

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration**

[FHWA Docket No. FHWA-98-4334]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of petitions and intent to grant applications for exemption; request for comments.

SUMMARY: This notice announces the FHWA's preliminary determination to grant the applications of 24 individuals for an exemption from the vision requirements in the Federal Motor Carrier Safety Regulations. Granting 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: Comments must be received on or before December 31, 1998.

ADDRESSES: Your written, signed comments must refer to the docket number at the top of this document, and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Thomas, Office of Motor Carrier Research and Standards, (202) 366-8786, or Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366-0834, Federal Highway 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:**Electronic Access**

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from

the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the **Federal Register's** home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

Background

Twenty-four individuals have requested a waiver of the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Their requests were filed with the FHWA on various dates before June 9, 1998. When they were filed, the FHWA was authorized by 49 U.S.C. 31136(e) to waive application of the vision standard if the agency determined the waiver was consistent with the public interest and the safe operation of CMVs. Because the statute did not limit the effective period of a waiver, the agency had discretion to issue waivers for any period warranted by the circumstances of a request.

On June 9, 1998, the FHWA's waiver authority changed with enactment of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. No. 105-178, 112 Stat. 107. Section 4007 of TEA-21 amended the waiver provisions of 49 U.S.C. 31136(e) and 31315 to change the standard for evaluating waiver requests, to distinguish between a waiver and an exemption, and to establish term limits for both. Under revised section 31136(e), the FHWA may grant a waiver for a period of up to 3 months or an exemption for a renewable 2-year period. The 24 applications in this proceeding fall within the scope of an exemption request under the revised statute.

The amendments to 49 U.S.C. 31136(e) also changed the criteria for exempting a person from application of a regulation. Previously an exemption was appropriate if it was consistent with the public interest and the safe operation of CMVs. Now the FHWA may grant an exemption 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." According to the legislative history, Congress changed the statutory standard to give the agency greater discretion to consider exemptions. The previous standard was judicially construed as requiring an advance determination that absolutely no reduction in safety would result from an exemption. Congress revised the standard to require that an "equivalent" level of safety be achieved by the exemption, which would allow for more equitable resolution of such matters,

while ensuring safety standards are maintained. (See H.R. Conf. Rep. No. 105-550, at 489 (1998)).

Although the 24 petitions in this proceeding were filed before enactment of TEA-21, the FHWA is required to apply the law in effect at the time of its decision unless (1) its application will result in a manifest injustice or (2) the statute or legislative history directs otherwise. *Bradley v. School Board of the City of Richmond*, 416 U.S. 696 (1974). There is nothing in the statute, its history, or the facts in this proceeding which meets either of these two tests. In fact, the new standard is more equitable as it allows an exemption to be based on a reasonable expectation of equivalent safety, rather than requiring an absolute determination that safety will not be diminished. In addition, the "public interest" finding required under the previous standard is not necessary under the new exemption standard. These changes enhance the FHWA's discretion to consider exemptions, thus benefitting the 24 applicants rather than causing an injustice.

Although applying TEA-21's new exemption standard does not adversely affect the applicants, subjecting their applications to the new procedural requirements would adversely affect them. Section 4007 requires the Secretary of Transportation to promulgate regulations specifying the procedures by which a person may request an exemption. The statute lists four items of information an applicant must submit with an exemption petition and gives the Secretary 180 days to implement the new procedural regulations. Although the FHWA intends to meet that deadline, it would be manifestly unjust to the 24 applicants to delay publication of this notice until the new procedural regulations are in place, and then at that time, require them to submit conforming information to support their exemption request. To avoid this delay and injustice, we will not apply the new procedural requirements of Section 4007 to exemption petitions filed before its effective date, June 9, 1998.

