

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Large Agricultural Restricted Category Airplane Certification Topics and Twin Engine Large Agricultural Restricted Category Airplane Certification Basis Proposal—AT-2002 Project**

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed policy and request for public comment.

SUMMARY: This notice announces the availability of and requests comments on two documents concerning airworthiness standard for restricted category type certificates for large airplanes that are to be used for agricultural, firefighting, and special purpose operations. The first document "Large Agricultural Restricted Category Airplane Topics" addresses two topics concerning design criteria for a large airplane weighing 19,000 pounds or less maximum certificated takeoff weight. For reference purposes, the first document also provides an overview of the second document. The second document "Twin Engine Large Agricultural Restricted Category Airplane Certification Basis Proposal AT-2002 Project" presents a proposed certification basis for twin-engine airplanes having a certificated maximum weight of 36,000 pound. The proposed certification bases contains many airworthiness standards currently in Title 14 of the Code of Federal Regulations (14 CFR) part 23, rather than 14 CFR part 25.

DATES: Comments must be received on or before July 2, 2004.

ADDRESSES: Send all comments on the proposals to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. Attn: Stephen (Steve) Flanagan, AIR-110. You may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC, 20591, or electronically submit comments to the following Internet address: 9-AWA-AVR-AIR-Policycomments@faa.gov. Include in the subject line of your message the title of the document on which you are commenting.

FOR FURTHER INFORMATION CONTACT: Stephen (Steve) Flanagan, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Certification Procedures Branch, AIR-110, Room 815, 800 Independence

Avenue SW., Washington, DC 20591, Telephone (202) 267-3549, Fax (202) 267-5340, or e-mail at: steve.flanagan@faa.gov

SUPPLEMENTARY INFORMATION:**Comments Invited**

You are invited to comment on the proposals listed in this notice by sending such written data, views, or arguments to the above listed address. Your comment should identify "Large Agricultural Restricted Category Airplane Certification Basis Proposal" or "Single Engine Large Agricultural Restricted Category Airplane Proposal" as appropriate. You may also examine comments received on the proposals before and after the comment closing date at the FAA Headquarters Building, Room 815, 800 Independence Avenue SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received on or before the closing date before implementing these proposals.

Background

The first document "Large Agricultural Restricted Category Airplane Topics" addresses two topics concerning design criteria for a large airplane that would weight 19,000 pounds or less maximum certificated takeoff weight. The first topic is the appropriate limit maneuvering load factor for the airplane. The second topic presents the FAA discussion explaining our agreement with the applicant's proposal that a single engine design for a small to medium size airplane is safer than a multi-engine design for the agricultural and firefighting special purpose operations. For reference purposes, the first document also provides an overview of the second document.

The second document "Twin Engine Large Agricultural Restricted Category Airplane Certification Basis Proposal AT-2002 Project" explains how the FAA and the applicant have developed a proposed certification basis for a twin-engine 36,000-pound airplane. The proposed certification basis uses many airworthiness standards from 14 CFR part 23, rather than 14 CFR part 25 requirements. Our rationale for this is based on the difference between transport category and restricted category safety expectations.

The FAA developed these proposals based on an applicant's proposal that using 14 CFR part 25 airworthiness standards for a large agricultural restricted category airplane is

excessively burdensome for an airplane that is only suitable for use in the unique special purpose operations of agricultural and forest and wildlife conservation (14 CFR 21.25(b)(1) and 21.25(b)(2)). The FAA agrees that the growth of turboprop engine power capability permits development of restricted category airplanes that are heavier than envisioned when the weight limits for normal, utility, and acrobatic category were originally established. FAA contends that these proposals are appropriate relief from the weight limits of normal, utility, or acrobatic category airplanes. This relief is appropriate only for airplanes that by design are suited only for their intended special purpose, and will not be eligible for a standard airworthiness certificate.

How To Obtain Copies

You can get an electronic copy via the Internet at <http://www.airweb.faa.gov/rgl> or by contacting the person named in the paragraph **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on May 30, 2004.

Susan J. M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 04-10642 Filed 5-10-04; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration**

[Docket Nos. FMCSA-99-5748, FMCSA-2001-11426, FMCSA-2002-11714]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 20 individuals. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective May 30, 2004. Comments from interested

persons should be submitted by June 10, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Numbers FMCSA-99-5748, FMCSA-2001-11426 and FMCSA-2002-11714 by any of the following methods:

- Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket numbers for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywockarte, Office of Bus and Truck Standards and Operations, (202) 366-2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the "help" section of the DMS web site. If you want us to notify you that we received your comments, please include a self-

addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, 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 procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 20 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 20 applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period. They are: Paul R. Barron, Joe W. Brewer, James D. Coates, Micahel D. DeBerry, Donald D. Dunphy, James W. Ellis, IV, John E. Engstad, David W. Grooms, Joe H. Hanniford, Sammy K. Hines, David A. Inman, Harry L. Jones, Teddie W. King, Lawrence C. Moody, Stanley W. Nunn, William R. Proffitt, Charles L. Schnell, Charles L. Shirey, Kevin R. Stoner, Carl J. Suggs.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam 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 and retain a copy of the certification on his/her person while driving for presentation to a duly authorized

Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded 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(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 20 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 40404, 64 FR 66962, 67 FR 10475, 67 FR 10471, 67 FR 19798, 67 FR 15662, 67 FR 37907). Each of these 20 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by June 10, 2004.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the

exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: April 23, 2004.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 04-10584 Filed 5-10-04; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted by Ms. Claire M. Tieder to NHTSA's Office of Defects Investigation (ODI), dated January 11, 2004, under 49 U.S.C. 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety with respect to the automatic transmission performance of model year (MY) 2004 BMW 3-Series xi all-wheel drive sedans. After a review of the petition and other information, NHTSA has concluded that further expenditure of the agency's investigative resources on the issues raised by the petition does not appear to be warranted. The agency accordingly has denied the petition. The petition is hereinafter identified as DP04-001.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Chan, Defects Assessment Division, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-8537.

SUPPLEMENTARY INFORMATION: By letter dated January 11, 2004, Ms. Claire M. Tieder of Reston, VA, submitted a

petition requesting that the agency investigate the automatic transmission performance of MY 2004 BMW 3-Series xi all-wheel drive vehicles. The petitioner alleges that she had experienced transmission delay engagement of one-half minute to two minutes after shifting from Reverse to Drive on her MY 2004 BMW 325xi vehicle.

ODI requested information from Bayerische Motoren Werke (BMW) pertaining to the issue of automatic transmission delayed engagement when shifting from Reverse to Drive or from Drive to Reverse (alleged defect) on all MY 2004 BMW 3-Series vehicles (subject vehicles) manufactured for sale or lease in the United States. According to BMW, two automatic transmission models—GM5 and 5HP19—were used in the subject vehicles. The GM5 transmission was used in both the rear-wheel drive and the all-wheel drive vehicles, and the 5HP19 transmission was used for the rear-wheel drive vehicles only. The table below is a summary of BMW's response to certain requested information which relates, or may relate, to the alleged defect on the subject vehicles:

Transmission model	Vehicle ¹ population	Consumer complaints	Field reports	Warranty claims	TSB	Crash	Injury	Fatality
5HP19	6,942	2	0	12	0	0	0	0
GM5	49,706	139	256	1742	2	0	0	0

¹ As of February 27, 2004.

BMW apparently was well aware of the alleged defect in the subject vehicle. In December 2003, BMW issued Technical Service Bulletin (TSB) SI B24 07 03, Subject: "GM5: Delayed P [Park] to D [Drive] Engagement on Cold Start." The TSB stated that "Customer may complain of delayed 'P' to 'D' engagement (2 to 30 seconds) during the first cold start in the morning," and that the cause was "Unfavorable tolerances of C1 clutch housing causing internal transmission pressure leak after extended (overnight) parking." The TSB applied to the subject vehicles and the BMW X5 3.0iA model with a GM5 transmission manufactured during certain time periods. The TSB indicated that if a customer complained about this problem, the affected transmission would be replaced with an improved unit after the servicing dealer verified the aforementioned delayed 'P' to 'D' engagement. On February 2004, BMW issued an updated TSB to include the BMW X3 3.0iA model with GM5

transmission. No TSB was issued with respect to the 5HP19 transmission.

In its response to ODI, BMW stated that the transmission engagement delay after shifting from Park to Drive, or from Reverse to Drive, is caused by an internal transmission fluid leak of the main drive clutch (C1 clutch) between the molded piston outer seal and the main drive clutch housing. The C1 clutch provides input torque to the transmission's 1st, 2nd, 3rd, and 4th gear. If the C1 clutch's torque-carrying capacity is interrupted, then forward drive gear engagement is delayed. The problem is more prevalent in colder weather, and usually occurs during a "cold start" such as after the vehicle has been parked with the engine off overnight.

In its response, BMW argued that the alleged defect does not pose an unreasonable risk to motor vehicle safety, for the following reasons:

(1) The delay can only occur at vehicle "cold start" after the vehicle has been at rest for more than eight hours,

and typically lasts less than 15 seconds. At the time of a "cold start," the vehicle is stationary. It is not moving in traffic. Therefore, the driver is not traveling at some measurable speed. There have been no crashes, no property damage claims, no injuries and no fatalities associated with the alleged defect reported to BMW;

(2) The delay is "self-correcting." Coincident with the transmission engagement delay, a driver who has been sensitized to this occurrence may increase the engine speed in order to reduce the delay time. By increasing the engine speed, the transmission's internal pressure increases more quickly toward its operating pressure, and enables the drive gear to engage sooner;

(3) The transition from delay occurrence to "normal" vehicle usage is benign. At the end of the delay, the transition to full engagement of the drive gear occurs in a "smooth" manner. There is no sudden/abrupt forward acceleration of the vehicle. Nothing in front of the vehicle is at an increased