intrastate commerce 49 CFR 350.341 (h), see 65 FR 15092, at 15109, March 21, 2000. They are not required to do so, however. California could therefore issue a driver who did not meet the standards of section 391.41 an intrastate CDL (i.e., one valid only within the State) which prohibited the driving of buses or hazmat vehicles.

The California DMV further commented that it would continue to oppose all requests for waivers or exemptions that did not prohibit the driver from transporting passengers and hazardous materials. The FMCSA stands by its previous response to California on this issue (see 65 FR 161, January 3, 2000). We believe it is unnecessary to impose any further restrictions on these drivers, since a waiver of or exemption from 49 CFR 391.41(b)(10) expresses the agency’s conclusion that the driver will likely perform just as safely as a driver who met the standard.

Notwithstanding the FMCSA’s ongoing review of the vision standard, as evidenced by the medical panel’s report dated October 16, 1998, and filed in the docket (FHWA–98–4334), the FMCSA must comply with Rauenhorst v. United States Department of Transportation, Federal Highway Administration, 95 F.3d 715 (8th Cir. 1996), and grant individual exemptions under standards that are consistent with public safety. Meeting those standards, the 70 veteran drivers in this case have demonstrated to our satisfaction that they can continue to operate a CMV with their current vision safely in interstate commerce because they have demonstrated their ability in intrastate commerce. Accordingly, they qualify for an exemption under 49 U.S.C. 31315 and 31136(e).

Conclusion


(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 its driver qualification file, or keep a copy in his/her driver 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.

Authority: 49 U.S.C. 322, 31315 and 31136; 49 CFR 1.73.
Background
Two individuals have requested renewal of their exemptions from the vision requirement in 49 CFR 391.41(b)(10) which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. They are Bruce T. Loughary and Leo L. McMurray. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 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.” Accordingly, the FMCSA has evaluated the two petitions for renewal on their merits and made a determination to extend their exemptions for a renewable 2-year period.

On October 9, 1998, the agency published a notice of final disposition announcing its decision to exempt 12 individuals, including these two applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10) (63 FR 54519). The qualifications, experience, and medical condition of each applicant was stated and discussed in detail at 63 FR 30285, June 3, 1998. Three comments were received, and their contents were carefully considered by the agency in reaching its final decision to grant the petitions (63 FR 54519). The agency determined that exempting the individuals from 49 CFR 391.41(b)(10) was likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption as long as the vision in each applicant’s better eye continues to meet the standard specified in 391.41(b)(10). As a condition of the exemption, therefore, the agency imposed requirements on the individuals similar to the grandfathering provisions in 49 CFR 391.64(b) applied to drivers who participated in the agency’s former vision waiver program.

These requirements are as follows: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that vision in the better eye meets the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests 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 retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official.

Basis for Renewing Exemptions
Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for an additional 2-year period. In accordance with 49 U.S.C. 31315 and 31136(e), each of the two applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285; 63 FR 54519) and each has requested renewal of the exemption. These two applicants have submitted evidence showing that the vision in their 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 their records of safety while driving with their respective vision deficiencies over the past 2 years, indicates that 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, the FMCSA concludes that extending the exemption for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption for each renewal applicant.

Conclusion
In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA extends the exemptions from the vision requirement in 49 CFR 391.41(b)(10) granted to Bruce T. Loughary and Leo L. McMurray, 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 and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official.

Request for Comments
The FMCSA has evaluated the qualifications and driving performance of the two applicants here and extends their exemptions based on the evidence introduced in their applications for renewal. The agency, however, will review any comments received concerning a particular driver’s safety record, evaluate any new information submitted, and determine if the exemption continues to be consistent with the requirements at 49 U.S.C. 31315 and 31136(e). We will consider all comments of this nature that we receive before the close of business on the closing day indicated in the “Dates” section.

Authority: 49 U.S.C. 322, 31136 and 31315; and 49 CFR 1.73.
Brian M. McLaughlin,
Director, Office of Policy Plans and
Regulations.
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