

transportation of persons, property, and mail, and should be issued a certificate of public convenience and necessity authorizing such operations, subject to conditions. At that time, we directed interested parties to file objections no later than 14 days after the service date of the order (*i.e.*, July 29, 2005). Subsequently, the Department published a notice in the **Federal Register** on July 21, 2005, inadvertently directing all interested parties wishing to file objections should do so by August 29, 2005. In order to correct this administrative error, while, at the same time, providing interested parties with a suitable period of time to file comments, we find it appropriate to direct persons wishing to file objections to our tentative decision to do so by August 15, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lauralyn Remo, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

#### Correction

In the **Federal Register** of July 21, 2005, in FR Doc. 05-14378, on page 42135, in the second column, correct the **DATES** caption to read:

**DATES:** Persons wishing to file objections should do so no later than August 15, 2005.

Dated: August 4, 2005.

**Karan K. Bhatia,**

*Assistant Secretary for Aviation and International Affairs.*

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**BILLING CODE 4910-62-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2005-21254]

#### Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of final disposition.

**SUMMARY:** The FMCSA announces its decision to exempt 24 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). 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:** August 10, 2005.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Office of Bus and Truck Standards and Operations, (202) 366-4001, 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 May 31, 2005, the FMCSA published a notice of receipt of exemption applications from 24 individuals, and requested comments from the public (70 FR 30999). The 24 individuals petitioned the 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: Linda L. Billings, George L. Cannon, Anthony Ciancone, Jr., Andrew B. Clayton, Kenneth D. Daniels, Jerry A. Davidson, Richard D. Espey, Jr., Allen R. Fasen, Tommy K. Floyd, Franklin G. Hermann, William W. Hodgins, Hazel L. Hopkins, Jr., Donald M. Jenson, Dean A. Maystead, Jason L. McBride, Sr., Willie J. Morgan, Carl V. Murphy, Jr., Donald L. Murphy, Mark D. Page, Larry D. Reynolds, Thomas D. Reynolds, Walter J. Savage, Jr., Thomas J. Sweeny, Jr., and Louis E. Villa, Jr.

Under 49 U.S.C. 31315 and 31136(e), the 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, the FMCSA has evaluated the 24 applications on their merits and made a determination to grant exemptions to all of them. The comment period closed on June 30, 2005. Two comments were received, and their contents were carefully considered by the FMCSA in reaching the final decision to grant the exemptions.

##### Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs 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 at 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°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul 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. The 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 24 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, macular and retinal scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but seven of the applicants were either born with their vision impairments or have had them since childhood. The seven individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 45 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. The 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 performance 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 24 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 50 years. In the past 3 years, three of the drivers have had convictions for traffic violations. Two of these convictions were for speeding, and one was for "failure to obey traffic control device." Three drivers were involved in four crashes among them, but did not receive a citation.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the May 31, 2005, notice (70 FR 30999). Since there were no substantial docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here, but note that information presented at 70 FR 30999 indicating that applicant 2, George L. Cannon, has driven straight truck for 50 years, is in error. The information should have indicated that Mr. Cannon has driven tractor-trailer combinations for 50 years. Our summary analysis of the applicants is supported by this correction and the information published on May 31, 2005 (70 FR 30999).

#### **Basis for Exemption Determination**

Under 49 U.S.C. 31315 and 31136(e), the 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, the 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, the FMCSA requires a person to present verifiable evidence that he or 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 a former FMCSA waiver study program clearly demonstrates that 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.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely 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 24 applicants receiving an exemption, we note that the applicants have had only four crashes and three traffic violations 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, the 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 or she has been performing in intrastate commerce. Consequently, the 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 24 applicants listed in the notice of May 31, 2005 (70 FR 30999).

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, the FMCSA will impose requirements on the 24 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

The FMCSA received two comments in this proceeding. The comments were considered and are discussed below.

Ms. Barb Sachau believes that vision exemptions are granted based on outdated research information from 1920 and 1952, therefore, compromising public safety on the highways. Also, she believes that medical examination information should not be accepted unless it is dated in the year the exemption is granted.

