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Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Atlanta's Department of Aviation.

Issued in College Park, Georgia, on May 26, 2004.

**Daniel Gaetan,**

*Acting Manager, Atlanta Airports District Office, Southern Region.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2004-17195]

#### 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 29 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:** June 3, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ms. Teresa Doggett, Office of Bus and Truck Standards and Operations, (202) 366-2990, 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:

##### Electronic Access

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

##### Background

On April 1, 2004, the FMCSA published a notice of receipt of exemption applications from 29 individuals, and requested comments

from the public (69 FR 17263). The 29 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: Manuel A. Almeida, James C. Askin, Paul J. Bannon, Ernie E. Black, Gary O. Brady, Michael C. Branham, Stephen H. Goldcamp, Steven F. Grass, Donald E. Hathaway, Michael S. Johannsen, Mearl C. Kennedy, Wai Fung King, Christopher J. Meerten, William J. Miller, Robert J. Mohorter, James A. Mohr, Charles R. Murphy, Lacy L. Patterson, Roderick F. Peterson, Stephen P. Preslopsky, Timothy J. Sands, Donald W. Sidwell, David M. Smith, Jose M. Suarez, Robert L. Swartz, Jr., Elmer K. Thomas, Robert L. Vaughn, Richard G. Wendt, and Richard A. Yeager.

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 29 applications on their merits and made a determination to grant exemptions to all of them. The comment period closed on May 3, 2004. One comment was received.

#### 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, FHWA-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 29 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, corneal and retinal scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but nine of the applicants were either born with their vision impairments or have had them since childhood. The nine individuals who sustained their vision conditions as adults have had them for periods ranging from 3 to 30 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 29 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 4 to 42 years. In the past 3 years, seven of the drivers have had convictions for traffic violations. Six of these convictions were for speeding and one was for "failure to obey traffic sign." None of the drivers was involved in a crash.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the April 1, 2004, notice (69 FR 17263). 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 69 FR 17265 indicating that applicant 10, Michael S. Johannsen, reported he has accumulated 207,000 miles while driving straight trucks for 9 years, is in error. The information should have indicated that Mr. Johannsen reported he has driven straight trucks for 9 years, accumulating 92,000 miles, and tractor-trailer combinations for 14 years, accumulating 207,000 miles. Our summary analysis of the applicants is supported by this correction and the information published on April 1, 2004 (69 FR 17263).

#### 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 29 applicants receiving an exemption, we note that the applicants have had no crashes and only seven 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 29 applicants listed in the notice of April 1, 2004 (69 FR 17263).

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 29 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 one comment in this proceeding. The comment was considered and is discussed below.

Ms. Barb Sashaw believes doctors may make statements that favor their patients. The opinions of the vision

specialists on whether a driver has sufficient vision to perform the tasks associated with operating a CMV are made only after a thorough vision examination including formal field of vision testing to identify any medical condition which may compromise the visual field such as glaucoma, stroke or brain tumor. While it is possible a practitioner may be partial, FMCSA believes requiring a signed statement on letterhead would deter doctors from making irresponsible statements. The medical information is combined with information on experience and driving records in the agency's overall determination whether exempting applicants from the vision standard is likely to achieve a level of safety equal to that existing without the exemption.

Also, Ms. Sashaw believes a driver who has only one eye would be without vision if a speck flew into his or her eye. It is not likely a driver would lose all vision from a speck in the eye, although the driver may decide to pull off the road to a safe location because of the discomfort.

#### Conclusion

Based upon its evaluation of the 29 exemption applications, the FMCSA exempts Manuel A. Almeida, James C. Askin, Paul J. Bannon, Ernie E. Black, Gary O. Brady, Michael C. Branham, Stephen H. Goldcamp, Steven F. Grass, Donald E. Hathaway, Michael S. Johannsen, Mearl C. Kennedy, Wai Fung King, Christopher J. Meerten, William J. Miller, Robert J. Mohorter, James A. Mohr, Charles R. Murphy, Lacy L. Patterson, Roderick F. Peterson, Stephen P. Preslopsky, Timothy J. Sands, Donald W. Sidwell, David M. Smith, Jose M. Suarez, Robert L. Swartz, Jr., Elmer K. Thomas, Robert L. Vaughn, Richard G. Wendt, and Richard A. Yeager 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: May 26, 2004.

