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Jaclyn Lawton,

Environmental Programs Engineer, Madison, Wisconsin.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2005-23099]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 17 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSR). The exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41 (b)(10).

DATES: The exemptions are effective March 15, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366-4001, maggi.gunnels@fmcsa.dot.gov, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at <http://dmses.dot.gov>.

Background

On January 25, 2006, FMCSA published a notice of receipt of exemption applications from 17 individuals, and requested comments from the public (71 FR 4194). The 17 individuals petitioned FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. They are: John R. Alger, Gene Bartlett, Jr., Raymond C. Becker, Marland L. Brassfield, Walter M. Brown, Rodney D. Curtis, Troy S. David, Norman J. Day, John M. Doney, Dale Fields, Billy R. Jeffries, Brian E. Monaghan, Roberto G. Serna, Robert V. Sloan, Raymond C. Smith, Gary N. Wilson, and William B. Wilson.

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-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 2-year period. Accordingly, FMCSA has evaluated the 17 applications on their merits and made a determination to grant exemptions to all of them. The comment period closed on February 24, 2006. Two comments were received, and fully considered by FMCSA in reaching the final decision to grant the exemptions.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSR provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

Since 1992, the Agency has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70 to 120 degrees, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Pual Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket, FMCSA-98-4334.) The panel's conclusion supports the agency's view that the present visual acuity standard is reasonable and necessary as a general standard to ensure highway safety. FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 17 exemption applicants listed in this notice fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinal detachment, corneal scar and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but four of the applicants were either born with

their vision impairments or have had them since childhood. The four individuals who sustained their vision conditions as adults have had them for periods ranging from 5 to 20 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 17 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 5 to 49 years. In the past 3 years, none of the drivers have had any convictions for traffic violations and none of them were involved in crashes.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the January 25, 2006 notice (71 FR 4194).

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision

standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA-98-3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996.) Experienced monocular drivers with good driving records in the waiver program have demonstrated their ability to drive safely. This supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes. (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the

experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 17 applicants receiving an exemption, we note that the applicants have had no collisions and no traffic violations among them in the last 3 years. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, The Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to the 17 applicants listed in the notice of January 25, 2006 (71 FR 4194).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 17 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the

following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

Two letters of recommendation were received in favor of granting the Federal vision exemption to two of the applicants. The first was concerning Robert V. Sloan and it was written by the General Teamsters Local Union No. 61. The second letter was regarding Raymond Becker and it was written by Baumberger & Sons, Inc. Both letters suggest that these applicants be granted Federal vision exemption due to their high level of professionalism and safety while driving.

Conclusion

Based upon its evaluation of the 17 exemption applications, FMCSA exempts John R. Alger, Gene Bartlett, Jr., Raymond C. Becker, Marland L. Brassfield, Walter M. Brown, Rodney D. Curtis, Troy S. David, Norman J. Day, John M. Doney, Dale Fields, Billy R. Jeffries, Brian E. Monaghan, Roberto G. Serna, Robert V. Sloan, Raymond C. Smith, Gary N. Wilson, and William B. Wilson from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked 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. 31315 and 31136.

If the exemption is still effective at the end of the 2-year period, the person may

apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: March 8, 2006.

Rose A. McMurray,
Associate Administrator, Policy and Program Development.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than May 15, 2006.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Mr. Victor Angelo, Office of Support Systems, RAD-20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number _____." Alternatively, comments may be transmitted via facsimile to

(202) 493-6230 or (202) 493-6170, or E-mail to Mr. Brogan at robert.brogan@fra.dot.gov, or to Mr. Angelo at victor.angelo@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493-6292) or Victor Angelo, Office of Support Systems, RAD-20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6470). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to

minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses). See 44 U.S.C. 3506(c)(2)(A)(i)-(iv); 5 CFR 1320.8(d)(1)(i)-(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Below are brief summaries of eight currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

OMB Control Number: 2130-0035.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form Number(s): N/A.

Abstract: The collection of information is due to the railroad operating rules set forth in 49 CFR part 217 which require Class I and Class II railroads to file with FRA copies of their operating rules, timetables, and timetable special instructions, and subsequent amendments thereto. Class III railroads are required to retain copies of these documents at their systems headquarters. Also, 49 CFR 220.21(b) prescribes the collection of information which requires railroads to retain one copy of their current operating rules with respect to radio communications and one copy of each subsequent amendment thereto. These documents must be made available to FRA upon request.

Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response (hours)	Total annual burden hours	Total annual burden cost
271.7-Copy-FRA-operating rules, timetables, Class I & II RRs	*1	1	1.00	1	\$35
-Amendments	32	96	0.33	32	1,120
-Copy of operating rules-Class III	20	20	0.92	18	630
-Amendments	632	1,896	0.25	474	16,590
217.9-Copy-Prog. for Perf. of Operational Tests	*20	20	9.92	198	6,930
-Amendments	50	150	1.92	288	10,080
-Oper. Test Rclds	632	9,180,000	0.08	765,000	34,425,000
-Summary Tests	55	55	1.00	55	1,925
271.11-Copy-Instr. Prog.-Employees	*20	20	8.00	160	5,600