

Issued in Kansas City, Missouri, on March 25, 2002.

James E. Jackson,

*Acting Manager, Small Airplane Directorate,
Aircraft Certification Service.*

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA-2001-9706]

Outdoor Advertising Control

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of amended Federal/State agreement.

SUMMARY: The Federal Highway Administration agrees with the Oregon Department of Transportation (ODOT) that the Highway Beautification Federal/State Agreement, dated August 26, 1974, between the United States of America and the State of Oregon should be amended to allow tri-vision signs, adjacent to routes controlled under the Highway Beautification Act. This change will be consistent with State law. A copy of the amended agreement will be mailed to the State of Oregon for execution.

FOR FURTHER INFORMATION CONTACT: Mr. John Burney, Office of Real Estate Services, HRE-20, (202) 366-5853; or Mr. Robert Black, Office of Chief Counsel, HCC-31, (202) 366-1359, Federal Highway Administration, 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 may 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. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may be downloaded, using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's web page at: <http://www.access.gpo.gov/nara>.

Background

The Highway Beautification Act of 1965, Public Law 89-285, 79 Stat. 1028, Oct. 22, 1965, as amended (HBA), partially codified at 23 U.S.C. 131, requires the States to provide effective control of outdoor advertising in the areas adjacent to the Interstate System, the Federal-aid primary system in existence on June 1, 1991, and the National Highway System.¹ States must provide effective control of outdoor advertising as a condition of receiving their full apportionment of Federal-aid highway funds.

Outdoor advertising may be allowed by a State in zoned or unzoned commercial or industrial areas. Signs in such areas must conform to the requirements of an agreement between the State and the Federal Government, through the FHWA, which establishes size, lighting and spacing criteria consistent with customary use. The agreement between Oregon and the FHWA was executed on August 26, 1974. The 1974 Agreement includes the provision that "No sign shall contain, include or be illuminated by any flashing intermittent, revolving, rotating or moving light or lights or moves or has any animated or moving parts."²

On July 28, 1999, the 70th Oregon Legislative Assembly passed Senate Bill 855, which made an exception in Oregon's outdoor advertising control law to allow tri-vision signs (1999 Or. Rev. Stat. Vol. 9, amending title 31, ORS, chap. 377. See Or. Rev. Stat., title 31, sections 377.710 and 377.720(d)). Tri-vision signs are composed of a series of three-sided rotating slats arranged side by side, either horizontally or vertically, that are rotated by an electromechanical process, capable of displaying a total of three separate and distinct messages, one message at a time. Prior to this change, outdoor advertising signs subject to Oregon's law could not have moving parts. This change created an exception for the tri-vision sign.

In July 1996, the FHWA issued a policy memorandum³ indicating that the FHWA will concur with a State that can reasonably interpret its State/

¹ The National Highway System, described in 23 U.S.C. 103(b), consists of the Interstate Highway System and other urban and rural principal arterial routes.

² The agreement between the State of Oregon and the FHWA is available on-line through the Document Management System (DMS) at the following URL: <http://dms.dot.gov> under FHWA Docket No. FHWA-2001-9706.

³ The 1996 FHWA policy memorandum is available on-line through the Document Management System (DMS) at the following URL: <http://dms.dot.gov> under the FHWA Docket No. FHWA-2001-9706.

Federal agreement to allow changeable message signs if such interpretation is consistent with State law. The interpretation is limited to conforming signs, which are signs permitted under 23 U.S.C. 131(d). Applying updated technology to nonconforming signs would be considered a substantial change and inconsistent with 23 CFR 750.707(d)(5). Many States allow tri-vision signs. The frequency of message change and limitation in spacing for these signs is determined by each State.

In April 1980 the FHWA adopted a procedure to be followed if a State requested a change in the Federal/State agreement. In accordance with this procedure, the State of Oregon first submitted its proposed change, along with the reasons for the change and the effects of the change, to the FHWA Division Office in Oregon. The Oregon Department of Transportation (ODOT) held a public hearing on November 8, 2000, regarding its proposal to amend the Federal/State agreement. The hearing generated fifteen comments.⁴

Discussion Of Comments

The proposed amended agreement was published in the **Federal Register** on August 17, 2001, at 66 FR 43291. We received one comment to the docket. The Oregon Roadside Council, a statewide organization dedicated to preserving Oregon's scenic beauty, objected to the change. It maintained that the tri-vision signs would divert a driver's attention and would detract from safety, especially in areas of increased traffic congestion.

