

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

[Docket Nos. FMCSA-99-6156 (OMCS-99-6156), FMCSA-2000-7006, and FMCSA-2000-7165]

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 announces the FMCSA's decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 76 individuals.

DATES: This decision is effective September 21, 2002. Comments from interested persons should be submitted by October 9, 2002.

ADDRESSES: You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. You can also submit comments as well as view the submissions of other commenters at <http://dms.dot.gov>. Please include the docket numbers that appear in the heading of this document in your submission. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped envelope or postcard or print a copy of the acknowledgement page that appears after you submit comments electronically.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, 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. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Background**

Seventy-six individuals have requested renewal of their exemptions from the vision requirement in 49 CFR 391.41(b)(10) which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. Under 49 U.S.C.

31315 and 31136(e), the FMCSA may renew 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." Accordingly, the FMCSA has evaluated the 76 petitions for renewal on their merits and decided to extend each exemption for a renewable 2-year period. The names of the applicants for exemption are listed in Table 1 under the section entitled "Conclusion."

On January 3, 2000, the agency published a notice of final disposition announcing its decision to exempt 40 individuals, including 3 of these applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10) (65 FR 159). The qualifications, experience, and medical condition of each applicant were stated and discussed in detail at 64 FR 54948 (October 8, 1999). Two comments were received, and their contents were carefully considered by the agency in reaching its final decision to grant the petitions (65 FR 159). On September 21, 2000, the agency published a notice of final disposition announcing its decision to exempt 56 individuals, including 31 of these applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10) (65 FR 57230). The qualifications, experience, and medical condition of each applicant were stated and discussed in detail at 65 FR 20245 (April 14, 2000). Three comments were received, and their contents were carefully considered by the agency in reaching its final decision to grant the petitions (65 FR 57230). Also on September 21, 2000, the agency published a second notice of final disposition announcing its decision to exempt 60 individuals, including 42 of these applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10) (65 FR 57234). The qualifications, experience, and medical condition of each applicant were stated and discussed in detail at 65 FR 33406 (May 23, 2000). One comment was received, and its contents were carefully considered by the agency in reaching its final decision to grant the petitions (65 FR 57234). The agency determined that exempting the individuals from 49 CFR 391.41(b)(10) was likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption as long as the vision in each applicant's better eye continued to meet the standard specified in 49 CFR 391.41(b)(10). As a condition of the exemption, therefore, the agency imposed requirements on the

individuals similar to the grandfathering provisions in 49 CFR 391.64(b) applied to drivers who participated in the agency's former vision waiver program.

These requirements are as follows: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that vision in the better eye meets the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests 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.

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 76 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 54948, 65 FR 159, 65 FR 20245, 65 FR 33406, 65 FR 57230, 65 FR 57234), and each has requested timely renewal of the exemption. Each of these 76 applicants 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 a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption for each renewal applicant.

Discussion of Comments

Advocates for Highway and Auto Safety (Advocates) expresses 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). We will not address these points again here, but refer interested parties to that earlier discussion.

Conclusion

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA extends the exemptions from the vision requirement in 49 CFR 391.41(b)(10) granted to the individuals listed in Table 1 below:

TABLE 1.—APPLICANTS FOR EXEMPTION FROM § 391.41(B)(1) VISION REQUIREMENTS

Elijah A. Allen, Jr	James W. Frion	Larry D. Johnson	Wayne R. Sears.
John W. Arnold	Marcellus A. Garland	Marvin L. Kiser, Jr	Lee R. Sidwell
James H. Bailey	Shawn G. Gaston	David R. Lambert	David L. Slack.
Victor F. Brast, Jr	James F. Gereau	James R. Lanier	Philip Smiddy.
John P. Brooks	George J. Ghigliotty	Ronnie L. LeMasters	James C. Smith.
Benny J. Burke	Ronald E. Goad	James S. Lewis	Daniel A. Sohn.
Derric D. Burrell	Esteban G. Gonzalez	Steven G. Luther	James N. Spenser, Jr.
Monty G. Calderon	Harlan L. Gunter	Lewis V. McNeice	Roger R. Strehlow.
Anthony J. Cesternino	Thanh Van Ha	Duane D. Mims	John T. Thomas.
Milton Coleman	Reginald I. Hall	William A. Moore, Jr	Darel E. Thompson.
Adam D. Craig	James O. Hancock	Barry B. Morgan	Ralph A. Thompson.
Eric L. Dawson III	Paul A. Harrison	Leonard J. Morton	Denney V. Traylor.
Roger A. Dennison	Sherman W. Hawk, Jr	Kevin J. O'Donnell	Noel S. Wangerin.
Richard L. Derick	Daniel J. Hillman	Gregory M. Preves	Brian W. Whitmer.
Craig E. Dorrance	Thomas J. Holtmann	James M. Rafferty	Jeffrey D. Wilson.
Joseph A. Dunlap	Gordon W. Howell	Richard O. Rankin	Larry M. Wink.
John C. Edwards, Jr	Roger L. Jacobson	Paul C. Reagle, Sr	Joseph F. Wood.
Calvin J. Eldridge	Robert C. Jeffres	Doyle R. Roundtree	William E. Woodhouse.
Willie P. Estep	Alfred C. Jewell, Jr	Daniel Salinas	Rick A. Young.

The exemption is subject to the following conditions: (1) Each individual must 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) Each individual must 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) Each individual must 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).

Request for Comments

The FMCSA has evaluated the qualifications and driving performance

of each of the 76 applicants here and extends their exemptions based on the evidence introduced. The agency will review any comments received 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). While comments of this nature will be entertained at any time, the FMCSA requests that interested parties with information concerning the safety records of these drivers submit comments by October 9, 2002. All comments will be considered and will be available for examination as stated in the ADDRESSES section. The FMCSA will also continue to file in the docket relevant information that becomes available.

Issued on: September 9, 2002.
Brian M. McLaughlin,
Associate Administrator, Policy and Program Development.
 [FR Doc. 02-22826 Filed 9-6-02; 8:45 am]
BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2002-12294]

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 49 CFR 391.41(b)(10).

DATES: September 9, 2002.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, you may contact Ms. Sandra Zywockarte, Office of Bus and Truck Standards and Operations, (202) 366-2987, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. 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>.