In regard to the first issue, the discussion above under the heading, "Basis for Exemption Determination," refers to research information completed in 1920 as the "first major research" and the study completed in 1952 as one of multiple "subsequent studies." The references show that the correlation between past and future driving performance has stood the test of time. We cite more recent research from 1964 and 1971, as well as the agency's vision waiver study program of the early 1990s. (See 61 FR 13338, 13345, March 26, 1996.) In addition, the agency assembled a panel of physicians expert in diagnosing and treating vision problems and utilized data from the previous vision waiver program (early 1990s) to provide a scientific basis for the current Federal vision exemption program.

In regard to the second issue, each applicant has been examined within one year of receiving the exemption by an ophthalmologist or optometrist who certifies the driver's vision has been stable for at least 3 years preceding the date of application. The FMCSA requires each driver upon receiving an exemption to be physically examined 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 provide a copy of the ophthalmologist's or optometrist's report to a medical examiner who conducts a medical examination and certifies the driver under 49 CFR 391.43. Thereafter, each exempted driver must have an eye examination and be certified annually. Because each

applicant has had stable vision for at least 3 years, and each applicant will undergo an eye examination upon receipt of the exemption, and yearly after receipt of the exemption, the FMCSA considers an exam performed within the last year to be consistent with the requirements of the vision program. In addition, it is consistent with the screening criteria of the vision waiver study program of the early 1990s. Those monocular drivers who participated in that program demonstrated a greater level of safety than that of all CMV drivers collectively.

Advocates for Highway and Auto Safety (Advocates) expresses continued opposition to the FMCSA's policy to grant exemptions from the FMCSRs, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which the FMCSA presents driver information to the public and makes safety determinations; (2) objects to the agency's reliance on conclusions drawn from the vision waiver program; (3) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions. The issues raised by Advocates were addressed at length in 70 FR 16887 (April 1, 2005). We will not address these points again here, but refer interested parties to those earlier discussions.

#### Conclusion

Based upon its evaluation of the 24 exemption applications, the FMCSA exempts Linda L. Billings, George L. Cannon, Anthony Ciancone, Jr., Andrew B. Clayton, Kenneth D. Daniels, Jerry A. Davidson, Richard D. Espey, Jr., Allen R. Fasen, Tommy K. Floyd, Franklin G. Hermann, William W. Hodgins, Hazel L. Hopkins, Jr., Donald M. Jenson, Dean A. Maystead, Jason L. McBride, Sr., Willie J. Morgan, Carl V. Murphy, Jr., Donald L. Murphy, Mark D. Page, Larry D. Reynolds, Thomas D. Reynolds, Walter J. Savage, Jr., Thomas J. Sweeny, Jr., and Louis E. Villa, Jr. 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 the 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 the FMCSA for a renewal under procedures in effect at that time.

Issued on: August 4, 2005.

**Pamela M. Pelcovits,**

*Director, Office of Policy, Plans, and Regulations.*

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BILLING CODE 4910-EX-P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### Pipeline Safety Advisory Bulletin; Inspecting and Testing Pilot-Operated Pressure Relief Valves

**AGENCY:** Office of Pipeline Safety (OPS), Pipeline and Hazardous Materials Safety Administration, DOT

**ACTION:** Notice of advisory bulletin.

**SUMMARY:** This notice announces a pipeline safety advisory bulletin about pilot-operated pressure relief valves installed in hazardous liquid pipelines. The bulletin provides pipeline operators guidance on whether their inspection and test procedures are adequate to determine if these valves function properly. Malfunctioning of a pilot-operated pressure relief valve was a contributing factor in an accident involving a petroleum products pipeline in Bellingham Washington.

#### FOR FURTHER INFORMATION CONTACT:

L.M. Furrow by phone at 202-366-4559, by fax at 202-366-4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590, or by e-mail at [buck.furrow@dot.gov](mailto:buck.furrow@dot.gov).

**SUPPLEMENTARY INFORMATION:** After its investigation of an accident involving a 16-inch petroleum products pipeline operated by the Olympic Pipe Line Company in Bellingham, Washington, the National Transportation Safety Board (NTSB) made the following recommendation to the Research and Special Programs Administration:<sup>1</sup> Develop and issue guidance to pipeline operators on specific testing

<sup>1</sup> The Norman Y. Mineta Research and Special Programs Improvement Act (Pub. L. 108-426, 118; November 30, 2004) reorganized the Research and Special Programs Administration (RSPA) into two new DOT administrations: the Pipeline and Hazardous Material Safety Administration (PHMSA) and the Research and Innovative Technology Administration. RSPA's regulatory authority over pipeline and hazardous materials safety was transferred to PHMSA.