

in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Preisser meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

*Brian A. Schlieckau*

Mr. Schlieckau, 45, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schlieckau meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

*Richard L. Sulzberger*

Mr. Sulzberger, 59, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sulzberger meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*Clayton F. Tapscott*

Mr. Tapscott, 40, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the

past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tapscott meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A C operator's license from Texas.

*Dirk VanStralen*

Mr. VanStralen, 64, has had ITDM since 2002. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. VanStralen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

*Henry L. Waskow*

Mr. Waskow, 64, has had ITDM since 2001. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Waskow meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Texas.

**Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the Notice.

FMCSA notes that Section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) requires the Secretary to revise its diabetes exemption program established

on September 3, 2003 (68 FR 52441).<sup>1</sup> The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: December 15, 2009.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. E9-30342 Filed 12-21-09; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**Qualification of Drivers; Exemption Applications; Vision**

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

**ACTION:** Notice of denials.

<sup>1</sup> Section 4129(a) refers to the 2003 Notice as a "final rule." However, the 2003 Notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

**SUMMARY:** FMCSA announces its denial of 92 applications from individuals who requested an exemption from the Federal vision standard applicable to interstate truck and bus drivers and the reasons for the denials. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions does not provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director Medical Programs, 202-366-4001, U.S. Department of Transportation, FMCSA, 1200 New Jersey Avenue, SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal vision standard for a renewable 2-year period if it finds “such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption.” The procedures for requesting an exemption are set out in 49 CFR part 381.

Accordingly, FMCSA evaluated 92 individual exemption requests on their merits and made a determination that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption program. Each applicant has, prior to this notice, received a letter of final disposition on his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published today summarizes the Agency’s recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denials.

The following 15 applicants lacked sufficient driving experience during the 3-year period prior to the date of their application:

Jeffrey L. Allen  
Malcom Celestine  
Dennis R. Davidson  
Michael S. Dawson  
Craig D. Delph  
William J. Gibson  
Dennis H. Heller

Cierra L. Jones  
Roberto Lozano  
Stephen V. May  
Bernard Sippin  
Mark L. St. Clair  
Vince A. Thompson  
Gregory J. Tipton  
Floyd L. Williams

The following 10 applicants did not have any experience operating a CMV:

Earl Bellfield, Jr.  
Terisa Billings  
Jeffrey T. Christman  
Diane E. Cuttler  
William Goodman, II  
Randy Hoffman  
Caroline W. Ngere  
Jose M. Orosco  
Wendell D. Risser  
Gerald Simms

The following 21 applicants did not have 3 years of experience driving a CMV on public highways with the vision deficiency:

Don R. Alexander  
Kenneth Bilby  
Quinton L. Bobo, Sr.  
Steven Bruehling  
Alberto Cano  
Christopher W. Craine  
Mark W. Crocker  
Tracy Y. Davis  
Robin L. Dothager  
Carl Fenner  
Kent Gilkerson  
Shawn M. Gregory  
Perry J. Harris  
Johnny L. Johnson  
Kevin J. Keegan  
Ernest K. Kerezi  
Edward F. Lindey, Jr.  
Shawna M. Morris  
Wesley C. Randall  
Talmadge O. Rutherford  
Gary Zoffada

The following 8 applicants did not have 3 years of recent experience driving a CMV with the vision deficiency:

Barry Barker  
Jack Evans  
Michael R. Garcia  
Ivan M. Hanna  
Keith D. Kleen  
Tom E. Slavens  
Carol P. Terry  
Douglas W. Turner

The following 13 applicants did not have sufficient driving experience over the past 3 years under normal highway operating conditions:

Charles L. Alsager, Jr.  
Roger J. Boggs  
Terry Y. Braxton  
Nathan C. Clements  
Rogelio Garcia  
Brian E. Goodwin

Jimmy L. Herron  
Darold D. Johnston  
Frederick A. Kolmorgen  
David J. Overweg  
Rick L. Robins  
Robert A. Rose  
Jesus R. Torres

One applicant, Thomas L. Matheny, had more than 2 commercial motor vehicle violations during the 3-year review period and/or application process. Each applicant is only allowed 2 moving citations.

One applicant, Michael A. Terry, has other medical conditions making him unqualified under Federal Motor Carrier Safety Regulations. All applicants must meet all other physical qualifications standards in 49 CFR 391.41(b)(1-13).

The following 4 applicants had commercial driver’s license suspensions during the 3-year review period in relation to a moving violation. Applicants do not qualify for an exemption with a suspension during the 3-year period:

John P. Crawford  
Randy Fielder  
Brandon L. McBride, Sr.  
Jason L. Meeks

Two applicants, Leland P. Armstrong and Bobbie Evans, did not hold a license which allowed operation of vehicles over 10,000 pounds for all or part of the 3-year period.

One applicant, Jerry W. Thompkins, did not have an Optometrist/Ophthalmologist willing to state that he is able to operate a commercial vehicle from a vision standpoint.

The following 10 applicants were denied for miscellaneous/multiple reasons:

Macario Escarcega  
Steven M. Guy  
Jim Kaiser  
Richard G. Lyon  
Teresa L. Miller  
Floyd D. Prater  
Jaime Roman  
Joseph M. Taylor  
Michael J. Whitesell  
Richard L. Wilson

Two applicants, Roger B. Doolin and Mark P. Huemann, were disqualified because their vision was not stable for the entire three-year review period.

