

*Affected Public:* All U.S. air carriers, foreign air carriers, computer reservations systems, travel agents doing business in the United States and the traveling public.

*Comments are invited on:* (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on the respondents, including through the use of automated techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC, on August 19, 2002.

**Michael Robinson,**

*Program Analyst.*

[FR Doc. 02-21467 Filed 8-21-02; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Review Under 49 U.S.C. 41720 of United/US Airways Agreements

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Extension of waiting period.

**SUMMARY:** United Air Lines and US Airways have submitted code-sharing and frequent flyer program reciprocity agreements to the Department for review under 49 U.S.C. 41720. That statute requires such agreements between major U.S. passenger airlines to be submitted to the Department at least thirty days before the agreements' proposed effective date and authorizes the Department to extend the waiting period for any such agreement. The Department has determined to extend the waiting period for the United/US Airways agreements for an additional thirty days.

**FOR FURTHER INFORMATION CONTACT:** Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366-4731.

**SUPPLEMENTARY INFORMATION:** As provided by 49 U.S.C. 41720, on July 25 United and US Airways submitted code-sharing and frequent flyer program reciprocity agreements to the Department more than thirty days before the airlines planned to implement them.

The statute authorizes us to extend the waiting period by 150 days with respect to a code-sharing agreement and by 60 days for the other types of agreements covered by the advance-filing requirement.

We have been reviewing the agreements, the comments submitted by outside parties, and other information in our possession, and we have been consulting with the Justice Department. We have also given interested parties an opportunity to submit comments on the agreements. 67 FR 50745 (August 5, 2002). As has been the case with respect to all agreements submitted under 49 U.S.C. 41720 since its enactment, our review of the United/US Airways agreements has been informal. *See* 67 FR 50745.

The purpose of our review is to see whether we should begin a formal investigation under section 41712 of the arrangements between United and US Airways, or take other action as a result of the agreements. United and US Airways will not need to obtain our approval before implementing their agreements after the end of the statutory waiting period (either the original waiting period or any extended period established by us). To block two airlines from implementing an agreement, we would normally need to issue an order under 49 U.S.C. 41712 (formerly section 411 of the Federal Aviation Act) in a formal enforcement proceeding that determines that the agreement's implementation would be an unfair or deceptive practice or unfair method of competition that would violate that section. Our informal review of the agreements accordingly focuses on whether they would significantly reduce competition.

We have concluded that we need additional time to determine whether the agreements or specific provisions in the agreements raise questions under 49 U.S.C. 41712 that may require us to request modifications of the agreements or to institute an enforcement proceeding. The agreements present important issues that require additional investigation by us. We have therefore determined to extend the waiting period by another thirty days, from August 24 to September 23. We understand that the two airlines wish to be able to implement the agreements promptly, and we therefore intend to conclude our review as soon as reasonably possible.

We recognize that the Air Carrier Association of America ("ACAA") filed a motion to suspend proceedings and open a docket. ACAA argues that all information relating to the application should be made public, including all discussions between US Airways and

the Air Transportation Stabilization Board ("ATSB"), the board that is considering a loan guarantee application filed by United and that has conditionally approved a loan guarantee application filed by US Airways. Docket OST-2002-12986. We have given ACAA and all other interested persons the ability to comment on the United/US Airways agreements. If ACAA has evidence and analysis indicating that the United/US Airways agreements in whole or in part may involve unfair methods of competition, it has had the opportunity to submit that material for our consideration.

In addition, the ACAA motion incorrectly assumes that the ATSB based its conditional approval of the US Airways application on the airline's ability to implement its agreements with United. The letter released by the ATSB did not make the implementation of those agreements a necessary condition to approval of the loan guarantee application. The ATSB has been expressly informed and is fully aware that this Department and the Justice Department have independent responsibilities for preventing unlawful anti-competitive conduct in the airline industry and that this Department has other independent regulatory responsibilities over the airline industry and the airports used by commercial airlines. This Department intends to carry out all of its regulatory responsibilities regarding the agreements before it completely independent of any matters that may or may not be pending before the ATSB.

Issued in Washington, DC, on August 19, 2002.

