



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

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 [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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. E-mail: 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 C.F.R. 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 back the same 100 miles). This would also mean that the CMV would continue to be driven by the driver most familiar with it, rather than a part-time driver.
- Drivers would be less stressed, knowing that they have sufficient time to complete their weekly schedule even if they are delayed by heavy traffic, weather conditions, etc.

A copy of Wolfe's application for exemption is available for review in the docket for this notice.

V. Public Comments

On October 18, 2018, FMCSA published notice of this application and requested public comment (83 FR 52872). The Agency received two comments.

Mr. Michael Millard wrote, “If the FMCSA considers approving the request there should be additional requirements to address training on driver fatigue so drivers and supervisors can recognize the symptoms and not allow drivers to violate Part 392.3 regarding ill or fatigued drivers. If the petition is approved the carrier should only be allowed to use the 34-hour restart once every six days.”

Mr. Stanley Roberts stated that “If they get a waiver then there would have to be waivers for several industries and businesses. I contend that the majority of their work would be considered regional at best and that their drivers are close enough to make it home on 60-hr/7-day rules.”

VI. FMCSA Decision

FMCSA has evaluated Wolfe’s application and the public comments and decided to deny Wolfe’s exemption request to operate up to 70 hours in a 6-day period; the company does not operate CMVs on Sundays. Wolfe did not demonstrate how operating up to 70 hours within 6 consecutive days of operations (compared to the limit of 60 hours within 6 consecutive days of operations) would maintain a level of safety equivalent to, or greater than, the level of safety that would be achieved without the

exemption [49 CFR 381.305(a)]. The company did not provide any countermeasures (e.g., additional off-duty time, etc.) to address the approximately 17 percent increase in the maximum amount of on-duty time that may be accumulated before driving is prohibited.

Issued on: November 15, 2019

Jim Mullen

Deputy Administrator

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