

Discussion of Comments

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

Advocates for Highway and Auto Safety (Advocates) expresses continued opposition to the FMCSA's policy to grant exemptions from the Federal Motor Carrier Safety Regulations, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which the 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. 31315 and 31136(e)); and finally (4) suggests that a recent 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

After considering the comments to the docket and based upon its evaluation of the 21 exemption applications, the FMCSA exempts Gordon L. Apple, Stanley E. Bernard, John D. Bolding, Jr., Ronald B. Brown, Michael P. Curtin, Albion C. Doe, James M. Eads, Richard L. Elyard, Michael R. Forschino, John C. Gadowski, Richard H. Hammann, Carl M. Hill, David A. Hiller, Billy L. Johnson, Christopher J. Kane, Jack E. Kettner, Wallace F. Mahan, Sr., James R. Petre, William E. Reveal, Robert P. Sanderson, and Janusz Tyrpien from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (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, so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the 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. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: In effect at 15, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy, Plans and Regulation.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2003-14504]

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 publishes the FMCSA's receipt of applications from 29 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 21, 2003.

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 at <http://dms.dot.gov>. Please include the docket number that appears 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 us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywockarte, Office of Bus and Truck Standards and Operations, (202) 366-2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), the 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 29 individuals listed in this notice have recently requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety.

Qualifications of Applicants

1. Michael C. Boyne

Mr. Boyne, 52, has retinopathy of prematurity in his right eye. His best-corrected visual acuity in the right eye is 20/400 and in the left, 20/20. His ophthalmologist examined him in 2002 and stated, "Based upon these findings, this individual has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Boyne submitted that he has driven tractor-trailer combinations for 9 years, accumulating 1.0 million miles. He