Accordingly, the FHWA has evaluated each of the 24 exemption requests on its merits, as required by the decision in *Rauenhorst v. United States Department of Transportation, Federal Highway Administration*, 95 F.3d 715 (8th Cir. 1996), applying the new exemption standard in 49 U.S.C. 31136(e). Based on our evaluation, we have made a preliminary determination that exempting these 24 applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level

of safety equal to, or greater than, the level that would be achieved without the exemption.

Qualifications of Applicants

1. Gary R. Andersen

Mr. Andersen is a 34-year-old individual who has operated CMVs for 15 years.

A congenital irregularity called amblyopia was discovered in his left eye when he was about 9 years old, and his optometrist believes the condition was present much earlier. Because of this condition, Mr. Andersen is unable to meet the vision requirement of 49 CFR 391.41(b)(10).

A 1997 letter from the optometrist states Mr. Andersen has 20/20 vision in his right eye without glasses and 20/200 unaided in the left eye. In the optometrist's opinion, Mr. Andersen can perform the tasks necessary to operate a CMV.

Mr. Andersen holds a Nebraska commercial driver's license (CDL) with a tank vehicle endorsement. He has driven straight trucks and tractor-trailer combinations almost 1 million miles since 1982, and his driving record contains no traffic violations and no accidents in such vehicles. One of his previous employers, Gerhold Concrete Company, says Mr. Andersen "operated equipment safely" while in its employ.

2. Joe F. Arnold

Mr. Arnold, 40, has been blind in his right eye since he was 6 months old. A 1997 medical report indicates he has 20/20 vision in his left eye without glasses. In his optometrist's opinion, Mr. Arnold is capable of operating a CMV.

Mr. Arnold has been a professional truck driver for 22 years and has operated straight trucks and tractor-trailer combinations. He holds an Arkansas CDL, and his official State driving record reflects no moving violations in any vehicle. His CMV was in a collision with an automobile in February 1996. There were no injuries, and Mr. Arnold did not receive a citation.

3. Jack E. Atkinson

Mr. Atkinson is 59 years old and has been employed as a commercial truck driver for 36 years. He has a macular defect in his left eye which prevents him from meeting the vision requirement of 49 CFR 391.41(b)(10). His optometrist believes the defect is "long standing."

A 1997 examination indicates Mr. Atkinson has 20/20 vision in his right eye and 20/60 in the left eye with corrective lenses. In the optometrist's

opinion, Mr. Atkinson is capable of operating a CMV. Because the eye condition is an old one, he has had many years to adapt his driving skills to accommodate his vision deficiency.

Mr. Atkinson holds a Missouri CDL with tank vehicle and double- and triple-trailer endorsements. He has driven CMVs more than 1.2 million miles since 1961. His official driving record for the past 3 years reflects no traffic violations in a CMV and no accidents in any vehicle. Mr. Atkinson has operated straight trucks and tractor-trailer combinations for Southern Supply Company since 1981; the president of the company calls him "an outstanding employee."

4. Gary A. Barrett

Mr. Barrett, 46, was born with amblyopia in his left eye. The vision in his right eye was 20/20 with glasses in a 1998 examination. His optometrist says Mr. Barrett is able to perform the tasks necessary to operate a CMV.

Mr. Barrett has an Iowa CDL with hazardous materials and tank vehicle endorsements. He received his first commercial license in 1969 and has driven straight trucks and tractor-trailer combinations more than 900,000 miles. His official State record for the past 3 years contains no accidents and one citation for failure to obey a traffic signal.

5. Ivan L. Beal

Mr. Beal, 63, has been employed as a commercial truck driver for 29 years. He has had amblyopia in his right eye since he was a child. Because of this eye condition, Mr. Beal is unable to meet the Federal vision requirement.

A 1997 medical report indicates Mr. Beal has 20/200 vision in his right eye and 20/20 vision in the left eye with corrective lenses. His optometrist states Mr. Beal has the skills to operate a CMV safely. Having had amblyopia since childhood, he has had almost his entire life to adapt to it.

