

last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Craig C. Lowry*

Mr. Lowry, 39, has loss of vision in his right eye due to a retinal detachment that occurred in 2006. The visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "I believe Craig has sufficient vision to perform the driving tasks required to operate a commercial vehicle". Mr. Lowry reported that he has driven straight trucks for 11 years, accumulating 440,000 miles and tractor-trailer combinations for 17 years, accumulating 1 million miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Robert J. MacInnis*

Mr. MacInnis, 58, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/50 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "His vision is stable and sufficient to perform the driving tasks required to operate a commercial motor vehicle". Mr. MacInnis reported that he has driven straight trucks for 5 years, accumulating 13,500 miles and tractor-trailer combinations for 21 years, accumulating 2 million miles. He holds a Class A CDL from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Gordon S. Newman*

Mr. Newman, 50, has no light perception in his left eye due to a traumatic injury that occurred eight years ago. The best corrected visual acuity in his right eye is 20/200 and in his left eye, no light perception. Following an examination in 2010, his optometrist noted, "In my medical opinion, Mr. Newman has sufficient vision to perform the driving tasks required of him." Mr. Newman reported that he has driven straight trucks for 18 years, accumulating 270,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Adolph L. Romero*

Mr. Romero, 48, has had refractive amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20 and in his left eye, 20/80. Following an examination in 2011, his ophthalmologist noted, "I certify that in

my medical opinion the patient's visual acuity is adequate for both daylight and nighttime driving and the visual acuity is sufficient to perform the driving tasks required to operate a commercial vehicle". Mr. Romero reported that he has driven straight trucks for 25 years, accumulating 112,500 miles and tractor-trailer combinations for 10 years, accumulating 20,000 miles. He holds a Class E operator's license from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Rodney W. Sukalski*

Mr. Sukalski, 54, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/15. Following an examination in 2010, his optometrist noted, "Yes, in my opinion I feel that Rodney Sukalski has adequate vision to drive a commercial vehicle." Mr. Sukalski reported that he has driven straight trucks for 15 years, accumulating 45,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Larry D. Warneke*

Mr. Warneke, 49, has had exotropia and amblyopia in his left eye since birth. The visual acuity in his right eye is 20/15 and in his left eye, 20/200. Following an examination in 2011, his optometrist noted, "It is my opinion that this man has sufficient vision to drive as he has proved within Washington State since 1987-when driving commercial vehicles". Mr. Warneke reported that he has driven straight trucks for 20 years, accumulating 800,000 miles and tractor-trailer combinations for 23 years, accumulating 115,000 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Lonnie D. Wendinger*

Mr. Wendinger, 56, has had retinal scars in both eyes due to toxoplasmosis since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/70. Following an examination in 2010, his optometrist noted, "In my medical opinion, Lonnie has sufficient vision to perform the driving tasks necessary to operate the commercial vehicle." Mr. Wendinger reported that he has driven straight trucks for 40 years, accumulating 1 million miles and tractor-trailer combinations for 20 years, accumulating 600,000 miles. He holds a Class A CDL

Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

#### 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. The Agency will consider all comments received before the close of business *June 20, 2011*. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: May 12, 2011.

**Larry W. Minor,**

*Associate Administrator of Policy.*

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**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2011-0057]

#### Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 16 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

**DATES:** The exemptions are effective May 19, 2011. The exemptions expire on May 19, 2013.

**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:

##### Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at <http://www.regulations.gov>.

**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 DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

##### Background

On April 5, 2011, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (76 FR 18824). That notice listed 16 applicants' case histories. The 16 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, 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, FMCSA has evaluated the 16 applications on their merits and made a determination to grant exemptions to each of them.

##### Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° 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 (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 16 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, complete loss of vision, optic nerve, atrophy, macular hole, vision field defect, central scarring, histoplasmosis, choroidal rupture, central scar, retinal detachment and prosthesis. In most cases, their eye conditions were not recently developed. 7 of the applicants were either born with their vision impairments or have had them since childhood. The 9 individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 26 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. While possessing a valid CDL or non-CDL, these 16 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in

interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 38 years. In the past 3 years, two of the drivers were involved in crashes or convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the April 5, 2011 notice (76 FR 18824).

##### Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision

deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., “Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,” Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 16 applicants, two of the applicants were convicted for moving violations and one of the applicants was involved in a crash. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants’ ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants’ intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and

driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 16 applicants listed in the notice of April 5, 2011 (76 FR 18824).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 16 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 one comment in this proceeding. The comment was considered and discussed below.

The Delaware Division of Motor Vehicles is in favor of granting a Federal vision exemption to Halman Smith, they indicated that they have reviewed the driving histories of this applicant and have no objections to FMCSA granting him a vision exemption.

#### Conclusion

Based upon its evaluation of the 16 exemption applications, FMCSA exempts, Melvin T. Ayer, Luis A. Bejarono, Richard T. Berendt, James O. Cook, Timothy J. Curran, Alfred D. Hewitt, Mark A. Kleinow, Luke R. Lafley, Kevin R. Lambert, James P. Lanigan, Nusret Odzakovic, Scott W. Schilling, Randy E. Sims, Halman Smith, Robert D. Smith and Richard D. Williams 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: May 12, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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#### DEPARTMENT OF TRANSPORTATION

##### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7918; FMCSA–2002–13411; FMCSA–2003–14504; FMCSA–2008–0231; FMCSA–2008–0398]

##### 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 18 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