The FHWA is certainly concerned with the safety of the motoring public, and one of the bases of the HBA is "to promote the safety * * * of public travel." 23 U.S.C. 131(a). Tri-vision signs do not appear to compromise the safety of the motoring public. Under Oregon law, each of the three faces in the tri-vision sign will be displayed for at least eight seconds. The next face must rotate into position within four seconds. A majority of the States allow tri-vision signs, with the time periods for displaying and rotating the sign faces being similar to Oregon's statutory time periods. There have been no reports of increases in traffic accidents in those States, due to tri-vision signs being installed adjacent to highways.

The Oregon law requires each tri-vision sign to have three permits. Oregon has "frozen" the statewide number of permits for off-premise

⁴ The fifteen written submissions are available on line through the Document Management System (DMS) at <http://dms.dot.gov> under FHWA Docket No. FHWA-2001-9706.

billboards to approximately 1,700, with approximately 500 permits still unused. Tri-vision billboards should help ultimately to reduce the number of separate billboard sites.

Oregon and the FHWA have completed the above procedure up to the point of publishing the FHWA's decision in the **Federal Register**. The FHWA has decided the Federal/State agreement between the FHWA and the State of Oregon should be amended as proposed. A copy of the amended agreement will be mailed to the State of Oregon for execution and will then be returned to the FHWA for signature.

Amendment to the Federal/State Agreement

The Federal/State Agreement "For Carrying Out the National Policy Relative to Control of Outdoor Advertising in Areas Adjacent to the National System of Interstate and Defense Highways and the Federal-Aid Primary System" (the Agreement) made and entered into on August 26, 1974, between the United States of America represented by the Secretary of Transportation acting by and through the Federal Highway Administrator and the State of Oregon shall include a new definition of Tri-vision signs in Section I. *Definitions* to read as follows:

O. *Tri-Vision sign* means an outdoor advertising structure that contains display surfaces composed of a series of three sided rotating slats arranged side by side, either horizontally or vertically, that are rotated by an electromechanical process, capable of displaying a total of three separate and distinct messages, one message at a time.

III: *State Control*, Paragraph A, Lighting (1) should be amended to read as follows:

No sign shall contain, include or be illuminated by any flashing intermittent, revolving, rotating or moving light or lights or moves or has any animated or moving parts; however, this paragraph does not apply to a traffic control sign or signs providing only public information such as time, date, temperature, weather or similar information and Tri-vision signs. Tri-vision signs, however, shall not contain, include or be illuminated by any flashing intermittent, revolving, rotating or moving light or lights. The frequency of message change is determined by the State.

Authority: 23 U.S.C. 131; 23 U.S.C. 315; 49 CFR 1.48.

Issued on: March 27, 2002.

Mary E. Peters,

Administrator, Federal Highway Administrator.

[FR Doc. 02-7912 Filed 4-1-02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2002-11714]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice announces FMCSA's receipt of applications from 30 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, 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 May 2, 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 see the submissions of other commenters at <http://dms.dot.gov>. Please include the docket numbers that appear 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 include 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, Ms. Sandra Zywockarte, Office of Bus and Truck Standards and Operations, (202) 366-2987; for information about legal issues related to this notice, Mr. Joseph Solomey, Office of the Chief Counsel, (202) 366-1374, FMCSA, Department of Transportation, 400 Seventh Street,

S.W., 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 and Filing

You may see all the comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>.

Background

Thirty individuals have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant 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." The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemptions will achieve the required level of safety.

Qualifications of Applicants

1. Ronald M. Aure

Mr. Aure, age 57, has amblyopia of the left eye. His visual acuity is 20/20 in the right eye and 20/200 in the left. Following an examination in 2001, his optometrist certified, "After extensive testing, it is my medical opinion that Ronald Aure has sufficient vision to perform the driving tasks required to operate a commercial vehicle." In his application, Mr. Aure indicated he has driven straight trucks for 5 years, accumulating 50,000 miles, and tractor-trailer combinations for 37 years, accumulating 4.6 million miles. He holds a Class A commercial driver's license (CDL) from Iowa, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

2. Steven S. Bennett

Mr. Bennett, 46, has amblyopia of the right eye. His visual acuity is 20/200 in the right eye and 20/20 in the left. An optometrist examined him in 2001 and stated, "Based on my findings, and not withstanding other factors, Mr. Bennett should have sufficient visual acuity and peripheral vision to operate a commercial motor vehicle." In his application, Mr. Bennett indicated he has driven straight trucks for 5 years, accumulating 250,000 miles, and tractor-trailer combinations for 13 years,