**Robert F. Proferes,**

*Director, Office of Bus and Truck Standards and Operations.*

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**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### FTA Fiscal Year 2004 Apportionments, Allocations and Program Information; Notice of Supplemental Information and Changes

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice announces further availability of apportionments for the Federal Transit Program. With only temporary extensions of our program authorization, FTA has published two previous documents identifying total annual apportionments and apportionments based on an extension of our program authorization. This notice makes fiscal year (FY) 2004 transit funds available for obligation based on program funding levels authorized by the Surface Transportation Extension Act of 2004, Part II (Pub. L. 108-224). With this notice, generally  $\frac{9}{12}$  of our annual appropriation is now available for grants. This notice also identifies changes to prior year bus and bus-related allocations, and extends the period of availability for FY 2004 funding for the Elderly and Persons with Disabilities Program (49 U.S.C. 5310).

**FOR FURTHER INFORMATION CONTACT:** The appropriate FTA Regional Administrator (see list at end of notice) or Mary Martha Churchman, Director, Office of Resource Management and State Programs, (202) 366-2053.

**ADDRESSES:** Address, telephone, and facsimile information for the FTA Regional Offices is listed at the end of this notice in Appendix A.

#### I. Funds Available for Obligation

The "Surface Transportation Extension Act of 2004, Part II" (Pub. L. 108-224) was signed into law by President Bush on April 30, 2004. The Act provides an extension of programs funded from the Highway Trust Fund, pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century (TEA-21), and provides contract authority for transit programs from October 1, 2003, through June 30, 2004.

FTA has revised the apportionment and allocation tables published in the supplemental **Federal Register** notice on March 29, 2004, to reflect the amount of FY 2004 funding that is currently available for obligation by grantees for the respective FTA program, in accordance with the Surface Transportation Extension Act of 2004, Part II, and the Consolidated Appropriations Act, 2004 (Pub. L. 108-199, Division F). The revised tables are posted on the FTA Web site at [[http://www.fta.dot.gov/25\\_ENG\\_HTML.htm](http://www.fta.dot.gov/25_ENG_HTML.htm)], together with this notice. The tables are also available by calling the Regional Office. Each Regional Office will also distribute the tables by e-mail to its mailing list.

FTA's program is funded by two sources of funds: the General Fund and the Highway Trust Fund. A column labeled "Apportionment" or "Allocation" in the revised tables includes both trust funds (contract authority) and general funds, and reflects the total dollar amount of obligation limitation and appropriations in the Consolidated Appropriations Act, 2004, once full year contract authority is made available. This amount does not represent the amount that is actually available for obligation at this time. The amount shown in a column labeled "Available Apportionment" or "Available Allocation" is currently available for obligation. The percentage of the full year's apportionment or allocation available to an individual State or urbanized area may vary by program. The total available for some programs included reallocated prior year funds, as shown in table 1. In the case of formula programs, the amounts available were determined by applying the formula to the total amount available for the program. In the case of Congressional allocations, the total amount available for the program was prorated to each project or activity.

#### II. Changes to Bus and Bus-Related Project Allocations

FTA has made changes to several bus and bus-related projects allocated in previous years based on correspondence received from Congress that clarifies the intent of the projects. The projects and clarifications are as follows:

1. *Fort Smith Bus Maintenance Facility, Arkansas.* The FY 2003 Department of Transportation and Related Agencies Act includes \$750,000 in the bus and bus facilities account for "Arkansas—Fort Smith Bus". The Conferees agree that the project description should read "Arkansas—Fort Smith Bus Maintenance Facility".