**Read C. Van de Water,**

*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 02-21555 Filed 8-20-02; 2:43 pm]

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2002-12432]

#### Application for Exemptions From Driver Physical Qualification Standards From Jerry Parker

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

**ACTION:** Notice of application for exemptions; request for comments.

**SUMMARY:** The FMCSA requests public comment on a request for an exemption application from the Federal standards for vision and for the loss or impairment

of limbs by Mr. Jerry Parker. Mr. Parker does not meet the vision requirements because of severe vision loss in his right eye. He does not meet the physical qualification requirements for the loss or impairment of limbs because he is missing his left arm and is unable to demonstrate power grasp prehension and precision prehension with each upper limb separately. In order for Mr. Parker to operate a commercial motor vehicle (CMV) in interstate commerce, he must be granted an exemption from both requirements. Mr. Parker believes his driving record indicates that a level of safety can be achieved that is equivalent to, or greater than, the level of safety that would be obtained by complying with the standards for vision and for loss or impairment of limbs set forth in the Federal Motor Carrier Safety Regulations.

**DATES:** We must receive your comments on or before September 23, 2002.

**ADDRESSES:** You can mail or hand 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 see the submission of other commenters at <http://dmses.dot.gov>. Please include the docket number that appears in the heading of this document. 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 postcard or print a copy of the acknowledgement page that appears after you submit comments electronically.

**FOR FURTHER INFORMATION CONTACT:** For information about the exemptions in this notice, you may contact Ms. Kaye Kirby, Office of Bus and Truck Standards and Operations, (202) 366-3109; Federal Motor Carrier Safety Administration, 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**

Sections 31315 and 31136 of title 49 of the United States Code (U.S.C.) provide the FMCSA with authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). An exemption provides time-

limited regulatory relief from one or more FMCSRs given to a person or class of persons subject to the regulations, or who intend to engage in an activity that would make them subject to the regulations. An exemption provides the person or class of persons with relief from the regulations for up to two years, and may be renewed. Sections 31315 and 31136(e) of 49 U.S.C. require the agency to consider whether the terms and conditions for the exemption would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulations when evaluating applications for exemptions.

In addition, the agency must publish a notice in the **Federal Register** for each exemption requested, explaining the request that has been filed; providing the public with an opportunity to inspect the safety analysis and any other relevant information known to the agency; and requesting public comment on the exemption. Before granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period and all terms and conditions of the exemption. The terms and conditions established by FMCSA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, FMCSA published an interim final rule implementing section 4007 of the Transportation Equity Act for the 21st Century (TEA-21)(codified at 49 U.S.C. 31315) (See 63 FR 67600). The regulations at 49 CFR part 381 establish the procedures to be followed to request waivers and to apply for exemptions from the FMCSRs, and the provisions used to process them.

**Mr. Parker's Request for Regulatory Relief**

Mr. Parker applied for a vision waiver from the FHWA in 1996, under the agency's authority to grant waivers to regulations promulgated under the Motor Carrier Safety Act of 1984. That authority has since been superseded by 49 U.S.C 31315. The criteria for obtaining a vision waiver was established under the agency's former Vision Waiver Program and included a provision that applicants for vision waivers meet all other physical qualification requirements under 49 CFR 391.41. When the agency discovered that Mr. Parker's left arm

had been amputated at the shoulder, his application for a vision waiver was denied. The agency indicated that it lacked sufficient evidence to determine if someone with both a vision impairment and limb impairment could safely operate a CMV. Subsequently, the agency has learned that Mr. Parker may have some degree of impairment in his right arm

Mr. Parker filed a Petition for Review with the United States Court of Appeals for the Sixth Circuit arguing that denial violated the Rehabilitation Act because the FMCSA did not perform an individualized inquiry into the merits of Mr. Parker's petition. On March 17, 2000, the Court ruled that the agency's administrative decision was arbitrary and capricious, and a violation of the Rehabilitation Act (*Jerry W. Parker v. United States Department of Transportation*, 207 F. 3d 359 (6th Cir. 2000)). The Court was concerned that the decision not to assess Mr. Parker's actual driving capabilities was not consistent with the agency's prior determination under the vision waiver program that the best predictor of future performance by a driver was the driver's past record of accidents and traffic violations. The court concluded that agency failure to assess Mr. Parker's actual driving capability created a per se rule against granting vision waivers to individuals with multiple disabilities. The Sixth Circuit remanded the case to FMCSA to create a functional capacity test that relies upon our finding that an individual's driving record is indicative of future performance.