He has driven tractor-trailer combinations and straight trucks approximately 2.4 million miles since 1968. He has a Nebraska CDL and his driving record for the past 3 years reflects no traffic violations and no accidents. Mr. Beal operates CMVs for his family's company and intends to continue driving for it if his exemption is granted.

6. Johnny A. Beutler

Mr. Beutler, 53, has amblyopia of the right eye and cannot meet the Federal vision standard. A 1997 examination by an optometrist revealed the vision in his left eye to be 20/20 without correction;

the amblyopic right eye measures 20/400 unaided. The optometrist stated Mr. Beutler has had the condition for many years and has had "no difficulty performing the appropriate driving skills" in a CMV.

Mr. Beutler is self-employed and holds a South Dakota CDL. He has driven more than 2.6 million miles in a 35-year professional driving career and has operated straight trucks and tractor-trailer combinations. His official State driving record reflects no traffic citations in any vehicle for the past 5 years. In 1996, his CMV was involved in an accident. There was property damage but there were no injuries, and he did not receive a citation.

7. Richard D. Carlson

Mr. Carlson lost the sight in his right eye when he was 11 years old. Now 51, his vision in the left eye is 20/15 without glasses, according to a 1997 examination. His ophthalmologist states Mr. Carlson can operate a CMV.

Mr. Carlson holds a Minnesota CDL with hazardous materials and tank vehicle endorsements. He is a self-employed owner-operator who has driven tractor-trailer combination vehicles for 20 years and 2 million miles. His official State driving record reveals no traffic citations or accidents in a CMV.

8. David John Collier

Mr. Collier, 42, has been blind in his right eye since 1970. His left eye was measured at 20/20 with glasses in a 1998 examination, and the optometrist says Mr. Collier has "adapted very well" to his condition and can perform the tasks required to operate a CMV.

David Collier has an Iowa CDL with a tank vehicle endorsement. He has operated tractor-trailer combination vehicles for 4 years and has driven them more than 400,000 miles. His official State driving record lists no moving violations and no accidents in a CMV. Like the other applicants, Mr. Collier's safe driving record indicates he has adjusted successfully to his vision impairment.

9. Tomie L. Estes

Mr. Estes is a 40-year-old individual who has been blind in his left eye since he was 10. He has 20/25 unaided vision in his right eye and 20/15 with corrective lenses, according to a 1998 examination. The optometrist who conducted the examination asserts Mr. Estes is able to drive a CMV.

Mr. Estes has 24 years' experience operating tractor-trailer combinations and 10 years of experience driving straight trucks. For the past 7 years, he

has operated CMVs for a company which calls him one of its top five drivers and lauds his job performance and safety record. Mr. Estes holds a Missouri CDL and has no traffic violations or accidents in the past 3 years on his official State driving record.

10. Jay E. Finney

Mr. Finney is a 50-year-old man who lost his left eye in an accident when he was 6. He has 20/25 vision in his right eye with corrective lenses. An optometrist examined him in November 1997 and asserted Mr. Finney "is able to perform the driving tasks required to operate a truck."

Mr. Finney has 20 years of experience operating straight trucks and tractor-trailer combinations. He holds a Missouri CDL with a tank vehicle endorsement and has driven more than 1 million miles in commercial vehicles. He has no traffic citations or accidents on his official driving record. Mr. Finney is a self-employed dump truck driver.

11. Britt D. Hazelwood

Mr. Hazelwood, 34, has had amblyopia in his right eye since early childhood. The vision in his left eye is 20/20 without glasses. His ophthalmologist states Mr. Hazelwood is able to perform the duties of a CMV driver.

Mr. Hazelwood has a Missouri CDL and has operated tractor-trailer combinations for 12 years and straight trucks for 16 years. He has accumulated more than 750,000 miles behind the wheel. His official State driving record reveals no accidents or citations in a CMV. This safe driving record indicates Mr. Hazelwood has adapted successfully to a vision impairment he has had almost all his life. His employer, for whom he has driven since 1987, calls him a "valuable employee."

