La Tonya Mimms, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety

Standards; Telephone: 202-366-9220. Email: HOURSOFSERVICE@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-2018-0235" 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 in person 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 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

Wolfe House Movers, LLC (USDOT 1276267), and Wolfe House Movers of Indiana, LLC (USDOT 1679025) (Wolfe) seek an exemption from the HOS

requirement of 49 CFR 395.3(b)(1) which prohibits a motor carrier from permitting or requiring a driver to drive a property-carrying CMV after the driver has been on duty 60 hours within a period of 7 consecutive days if the employing motor carrier does not operate CMVs every day of the week. Wolfe does not operate CMVs every day of the week and is therefore prohibited from using the 70-hour/8-day rule in 49 CFR 395.3(b)(2) for its business operations.

According to Wolfe, its primary line of business is lifting and moving buildings. Drivers employed by Wolfe transport steel beams and dollies to and from various jobsites where work is performed. Wolfe advised that its owners believe that Sunday is a day of rest and worship and refuse any business opportunities that would require Sunday work.

Because Wolfe does not conduct business on Sunday, its commercial business operations are subject to the 60-hours-in-7-day rule set forth in 49 CFR 395.3(b)(1). Due to the geographical spread of its operations, Wolfe asserted that the 60-hour limitation is a substantial burden. Wolfe explained in its application that the company attempts to schedule work so that all crews can be at their home terminal before the 60th on-duty hour of the week. However, weather, traffic, or jobsite conditions sometimes delay completion of projects causing crews to be stranded one or two hours' drive from the home terminal. When delays occur relief drivers are sent in non-commercial vehicles to pick up stranded drivers so that the drivers who have run out of hours can drive back to the home terminal using the non-commercial vehicles while the relief drivers return the CMVs to the terminal.

Wolfe reports that it is a small company and it is difficult to have relief drivers available on short notice; this is unproductive and costly for the company. Wolfe asserted that the stress and pressure associated with approaching the 60-hour cut-off is likely to have a detrimental effect on the safety performance of even well-trained and well-qualified drivers.

According to Wolfe, allowing it to use the 70-hour on-duty limit for all drivers not operating CMVs on Sundays would provide the following significant safety benefits:

- The need for relief drivers would be significantly reduced or eliminated. This would result in fewer on-road miles driven (by eliminating the need for a relief driver to drive up to 100 miles out to pick up the CMV and for the regular driver to drive the non-CMV