



United States Department of Transportation  
Before the Federal Motor Carrier Safety Administration  
Docket No. FMCSA 2013-0284

**Comments of the American Bus Association  
On the Application for Exemption from Parts of 49 CFR filed by Miami Nice Excursions**

September 16, 2013

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The American Bus Association appreciates this opportunity to comment on the Federal Motor Carrier Safety Administration's (hereinafter "FMCSA" or "Agency") request for comments in the matter of the exemption request by Miami Nice Excursions (d/b/a Miami Nice Tours) (hereinafter "Miami Nice" or the "Applicant") from several Federal Motor Carrier Safety Regulations. Specifically, Miami Nice Tours requests an exemption from 49 CFR 383.23 (Commercial Drivers' License); 49 CFR 391.23 (Investigation and inquires); 49 CFR 391.25 (Annual Inquiry and review of driving record); 49 CFR 391.51(b) (2), (b) (4) and (b) (5) (General requirements for driver qualification files; and 49 CFR 391.53 (Driver investigation history file).

**INTRODUCTION**

By letter dated April 17, 2013, addressed to The Honorable Anne Ferro, FMCSA Administrator, and signed by Niels Kluensch, the Tour and Charter Coordinator of Miami Nice Excursions, the applicant requested an exemption from the motor carrier safety regulations listed above. The Federal Register notice detailing the application was published in the Federal Register on Friday, August 16, 2013, at 78 Federal Register Number 159 at pages 50139 and 50140 (78 Fed. Reg. 50139-50140). Comments on the application for exemption are due to the docket on or before September 16, 2013.

The American Bus Association (hereinafter "ABA") is the premier private bus and motorcoach industry trade association in North America. ABA has existed for over 75 years. The ABA is home to some 3,800 member companies and organizations and approximately 850 bus operator companies. ABA motorcoaches, or over-the-road bus (OTRB) members, represent 65% of all OTRBs on the road. The bus operator members provide all manner of transportation services to the public, including fixed-route scheduled service, charter and tour, dedicated employee transportation, airport shuttle and commuter services. In addition, there are ABA

members that provide services to bus companies. Finally, ABA members include many tour, travel and tourist companies, convention and visitors' bureaus, destinations and attractions.

## CONCLUSION

ABA respectfully submits that the applicant has not presented sufficient evidence to warrant the requested exemption and therefore the application must be denied.

## COMMENTS

Applicant requests an exemption from the Federal Motor Carrier Safety Regulations covering 49 CFR 383.23, 49 CFR 391.23, 391.25, 49 CFR 391.51 (b) (2), (4) and (5) and 49 CFR 391.53 for up to 50 non-U.S. CDL permitted drivers "who may operate one of three motorcoaches...provid(ing) transportation for approximately 87 groups of passengers" touring the United States (Application letter, page 1). Applicant's stated reasons for requesting the exemption are: The proposed drivers are citizens of foreign countries and cannot apply for a CDL in any State; providing transportation using the exempted CDL holders will support the United States federal administration's priorities regarding jobs and employment by the tour groups spending over \$13 million dollars in the United States, money that will not be spent if non-U.S. CDL drivers are not used for the tour; and the process for obtaining a European CDL is comparable to or as effective as the Federal requirements of 49 CFR Part 383. In support of this final reason, applicant references a prior FMCSA decision granting an application for exemption in *Daimler Trucks North America Exemption Application*, Docket No. FMCSA 2012-0032, 77 Fed. Reg. 31422-31423 (Friday, May 25, 2012) (hereinafter "*Daimler Trucks*").

As ABA understands the proposed operation, the tour groups will travel in one of three motorcoaches each with a U.S. CDL holder as "primary" driver and a non U.S. CDL holder as a "backup" driver. The backup drivers will have the "primary function" of "hosting to the passengers providing tour information and assistance with lodging, luggage, recreation and entertainment, currency exchange, meals, etc." (Application letter, page 2). Despite the backup drivers' lack of driving duties the application letter insists that the passengers "...would not book the tour without the non-U.S. CDL holders accompanying them on the trips..." (Application letter, page 2). The remaining 47 non U.S. CDL holders would not necessarily come to the United States to perform driving duties but would be presumably available if needed to join the tours in the future.