In response to the Court's ruling, FMCSA is currently considering requests for exceptions to the physical qualifications standards from drivers with multiple disabilities, to be applications for exemptions. Each disability that would preclude the driver from complying with the physical qualifications standards should be considered separately with regard to the agency's process for determining whether to grant or deny the petition upon review of public comments. The agency has made a preliminary decision to use the existing procedures under 49 CFR part 381.

Consistent with the agency's preliminary decision concerning drivers with multiple disabilities, the agency is considering Mr. Parker's request as: (1) An application for an exemption from the vision standard under section 391.41(b)(10); and (2) an application for an exemption from the standard for the loss of limbs at section 391.41(b)(1).

Section 391.41(b)(10) requires a person to have distant vision acuity of at least 20/40 (Snellen) in each eye with

or without corrective lenses; and distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses; and field of vision of at least 70 degrees 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. Section 391.41(b)(1) requires that a person have no loss of foot, leg, hand, or arm, or alternatively, be granted a skill performance evaluation (SPE) certificate [previously called a "waiver"] pursuant to section 391.49. The alternative physical qualification standards for the loss or impairment of limbs, at 49 CFR 391.49(d)(3)(i)(B), include a requirement that applicants for SPE certificates include with their application a medical evaluation summary that, "\* \* \* the applicant is capable of demonstrating precision prehension (e.g. manipulating knobs and switches) and power grasp prehension (e.g. holding and maneuvering the steering wheel) with each upper limb separately."

Mr. Parker does not meet the vision requirements because of a congenital eye condition known as Coats disease in his right eye. His ability to see with his right eye is below that which could be measured on the standard Snellen chart. However, he has corrected vision of 20/20 in his left eye. Mr. Parker does not meet the physical qualification requirements for the loss of limbs and he is unable to demonstrate precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately. Under current regulations at 49 CFR 391.41/391.49, Mr. Parker would need to use a prosthetic device in order to demonstrate precision and power grasp prehension. He does not use a prosthetic device to assist in operating CMVs. Mr. Parker's left arm was amputated above the elbow. His right arm has severe scarring and he has had multiple surgeries on this arm as a result of the injuries sustained in the accident that necessitated the amputation of the left arm.

Mr. Parker stated that he has driven safely over 1.2 million miles in a CMV since 1985. He has no accidents and no traffic violations on his driving record.

#### Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment from all interested parties on Mr. Parker's application for an exemption from the Federal standards for vision and for the loss of limbs. Interested persons should

consider each exemption separately, to the greatest extent practicable. FMCSA also requests comments on our plan to assess individual physical impairments separately (only vision and limb). We have not yet made a final decision on potential diabetic exemptions and today's notice pronounces no proposal on how to handle those situations. The agency may grant or deny either or both requests based on the comments received, and any other relevant information that is available to the agency.

Issued on: August 19, 2002.

**Pamela M. Pelcovits,**

*Director, Office of Policy Plans and Regulation.*

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**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket Number: MARAD-200213161]

#### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SPIRIT.

**SUMMARY:** As authorized by Public Law 105-383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

**DATES:** Submit comments on or before September 23, 2002.

**ADDRESSES:** Comments should refer to docket number MARAD-2002-13161. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001.

You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR-832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-2307.

**SUPPLEMENTARY INFORMATION:** Title V of Public Law 105-383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

#### Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: SPIRIT. Owner: Pamela L. Benson (in process of vessel purchase, sale final 9/10/2002).

(2) Size, capacity and tonnage of vessel. According to the applicant: "Gross Tonnage: 14, Net Tonnage: 13, Length: 41 feet, Hull Depth: 5.7 feet, Hull Breadth: 12.7 feet."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Sail Training, targeted but not exclusive to, youth and women. Geographic Area: Puget Sound, San Juan Islands."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1986. Place of construction: Richmond, BC, Canada.

(5) A statement on the impact this waiver will have on other commercial