12. Jon R. Houston

Mr. Houston, 33, has had amblyopia in his left eye since he was 4 years old. The vision in his right eye was 20/20 without glasses in a 1998 examination. His optometrist says Mr. Houston "has excellent peripheral vision" and is able to perform the tasks necessary to operate a CMV.

Mr. Houston has an Iowa CDL with a tank vehicle endorsement. He has 3 years' experience driving straight trucks and has driven tractor-trailer combinations for 11 years and more than 1 million miles. His official State driving record contains one speeding ticket and no accidents in a CMV in the past 3 years.

13. Jerome R. Jessen

Mr. Jessen, 53, has partial amblyopia in the right eye which makes him unable to meet the Federal vision standard. The condition has existed since childhood. His ophthalmologist examined him in 1997 and found Mr. Jessen's vision in the left eye to be 20/20 with glasses. The doctor says Mr. Jessen is able to perform the tasks required to operate a CMV.

Mr. Jessen is a self-employed dump truck driver with a Minnesota CDL and intrastate vision waiver. He has been a professional truck driver for 10 years and has driven 500,000 miles. There are no traffic violations or accidents in any vehicle in the past 3 years on his official driving record.

14. Chad M. Kallhoff

Mr. Kallhoff had an accident when he was 12 which left him blind in his left eye. The vision in his right eye is 20/20 without glasses. His optometrist states Mr. Kallhoff is able to perform the duties of a CMV driver.

Mr. Kallhoff, 28, has a Nebraska CDL and has operated tractor-trailer combinations for 7 years and straight trucks for 10 years. He has accumulated more than 1 million miles behind the wheel. His official driving record for the past 3 years reveals no accidents and one speeding ticket in a CMV. This safe driving record indicates Mr. Kallhoff has adapted successfully to a vision impairment he has had for more than half his life.

15. Loras G. Knebel

Mr. Knebel is a 59-year-old individual whose scar on the cornea in his left eye prevents him from meeting the vision requirement of 49 CFR 391.41(b)(10). The scar is a result of a 1981 accident. Mr. Knebel has 20/20 vision in his right eye with corrective lenses, according to a 1997 examination. The ophthalmologist who conducted the examination asserts Mr. Knebel "is able to drive any vehicle and perform any tasks" driving might require.

Mr. Knebel has 25 years' experience operating straight trucks. For the past 2 years, he has operated tractor-trailer combinations for an Iowa company and averaged 60,000 miles annually in those vehicles. He holds an Iowa CDL and has one speeding ticket and no accidents in a CMV on his official State driving record.

16. Rodney D. Lemburg

Mr. Lemburg, 41, has had amblyopia in his left eye since childhood. A 1998 examination by an ophthalmologist confirmed vision in the right eye to be 20/20 without glasses. The doctor

believes Mr. Lemburg is able to perform the tasks required to operate a CMV and is "a proper candidate to drive."

Mr. Lemburg has a South Dakota CDL with hazardous materials and tank vehicle endorsements. He has been a professional truck driver for 14 years and has driven straight trucks and tractor-trailer combination vehicles more than 2 million miles. There are no traffic violations or accidents in the past 3 years on his official driving record.

17. Dexter L. Myhre

Mr. Myhre, 54, has been blind in his left eye since 1994. His right eye was measured at 20/20 without glasses in a January 1998 examination, and the optometrist asserts Mr. Myhre can perform the tasks required to operate a CMV.

Dexter Myhre has a Minnesota CDL and intrastate vision waiver. He has operated tractor-trailer combination vehicles for almost 13 years. In the 3 years since he lost the sight in his left eye, Mr. Myhre has driven those vehicles more than 200,000 miles and has not received any traffic citations or been involved in an accident. He received a driving safety award from his employer's insurance company in 1996. Mr. Myhre has been employed by the same motor carrier since 1985; a member of its safety department says he has "excellent safety habits" and is a very capable driver whom the company would like to have on the road more frequently.

