

ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 33 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

FMCSA received four comments in this proceeding. The comments were considered and discussed below.

Three of the comments received were in favor of granting the Federal vision exemption to Mr. Forrest L. Wright. The fourth comment, from an anonymous individual, was in favor of the Federal Vision Program and was of the opinion that the current Federal Vision standard should be changed and updated.

In response to the fourth comment, Congress established a Medical Review Board (MRB) to provide FMCSA with advice and recommendations on medical standards and guidelines for the physical qualifications of CMV drivers [49 U.S.C. 31149(a)]. The Agency is currently evaluating the MRB's recommendations regarding the current vision standard; the opinions of medical research panels; and evidence reports related to vision.

### Conclusion

Based upon its evaluation of the 33 exemption applications, FMCSA exempts James M. Andrews, Michael L. Ayers, Todd J. Berglund, Sr., George M. Callahan, William D. Cardiff, Paul V. DaLuisio, Richard DiStaola, Tracy A. Doty, Vincent C. Durazzo, Jr., Matthew A. Ericson, Breck L. Falcon, Charles W. Hillyer, Stephen R. Jackson, Wesley J.

Jenkins, Richard H. Johnson, Darrel R. Martin, James W. McGhee, Felix L. McLean, James P. Mittlefehldt, Robert E. Morrison, Pahl M. Olson, Craig P. Osborn, Jeremy L. Perry, Wayne G. Resch, Brad E. Robrock, James L. Rooney, James E. Russell, Robert C. Sellers, Jr., James A. Smith, Richard Sturk, Wayne A. Whitehead, Charles F. Wotring, and Forrest L. Wright 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. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by 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. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: March 27, 2009.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

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**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA-1999-5578; FMCSA-2000-8398; FMCSA-2002-13411; FMCSA-2004-17984; FMCSA-2004-19477; FMCSA-2005-20027; FMCSA-2006-26066; FMCSA-2006-25246; FMCSA-2007-27333]**

### Qualification of Drivers; Exemption Applications; Vision

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

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

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 22 individuals. 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 exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained

without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective May 7, 2009. Comments must be received on or before May 6, 2009.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-1999-5578; FMCSA-2000-8398; FMCSA-2002-13411; FMCSA-2004-17984; FMCSA-2004-19477; FMCSA-2005-20027; FMCSA-2006-26066; FMCSA-2006-25246; FMCSA-2007-27333, using any of the following methods.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the On-Line instructions for submitting comments.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments On-Line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000

(65 FR 19476). This information is also available at <http://DocketInfo.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 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 renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-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 procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

##### **Exemption Decision**

This notice addresses 22 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 22 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Rex A. Botsford  
Roger C. Carson  
Robert A. Casson  
Gregory L. Cooper  
Kenneth D. Craig  
Christopher A. Deadman  
Jerald O. Edwards  
David R. Gross  
George Harris  
Francisco J. Jimenez  
Kenneth C. Keil  
Paul R. Kerpsie  
Melvin A. Kleman  
Roosevelt Lawson  
Emanuel N. Malone  
Roberto E. Martinez  
Richard W. Mullenix  
George K. Sizemore  
James A. Strickland  
Clarence L. Swann, Jr.  
Kerry W. VanStory  
Manuel A. Vargas

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination 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 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 two years unless rescinded earlier by 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. 31136(e) and 31315.

##### **Basis for Renewing Exemptions**

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 22 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR 51568; 66 FR 48504; 65 FR 78256; 66 FR 16311; 68 FR 13360; 70 FR 12265; 72 FR 11426; 72 FR 11425; 67 FR 76439; 68 FR 10298; 70 FR 7543; 72 FR 18726; 69 FR 33997; 69 FR 61292; 72 FR 184; 69 FR 64806; 70 FR 2705; 72 FR 5489; 70 FR 2701; 70 FR 16887; 70 FR 12666; 71 FR 63379; 72 FR 1050; 72 FR 180; 72 FR 9397; 72 FR 12666; 72 FR 25831). Each of these 22 applicants has requested renewal of the exemption and 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 two 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, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

##### **Request for Comments**

FMCSA will review comments received at any time 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. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by May 6, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 22 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: March 31, 2009.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

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