



A bold voice for transportation workers

September 16, 2013

Mr. Thomas Yager
Chief, FMCSA Driver and Carrier Operations Division
Office of Bus and Truck Standards and Operations
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

**RE: Commercial Driver's License Standards: Application for Exemption; Miami Nice Tours
Notice of Application for Exemption; Request for Comments
Docket No. FMCSA-2013-0284**

Dear Mr. Yager,

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I write in opposition to the application submitted by Miami Nice Tours (Miami) to exempt itself and 50 European drivers from certain provisions of the Federal Motor Carrier Safety Regulations. By way of background, TTD consists of 33 affiliated unions, including those that represent motorcoach drivers who abide by the regulations from which Miami seeks exemption¹.

TTD opposes the Miami application which would allow the company to hire 50 European drivers exempt from having to obtain U.S. commercial driver's licenses (CDL). These non-licensed drivers would be responsible for operating motorcoaches for approximately 87 short day tours and cross-country tours throughout the U.S. each year. While the application is characterized as only seeking exemption from the requirement under 49 CFR part 383.23 that all commercial motor vehicle (CMV) operators possess a CDL, Miami's request would also exempt the company from four federal regulations (49 CFR parts 391.23, 391.25, 391.51(b)(2),(4),(5), and 391.53) that require important annual inquiries and other investigations into drivers' safety performance histories and driving records. This application would run counter to the immense efforts FMCSA has made to enhance motorcoach safety through increased inspections, compliance reviews, and out-of-service orders.

According to Miami's application, the 50 European drivers would serve primarily as hosts to the passengers, assisting them with currency exchange and finding lodging, recreation and entertainment.² The non-licensed individuals would serve only as "backup" drivers to the U.S.

¹ A complete list of TTD affiliated unions is attached.

² Miami Nice Excursions, dba Miami Nice Tours, Application for Exemption, April 17, 2013, page 3

Transportation Trades Department, AFL-CIO

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Edward Wytkind, President /Larry I. Willis, Secretary-Treasurer



CDL holders doing most of the driving.³ Miami further states that its customers “simply would not book the tour without the non-U.S. CDL holders accompanying them...”⁴

While Miami explains that its customers have a “long-term relationship” with the non-licensed drivers and want their accompaniment on tours, the company fails to provide an explanation for why the 50 individuals cannot simply be hired only as onboard tour guides or concierges capable of meeting passenger needs.⁵ Hiring them in this capacity would eliminate the need for this exemption altogether.

The company also never makes the case for why it needs additional drivers or why it is unable to hire additional CDL holders to meet this unidentified need. If the company is concerned that the planned tours would require a second driver in order to give the primary driver a break or to comply with federal hours of service regulations (which the company never explicitly states), then it must accept its responsibility to hire CDL holders who can serve in that role. Even if Miami could explain why the additional drivers are needed, its proposed solution (hire non-licensed drivers) could not satisfy federal safety requirements.

While we acknowledge that under the planned scenario the non-licensed drivers would spend limited time behind the wheel, FMCSA should not weaken its safety regulations based on the fact that these are backup drivers. To the extent that they are in control of a motorcoach, the drivers must possess the necessary credentials certifying their ability to safely operate a passenger-carrying vehicle. Allowing non-licensed drivers who are unfamiliar with our country’s highways, road rules and important safety regulations to drive 40-42 passengers for any length of time has the potential to put the safety of the driver, passengers and other motorists at risk.

We also reject the similarities Miami tries to make between a previous FMCSA decision to grant a company’s drivers exemption from 49 CFR part 383.23 and its own request. The FMCSA exemption that Miami references was issued to a manufacturing company for two of its field test engineers to test drive vehicles.⁶ This is in stark contrast to Miami’s request for an exemption for 50 individuals driving 40 passengers across the U.S. Further, the referenced company submitted to FMCSA documentation of their drivers’ safe driving records.⁷ Miami makes no mention of providing such information to the agency in its application, only noting that its document includes a roster of the non-licensed drivers and copies of their credentials.⁸

It is also important to note that if FMCSA grants Miami’s request to exempt the drivers from part 383, the drivers would also be exempt from the drug and alcohol testing requirements of 49 CFR part 382. Under part 382, CMV operators subject to “the commercial driver’s license

³ *Id.* 3.