18. James H. Oppliger

Mr. Oppliger, 52, has been a commercial truck driver for 36 years. He has had an artificial right eye since 1973 and cannot meet the Federal vision requirement. He has had almost half his life to adapt to his medical condition.

A 1998 medical report indicates Mr. Oppliger has 20/20 vision in the left eye without corrective lenses. His optometrist states Mr. Oppliger can perform the tasks required to operate a CMV.

He has driven tractor-trailer combinations and straight trucks approximately 700,000 miles in his career. He has a Nebraska CDL with a tank vehicle endorsement, and his driving record for the past 3 years reflects no traffic violations and no accidents in a CMV. Mr. Oppliger is a self-employed professional driver who hauls grain and feed.

19. Stephanie D. Randels

Ms. Randels has had amblyopia of the left eye since birth. Her vision in the eye with corrective lenses has generally varied between 20/50 and 20/60 in the

past 12 years, but this is not sufficient to meet the vision standard of 49 CFR 391.41(b)(10). According to a 1998 examination, her right eye is correctable to 20/20. Her optometrist states

Ms. Randels can perform the tasks associated with driving a CMV.

Ms. Randels is 39 years old and holds a Missouri CDL with a hazardous materials endorsement. She has operated tractor-trailer combinations for 18 years and driven more than 2 million miles. She has driven for the same company for the past 10 years and has not received a moving violation or been involved in an accident. The company's safety director calls Ms. Randels "one of the safest, most conscientious drivers on the road."

20. Duane L. Riendeau

Mr. Riendeau, 50, has amblyopia in the right eye which makes him unable to meet the Federal vision standard. The condition has existed since childhood. An optometrist examined him in 1997 and found Mr. Riendeau's vision in the left eye to be 20/30 unaided and 20/20 with glasses. The doctor recommends Mr. Riendeau be permitted to continue operating a CMV.

Mr. Riendeau holds a North Dakota CDL with a tank vehicle endorsement. He has been a professional truck driver for 25 years and has driven straight trucks and combination vehicles more than 1.5 million miles. There are no traffic violations or accidents in any vehicle on his official driving record.

21. Darrell Rohlfs

Mr. Rohlfs, 38, had his left eye removed in 1988 due to a cancerous tumor. The vision in his right eye was 20/20 without glasses in a 1997 examination. His optometrist says Mr. Rohlfs is able to perform tasks necessary to operate a CMV.

Mr. Rohlfs has an Iowa CDL and has driven straight trucks and tractor-trailer combinations almost 900,000 miles in a 19-year professional driving career. Several of his employers lauded his safe driving practices. His official State record for the past 3 years contains two speeding tickets in a CMV; in each case, Mr. Rohlfs was going less than 15 miles per hour over the posted limit. He has had no accidents in any vehicle.

22. Marvin L. Swillie

Mr. Swillie is a 53-year-old man with a retinal scar in his left eye, making him unable to meet the Federal vision standard. He has 20/20 vision in his right eye with corrective lenses. An ophthalmologist examined him in 1998 and asserted Mr. Swillie is capable of driving a CMV.

Mr. Swillie has 25 years of experience operating tractor-trailer combinations; he has driven them more than 3 million miles. He holds a Nebraska CDL with hazardous materials and tank vehicle endorsements. He has no traffic citations or accidents in a CMV on his official driving record. Mr. Swillie has driven for the same company since 1987 and will continue there if his exemption is granted.

23. Larry Waldner

Mr. Waldner, 43, lost the sight in his left eye when he was 6 years old. A 1998 examination by an optometrist revealed the vision in his right eye to be 20/20 without correction. The optometrist stated Mr. Waldner "could certainly operate a commercial vehicle" despite his condition.

