

new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

Outright approval was granted for two proposed action elements in the revised NCP where the city of Austin requested Federal approval. Approved action items include land mitigation measures consisting of a land acquisition program and a sound insulation program.

These determinations are set forth in a Record of Approval signed by the Associate Administrator for Airports on February 11, 2004. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the administrative offices of: City of Austin, Department of Aviation, Austin-Bergstrom International Airport, 3600 Presidential Boulevard, Austin, Texas 78719.

Issued in Fort Worth, Texas, February 19, 2004.

**Joseph G. Washington,**

*Acting Manager, Airports Division.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2003-16564]

#### 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:** March 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Zywokarte, 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:**

#### Electronic Access

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

#### Background

On December 24, 2003, the FMCSA published a notice of receipt of exemption applications from 29 individuals, and requested comments from the public (68 FR 74699). 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: Lee A. Burke, Barton C. Caldara, Terrance F. Case, Lawrence M. Daley, Allan Darley, Charley Davis, Ray L. Emert, Robin S. England, Jessie W. Ford, Richard Hailey, Jr., Spencer N. Haugen, Thomas R. Hedden, William G. Hix, Robert V. Hodges, Jay W. Jarvis, George R. Knavel, John R. Knott, III, Duane R. Krug, Eric M. Moats, Sr., Lester T. Papke, Edward D. Pickle, Charles D. Pointer, Richard A. Pruitt, Kent S. Reining, Bruce K. Robb, James J. Rouse, Ronald D. Ulmer, Mitchell A. Webb, and Jerry L. Wilder.

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 January 23, 2004. No comments were 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 scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but six of the applicants were either born with their vision impairments or have had them since childhood. The six individuals who sustained their vision conditions as adults have had them for periods ranging from 16 to 49 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 6 to 42 years. In the past 3 years, two of the drivers have had convictions for traffic violations. Two of these convictions were for speeding and one was for "failure to obey traffic sign." One driver was involved in two crashes but did not receive a citation in either.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the December 24, 2003, notice (68 FR 74699). Since there were no docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants is supported by the information published on December 24, 2003 (68 FR 74699).

#### **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 only two 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 29 applicants listed in the notice of December 24, 2003 (68 FR 74699).

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 no comments in this proceeding.

#### **Conclusion**

Based upon its evaluation of the 29 exemption applications, the FMCSA exempts Lee A. Burke, Barton C. Caldara, Terrance F. Case, Lawrence M.

Daley, Allan Darley, Charley Davis, Ray L. Emert, Robin S. England, Jessie W. Ford, Richard Hailey, Jr., Spencer N. Haugen, Thomas R. Hedden, William G. Hix, Robert V. Hodges, Jay W. Jarvis, George R. Knavel, John R. Knott, III, Duane R. Krug, Eric M. Moats, Sr., Lester T. Papke, Edward D. Pickle, Charles D. Pointer, Richard A. Pruitt, Kent S. Reining, Bruce K. Robb, James J. Rouse, Ronald D. Ulmer, Mitchell A. Webb, and Jerry L. Wilder 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: March 1, 2004.

**Rose A. McMurray,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. 04-4853 Filed 3-4-04; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Notice of Funds Availability for the Next Generation High-Speed Rail Program: Revenue Service Demonstration of Compliant Diesel Multiple Unit (DMU) Self-Propelled Passenger Cars

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** Under this Notice, the FRA encourages interested parties to submit by April 23, 2004, a Statement of Interest in receiving a grant to support a demonstration in daily revenue commuter or intercity passenger service, beginning in calendar year 2004, of Diesel Multiple Unit (DMU) self-propelled passenger rail cars which comply with all current Federal passenger car safety standards ("Compliant DMU"). The purpose of the demonstration is to determine the

current availability of Compliant DMU technology and the suitability of this equipment for regularly scheduled revenue service in the U.S. The subject Compliant DMU must meet all of the current requirements of 49 CFR part 238, as amended; compliance via "grandfathering" is not acceptable for the purposes of this announcement.

**DATES:** All submissions of Statements of Interest must be received in FRA's offices by close of business Thursday, April 23, 2004. The deadline for the submission of applications will be noted in the solicitation from FRA to prospective grantees as a result of the evaluation of the Statements of Interest.

**ADDRESSES:** Applicants must submit an original and six (6) copies to the Federal Railroad Administration at one of the following addresses:

Postal address (note correct ZIP Code): Federal Railroad Administration, Attention: Robert L. Carpenter, Office of Procurement Services (RAD-30), Mail Stop #50, 1120 Vermont Ave., NW., Washington, DC 20590.

FedEx/courier address (note correct ZIP Code): Federal Railroad Administration, Attention: Robert L. Carpenter, Office of Procurement Services (RAD-30), Room # 6126, 1120 Vermont Ave., NW., Washington, DC 20005.

Due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are encouraged to use other means to assure timely receipt of materials.

**FOR FURTHER INFORMATION CONTACT:** Steve Sill, Program Manager, Office of Railroad Development (RDV-11), Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Phone: (202) 493-6348; Fax: (202) 493-6330, or Robert Carpenter, Grants Officer, Office of Acquisition and Grants Services (RAD-30), Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Phone: (202) 493-6153; Fax: (202) 493-6171.

**SUPPLEMENTARY INFORMATION:** The demonstration will be supported with up to \$4,970,500 of Federal funds provided to FRA's Next Generation High-Speed Rail Program, as part of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (included as Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199 (January 23, 2004))). The Federal funds must be matched on a dollar-for-dollar basis from non-Federal sources. FRA anticipates soliciting one or two grant applications and awarding one or two grants for the demonstration to eligible participants,

with the intent of beginning demonstration during calendar year 2004. The funds made available under this grant will be available for activities related to establishing compliance of the DMU design with existing Federal passenger safety standards (49 CFR part 238, as amended), for the acquisition of DMUs through a conventional competitive procurement process, and for service facilities necessary for revenue service demonstration. The grantee will be responsible for all other expenses of the demonstration, including the cost of passenger facilities and any net operating expenses. FRA anticipates that no further public notice will be made with respect to selecting applicants for this demonstration.

**Purpose:** There is substantial interest in the expanded use of passenger rail service to help address congestion in other modes of transportation and/or to provide for additional alternatives to meet current and future mobility needs. Transportation planners and decision makers have expressed an interest in alternatives to locomotive hauled trains, which are currently the most prevalent form of passenger rail transportation in areas where electric operation is not available. Historically, DMUs were available for this purpose, but none has entered service domestically since FRA issued the Passenger Equipment Safety Standards Final Rule on May 12, 1999. Indeed, no DMUs had been built new in the U.S. for decades before the issuance of that rule. The purpose of the demonstration is to determine whether the current state of railroad technology development offers the availability, in the very near term, of a DMU self-propelled passenger car that meets current Federal passenger car safety standards found at 49 CFR part 238, as amended. If such technology is available, the demonstration will develop technology-specific cost, maintenance, reliability and operating data to help transportation planners and decision makers determine whether a Compliant DMU should be considered as an option for rail-based transportation. The equipment must meet all of the current requirements of 49 CFR part 238, as amended; compliance via "grandfathering" is not acceptable for the purposes of this announcement.

**Authority:** The authority for the Program can be found in title 49, United States Code, section 26102 and in the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (included as Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199 (January 23, 2004))). The Secretary of Transportation's responsibilities under this