⁴ *Id.* 2.

⁵ *Id.* 2.

⁶ Commercial Driver’s License (CDL) Standards; Daimler Trucks North America (Daimler) Exemption Application, Notice of final disposition; granting of application for exemption, 77 Fed. Reg. 31422-31423 (May 25, 2012).

⁷ *Id.* 31423

⁸ Miami Nice Excursions, dba Miami Nice Tours, Application for Exemption, April 17, 2013, page 5.

requirements of part 383...” are required to undergo controlled substance and alcohol use testing. Approving Miami’s application would create a glaring discrepancy in which the non-licensed individuals would not undergo the same scrutiny as U.S. licensed drivers.

We understand that Miami would require the prospective drivers to participate in its random controlled substance and alcohol testing program and to “submit to a pre-employment drug test prior to operating a CMV covered by federal drug and alcohol testing requirements.”⁹ Although Miami would take steps to conduct drug and alcohol testing, a company specific plan cannot be used as a substitute for agency mandated testing procedures.

We also take issue with Miami’s request for relief for itself from four regulations that require companies to obtain important driver record and safety performance history information and to maintain files of these records. These regulations require companies to make annual inquiries and reviews and to perform other investigations to obtain driver identification and employment verification information, obtain driver medical examiner certificates and information on drivers’ accidents, and to ensure that they meet the minimum requirements for safe driving and are qualified to drive a CMV, among other things. Motor carriers are to obtain such information from drivers’ previous employers and from states and state licensing agencies from which the driver held an operating license.

We realize that since the 50 prospective drivers are all non-U.S. residents, this information is not available from American employers or U.S. state licensing agencies as called for by the regulations. However, we find it difficult to believe that Miami is fully incapable of obtaining the information through the drivers’ current employers or foreign licensing agencies, especially as Miami states that it will verify “by a certified statement from each bus company’s insurance company with whom the driver is employed” that a driver has not been involved in a crash over the last five years.¹⁰ And while Miami plans to obtain a list from the non-licensed drivers identifying their “violations and or crashes” within the last year, the information it receives will not create a complete picture of the drivers’ previous accidents, violations, license status, or driving and safety histories.¹¹ If Miami cannot review the drivers’ complete history, then they should not operate motorcoaches on U.S. roadways.

In addition to the serious safety concerns posed by the non-licensed drivers, Miami’s plan would effectively outsource jobs that would otherwise employ qualified and appropriately credentialed U.S. drivers. Miami makes no claim that there is a shortage of CDL holders, and given Florida’s 7.1% unemployment rate and our experience and knowledge of this sector, we believe there are plenty of qualified drivers readily available to drive for Miami. Allowing a company to hire non-licensed, non-domiciled individuals in place of U.S. CDL holders is unacceptable.

⁹ *Id.* 4.

¹⁰ *Id.* 4.

¹¹ *Id.* 3.

We appreciate the agency providing the opportunity for public comment on this application and for giving the request a thorough review. In the interest of public safety and American licensed drivers, we urge FMCSA to reject Miami's application.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward Wytkind', with a horizontal line underneath.

Edward Wytkind
President

TTD MEMBER UNIONS

The following labor organizations are members of and represented by the TTD:

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of Government Employees (AFGE)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
*International Brotherhood of Boilermakers, Iron Ship Builders,
Blacksmiths, Forgers and Helpers (IBB)*
International Brotherhood of Electrical Workers (IBEW)
International Longshoremen's Association (ILA)
International Longshore and Warehouse Union (ILWU)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Aviation Safety Specialists (PASS)
Sailors' Union of the Pacific (SUP)
Sheet Metal, Air, Rail and Transportation Workers (SMART)
Transportation Communications Union/ IAM (TCU)
Transport Workers Union of America (TWU)
UNITE HERE!
United Mine Workers of America (UMWA)
*United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service
Workers International Union (USW)*
United Transportation Union (SMART)