The Application letter states that one of the tours would be based in California, one in New York and the third would be a cross country tour. In addition, the application avers that the buses would not operate with an overnight schedule and the typical daily schedule for the drivers would include an 11-hour duty day and "up to 12 hours" for long distance trips (with driving in these trips "split between the primary and backup driver") and no more than "600 miles traveled" (Application letter, page 3).

## **The Regulations**

It is ABA's view that the scope of the application for exemption is too broad. Miami Nice proposes that FMCSA grant the applicant the authority to decide who provides transportation within the United States, the terms on which they can safely operate and do so without any input from the federal authority assigned to protect the public.

First applicant proposes that the FMCSA wipe out the requirement of 49 CFR 383.21 which requires commercial motor vehicle drivers in the United States to have a CDL issued by a State. In support of this the Application letter states that the proposed drivers are citizens of Germany, Austria and Switzerland and "therefore cannot apply for a CDL in any of the U.S. States" (Application letter, page 1).

However, missing from the application is any evidence that the proposed exempted drivers could not have applied for a non-domiciled CDL in any of the States that Miami Nice proposed to tour. It may be, as noted in the *Daimler Trucks* exemption decision Miami Nice cites in support of its application, that none of the States currently issue non-domiciled CDLs (*see, Commercial Driver's License Standards, Daimler Trucks North America Exemption Application*, 77 Fed. Reg. 31422, note 1 [May 25, 2012]) but the issue must at least be addressed in the application; that is to say that there must be some showing that the applicant sought to obtain appropriate non-domiciled CDLs and was turned down before asking the FMCSA to exempt it from the agency's safety regulations.

In addition, the citation of the *Daimler Trucks* exemption does not support Miami Nice's exemption. First, the *Daimler Trucks* exemption request was limited to exempting two named Daimler test engineers from 49 CFR 383.23 of the "CDL rules, requiring drivers operating CMVs to have a CDL issued by one of the states" (77 Fed. Reg. at 31422). The Daimler engineers were exempted so they could test drive Daimler vehicles on U.S. roads in order to meet "future vehicle safety and environmental regulatory requirements and to promote the development of technology advancements in vehicle safety systems and emission reductions." And while the *Daimler Trucks* decision did hold that the process for obtaining a German-issued CDL is comparable to or as effective as the U.S. CDL requirements the decision cannot be stretched to support an exemption of fifty drivers from Germany, Switzerland and Austria. Moreover, in the *Daimler Trucks* decision, FMCSA limited the engineers driving to "no more than 6 hours per day for 2 consecutive days... with each driver driving for no more than 200 miles per day for a total of 400 miles during a two day period on a quarterly basis (77 Fed. Reg. at 31422). The Miami Nice application request requires FMCSA to exempt an operation which goes well beyond the limits the agency set in *Daimler Trucks*.

## **EVIDENTIARY FAILURES**

Miami Nice fails to support its application for exemption with any real evidence. Specifically, Miami Nice states but fails to support its assertion that the tour groups will not come to the

United States unless the non-U.S. CDL holder drivers are allowed to be exempt from FMCSA regulations. But the application supplies no affidavit or written support for that conclusion from any person who plans to join the tour or any tour destination or attraction. Likewise, there is no claim of a shortage of drivers to support the application or even the assertion of a shortage of German speaking drivers that could be used to buttress the exemption request. Moreover, the application is devoid of any evidence that CDL drivers are needed for this operation. In Miami Nice's own words the backup drivers' primary duties will be limited to "hosting the passengers providing tour information and assistance with lodging, luggage, recreation and entertainment, currency exchange, meals, etc." (Application letter, page 3). Clearly, CDL drivers are not needed to accomplish any of these functions. At most, German speaking guides may be needed by Miami Nice, but not CDL holders. In addition, the same lack of support taints Miami Nice's statement that it needs fifty non-U.S. CDL holder drivers to operate a total of three motorcoaches. The application is devoid of any calculation to support this number, either by reference to the distances to be travelled, the number of days needed to keep a schedule or support from or citation to any schedule at all. It is as if the applicant chose the number of drivers it requires out of thin air. Finally, the applicant's assertion that without this exemption the United States economy will lose \$13 million dollars is, without more, pure speculation. ABA's research foundation has studied the issue of the amount of economic activity a motorcoach tour group brings to local communities and has figures documenting the dollars a motorcoach tour leaves behind for many cities and destinations. Miami Nice has no such calculations in its application. Miami Nice's assertion, without more, cannot be taken seriously. In summary, the application supplies no reason that the exemption should be granted.

Respectfully submitted,



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