Mr. Waldner holds a South Dakota CDL. He has 15 years' experience operating straight trucks and has operated tractor-trailer combinations for the past 3 years. He has driven for the same company since February 1995 and intends to continue with it if he is granted an exemption. Mr. Waldner's official State driving record reflects no traffic citations or accidents in a CMV.

24. Ronald Watt

Mr. Watt, 66, lost the vision in his right eye in 1992 due to an injury. A 1997 medical report indicates he has 20/20 vision in his left eye with glasses. In his ophthalmologist's opinion, Mr. Watt is capable of operating a CMV.

Mr. Watt has operated straight trucks since he was a teenager and tractor-trailer combinations professionally since 1975. He has driven the combination vehicles 2 million miles. Mr. Watt has a North Dakota CDL with tank vehicle and double-and triple-trailer endorsements. His driving record for the past 3 years reflects no traffic violations in a CMV and no accidents in any vehicle.

Basis for Preliminary Determination To Grant Exemptions

Independent studies support the principle that past driving performance is a reliable indicator of an individual's future safety record. The studies are filed in FHWA Docket No. FHWA-97-2625 and discussed at 63 FR 1524, 1525 (January 9, 1998). We believe we can properly apply the principle to monocular drivers because data from the vision waiver program clearly demonstrates the driving performance of monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, March 26, 1996). That monocular drivers in the waiver program demonstrated their

ability to drive safely supports a conclusion that other monocular drivers, with qualifications similar to those required by the waiver program, can also adapt to their vision deficiency and operate safely.

The 24 applicants have qualifications similar to those possessed by drivers in the waiver program. Their experience and safe driving record operating CMVs demonstrate that they have adapted their driving skills to accommodate their vision deficiency. For that reason, the FHWA believes exempting these individuals from 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption as long as vision in their better eye continues to meet the standard specified in Section 391.41(b)(10). As a condition of the exemption, therefore, the FHWA proposes to impose 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 (1) that each individual be physically examined 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 he or she 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 his or her employer for retention in its driver qualification file or keep a copy in his or her driver qualification file if he or she becomes self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with revised 49 U.S.C. 31136(e), the proposed exemption for each person will be valid for 2 years unless revoked earlier by the FHWA. 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. 31136. If the exemption is effective at the end of the 2-year period, the person may apply to the FHWA for a renewal under procedures in effect at that time.

Request for Comments

In accordance with 49 U.S.C. 31136(e), the FHWA is requesting public comment from all interested parties on the exemption petitions and the matters discussed in this notice. All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue exemptions from the vision requirement to the 24 applicants and publish in the **Federal Register** a notice of final determination at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information which becomes available after the closing date. Interested persons should continue to examine the docket for new material.

Authority: 49 U.S.C. 31136 and 31315; 23 U.S.C. 315; 49 CFR 1.48.

Issued on: November 20, 1998.

Kenneth R. Wykle,

*Federal Highway Administration
Administrator.*

[FR Doc. 98-31927 Filed 11-30-98; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration**

[Docket No. NHTSA-98-4805]

Notice of Receipt of Petition for Decision That Nonconforming 1999 Harley Davidson FX, FL, and XL Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1999 Harley Davidson FX, FL, and XL motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1999 Harley Davidson FX, FL, and XL motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their

manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 31, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:**Background**

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90-009) has petitioned NHTSA to decide whether non-U.S. certified 1999 Harley Davidson FX, FL, and XL motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1999 Harley Davidson FX, FL, and XL motorcycles that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1999 Harley Davidson FX, FL, and XL motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1999 Harley Davidson FX, FL, and XL motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1999 Harley Davidson FX, FL, and XL motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model head lamp assemblies; and (b) Installation of U.S.-model taillamp assemblies and front and rear side reflectors if the vehicles are not already so equipped.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*: Installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays*: Installation of a U.S.-model speedometer/odometer calibrated in miles per hour.

The petitioner also states that a vehicle identification number plate will be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL-401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal**