

2008, his ophthalmologist noted, "I believe Mr. Sellers will continue to perform well as a commercial truck driver. He has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Sellers reported that he has driven tractor-trailer combinations for 15 years, accumulating 225,000 miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James A. Smith

Mr. Smith, 49, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/15. Following an examination in 2008, his optometrist noted, "In my opinion, he has sufficient vision to perform all driving tasks required to operate a commercial motor vehicle." Mr. Smith reported that he has driven tractor-trailer combinations for 17 years, accumulating 595,000 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.

Richard Sturk

Mr. Sturk, 59, has had loss vision in the right eye due to ischemic optic atrophy since 2003. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/25. Following an examination in 2008, his ophthalmologist noted, "In my medical opinion, I do believe that Mr. Sturk has sufficient vision in his left eye to operate a commercial vehicle." Mr. Sturk reported that he has driven tractor-trailer combinations for 17 years, accumulating 1.7 million miles. He holds a Class A CDL license from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Wayne A. Whitehead

Mr. Whitehead, 42, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/60 and in his left eye, 20/25. Following an examination in 2008, his ophthalmologist noted, "I certify that in my medical opinion, Mr. Whitehead has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Whitehead reported that he has driven straight trucks for 5 years, accumulating 120,750 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows

no crashes and no convictions for moving violations in a CMV.

Charles F. Wotring

Mr. Wotring, 41, has had macular dystrophy in his left eye since birth. The best corrected visual acuity in his right eye is 20/25 and in his left eye, 20/400. Following an examination in 2008, his optometrist noted, "He is visually able to drive commercially." Mr. Wotring reported that he has driven straight trucks for 1½ years, accumulating 52,500 miles, and tractor-trailer combinations for 14 years, accumulating 1.1 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 14 mph.

Forrest L. Wright

Mr. Wright, 54, has had optic nerve hypoplasia in his right eye since birth. The best corrected visual acuity in his right eye is light perception and in his left eye, 20/20. Following an examination in 2008, his optometrist noted, "It is my opinion that Mr. Wright has sufficient vision to perform all driving tasks to operate a commercial vehicle." Mr. Wright reported that he has driven straight trucks for 3 years, accumulating 30,000 miles, and buses for 6 years, accumulating 24,000 miles. He holds a Class B CDL from Alabama. 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 March 16, 2009. 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: February 5, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-00-8398; FMCSA-00-7165; FMCSA-04-18885; FMCSA-04-17984; FMCSA-06-24783]

Qualification of Drivers; Exemption Renewals; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 26 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemptions will 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, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, 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>.

Background

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. The comment period ended on November 17, 2008.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

Advocates for Highway and Auto Safety (Advocates) expressed opposition to FMCSA's policy to grant exemptions from the FMCSR, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which FMCSA presents driver information to the public and makes safety determinations; (2) objects to the Agency's reliance on conclusions drawn from the vision waiver program; (3) claims the Agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31136(e) and 31315); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 26 renewal applications, FMCSA renews the Federal vision exemptions for Paul G. Albrecht, Elijah A. Allen, Jr., David W. Brown, Monty G. Calderon, David J. Caldwell, Walden V. Clarke, Awilda S. Colon, David Hagadorn, Zane G. Harvey, Jr., Jeffrey M. Keyser, Donnie A. Kildow, Carl M. McIntire, Daniel A. McNabb, David G. Meyers, Robert E. Moore, Thomas L. Oglesby, Michael J. Paul, Russell A. Payne, Rodgey M. Pegg, Raymond E. Peterson, Zbigniew P. Pietranik, John C. Rodriguez, James A. Walker, Richard A. Westfall, Charles E. Wood, and Joseph F. Wood.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal 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.

Issued on: February 5, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2009-0008]

Beall Corporation; Receipt of Application for a Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of petition for temporary exemption from Federal Motor Vehicle Safety Standard (FMVSS) No. 224, *Rear impact protection*.

SUMMARY: We are asking for comments on the application of Beall Corporation for a temporary exemption from the requirements of FMVSS No. 224. The basis for the application is that compliance would cause substantial economic hardship to the manufacturer which has tried in good faith to comply with the standard.

We are publishing this notice of receipt of the application in accordance with our regulations on the subject. This action does not mean that we have made a judgment about the merits of the application.

DATES: You should submit your comments not later than March 16, 2009.

FOR FURTHER INFORMATION CONTACT: Ari Scott, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building 4th Floor, Room W41-326, Washington, DC 20590. Telephone: (202) 366-2992; Fax: (202) 366-3820.

SUPPLEMENTARY INFORMATION: In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Beall Corporation, d/b/a Power Truckweld ("Beall"), a Dump Body trailer manufacturer, has petitioned the agency for a temporary exemption from the rear impact protection requirements in FMVSS No. 224 (49 CFR 571.224). The basis for the application is that compliance would cause substantial economic hardship to the manufacturer, which has tried in good faith to comply with the standard. A copy of the petition has been placed in the docket for this notice.¹ Beall has requested a three-year hardship exemption.

¹ To view the application, go to <http://www.regulations.gov> and enter the docket number set forth in the heading of this document. The company has withdrawn its request for confidential treatment of certain business and financial information submitted in its petition for temporary exemption.

Beall is a company that manufactures trailers in Washington and Oregon. The company has been in existence for over a decade. Beall states that the total number of vehicles produced in the 12-month period prior to filing the petition was 79. Of those vehicles, 64 were dump body type trailers that would be covered by the requested temporary exemption. The largest number of Dump Body trailers the petitioner sold in recent years is 79 in 2005.

Beall states that the denial of the requested exemption will result in substantial economic hardship. According to the statements of the petitioner, the denial of exemption could cost the company 40 percent of its projected sales during the period covered by the exemption, a situation which could cause the layoff of 100% of its employees. Additionally, Beall asserts that if the exemption is denied, it would lose the entire \$800,000 goodwill investment associated with the 2001 purchase of Pioneer Truckweld. It also notes that several of its competitors, such as Reliance and Columbia Body Manufacturing, have received exemptions from FMVSS No. 224, and that it needs to be able to compete effectively with these entities in the dump body trailer sales market, as well as the dump body truck market, as many customers will not allow a manufacturer to bid on a dump body truck if they cannot supply a dump body trailer.

Beall also provides specific financial information with its statement for the years 2004 through 2006. In 2004, it indicates that it posted a loss of over \$200,000. In 2005, that loss was approximately \$138,000. Finally, in 2006, the total loss was over \$53,000. In the event that this petition is denied, Beall estimates that it will lose over \$24,000 in the year following the denial. While Beall did not provide specific financial information regarding the projected financial impact of a grant, it has stated that such a grant is necessary for the survival of the Power Truckweld division.

The petitioner believes that it is impossible to estimate the cost of compliance because the method by which compliance may be achieved is unknown at this time, and requires substantial further engineering analysis. Beall states that it has tried, unsuccessfully, to design or outsource the design of a device that would satisfy FMVSS No. 224 for dump body trailers.

In explaining why it has not been currently able to meet the rear impact protection requirements, Beall points to a number of technical challenges associated with designing a compliant rear impact protection system. Namely,