Finally, the following 4 applicants met the current federal vision standards. Exemptions are not required for applicants that meet the current regulations for vision:

Patricia Duncan  
Michael A. Sherbourne  
Robert J. Snowden, Jr.  
Michael T. Thompson

Issued on: December 15, 2009.

Larry W. Minor,

Associate Administrator for Policy and  
Program Development.

[FR Doc. E9-30343 Filed 12-21-09; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Ex Parte No. 290 (Sub-No. 5) (2010-1)]

#### Quarterly Rail Cost Adjustment Factor

**AGENCY:** Surface Transportation Board.

**ACTION:** Approval of rail cost adjustment factor.

**SUMMARY:** The Board has approved the first quarter 2010 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter 2010 RCAF (Unadjusted) is 1.038. The first quarter 2010 RCAF (Adjusted) is 0.467. The first quarter 2010 RCAF-5 is 0.443.

**DATES:** *Effective Date:* January 1, 2010.

#### FOR FURTHER INFORMATION CONTACT:

Pedro Ramirez, (202) 245-0333. Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

Additional information is contained in the Board's decision, which is available on our Web site <http://www.stb.dot.gov>. Copies of the decision may be purchased by contacting the office of Public Assistance, Governmental Affairs, and Compliance at (202)-245-0235. Assistance for the hearing impaired is available through FIRS at 1-800-877-8339.

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: December 16, 2009.

By the Board, Chairman Elliott, Vice Chairman Nottingham, and Commissioner Mulvey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9-30361 Filed 12-21-09; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Ex Parte No. 684]

#### Solid Waste Rail Transfer Facilities

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice.

**SUMMARY:** This decision provides the factual basis for the Board's certification under 5 U.S.C. 605(b) of the Regulatory Flexibility Act that the interim rules governing the submission and review of applications for land-use-exemption permits and related filings under 49 CFR 1155 will not have a significant economic impact on a substantial number of small entities.

**DATES:** Comments on the factual basis for the Board's Regulatory Flexibility Act certification are due by January 6, 2010, and reply comments are due by January 19, 2010.

**ADDRESSES:** Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 684, 395 E Street, SW., Washington, DC 20423-0001. Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

#### FOR FURTHER INFORMATION CONTACT:

Valerie Quinn at (202) 245-0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** The Clean Railroads Act of 2008, Public Law No. 110-432, 122 Stat. 4848 (Clean Railroads Act or CRA), enacted October 16, 2008, removed from the jurisdiction of the Surface Transportation Board the regulation of solid waste rail transfer facilities,<sup>1</sup> except as provided for in that act. The CRA limited the Board's authority with regard to solid waste rail

<sup>1</sup> The CRA defines a solid waste transfer facility as including the portion of a facility: (1) That is owned or operated by or on behalf of a rail carrier; (2) where solid waste is treated as a commodity transported for a charge; (3) where the solid waste is collected, stored, separated, processed, treated, managed, disposed of, or transferred; and (4) to the extent that solid-waste activity is conducted outside of the original shipping container. 49 U.S.C. 10908(e)(1)(H)(i).

transfer facilities to the issuance of land-use-exemption permits, a license that preempts a facility from compliance with state laws, regulations, orders, and other requirements affecting the siting of the facility.<sup>2</sup> On January 14, 2009, the Board served a notice of proposed rulemaking that set forth proposed procedures governing the submission and review of applications for land-use-exemption permits and related filings. *See Solid Waste Rail Transfer Facilities*, STB Ex Parte No. 684 (STB served Jan. 14, 2009) (*January 14 Notice*). Pursuant to 49 U.S.C. 10909(b), those proposed rules serve as the current interim rules.

In accordance with 5 U.S.C. 605(b) of the Regulatory Flexibility Act, we certified in the *January 14 Notice* that the proposed action would not have a significant economic impact on a substantial number of small entities. The Board also sought comment on the interim rules and the Board's interpretation of the CRA. During the time period allotted for comments, we received a request that we publish the factual basis for our certification and allow comments on it. *See Salem Rail Logistics Comments* at 3.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, generally requires a description and analysis of new rules that will have a significant economic impact on a substantial number of small entities. In drafting a rule an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. 5 U.S.C. 601-604. When proposing new rules, the agency must either include an initial regulatory flexibility analysis, 5 U.S.C. 603(a), or certify that the proposed rule will not have a "significant impact on a substantial number of small entities," 5 U.S.C. 605(b). The impact must be a direct impact on small entities "whose conduct is circumscribed or mandated" by the proposed rule. *White Eagle Coop. Ass'n v. Conner*, 553 F.3d 467, 480 (7th Cir. 2009).

In the *January 14 Notice*, the Board certified that the interim rules would not have a significant economic impact on a substantial number of small entities. The basis for that determination is as follows. While applicants for land-use-exemption permits could be small entities, as defined in 13 CFR Part 121, nothing in the interim rules gives the

<sup>2</sup> The Board, however, has the authority to require as a condition of the permit compliance with State laws, regulations, orders, and other requirements that affect the siting of a facility. 49 U.S.C. 10909(f).