

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

After considering the comments to the docket and based upon its evaluation of the 70 exemption applications in accordance with the *Rauenhorst* decision, the FMCSA exempts Henry Wayne Adams, Willie F. Adams, Fernando Aquilera, Louis Edward Aldrige, Larry Neal Arrington, David Ball, Delbert Ronnie Bays, Rosa C. Beaumont, Jerry A. Bechtold, Robert F. Berry, James A. Bright, Robert R. Buis, David Dominick Bungori, Ronzie L. Carroll, Richard S. Carter, Lynn A. Childress, David R. Cox, Gerald Wade Cox, Dempsey Leroy Crawhorn Jr., Thomas P. Cummings, Cedric E. Foster, Rosalie A. Gifford, Eugene Anthony Gitzen, Donald Grogan, Elmer Harper, Peter L. Haubruck, Brain L. Houle, Christopher L. Humphries, Craig C. Irish, Donald R. Jackson, Nelson V. Jaramillo, Daryl A. Jester, Joseph Vernon

Johns, Jimmie W. Judkins, Kurth A. Kapke, Johnny M. Krupczak, Charles R. Kuderer, Thomas D. Laws, Demetrio Lozano, Wayne Mantela, Kenneth D. May, Jimmy R. Millage, Harold J. Mitchell, Gordon L. Nathan, Jerry L. New, Bernice Ray Parnell, Aaron Pennington, Clifford C. Priesmeyer, George S. Rayson, Kevin D. Reece, Franklin Reed, Arthur A. Sappington, James L. Schneider, Patrick W. Shea, Carl B. Simoney, Ernie Sims, William Smith, Paul D. Spalding, Richard Allen Strange, Steven Carter Thomas, George Walter Thornhill, Rick N. Ulrich, Roy F. Varnado, Henry Lee Walker, Larry D. Wedekind, Daniel Wilson, Emmett E. Windhorst, Wonda Lue Wooten, Thomas Long, and Gary Bryan 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 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.

Issued on: December 4, 2000.

Brian M. McLaughlin,

Director, Office of Policy Plans and Regulations.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2000-8203]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice announces the FMCSA's decision to renew the exemptions from the vision requirement in 49 CFR 391.41(b)(10), for two individuals.

DATES: This decision is effective December 8, 2000. We must receive your comments on or before January 8, 2001.

ADDRESSES: Please mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit>. You can look at and copy all the comments at the same address 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 print the acknowledgment page that appears after submitting 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. Joe Solomey, Office of the Chief Counsel, (202) 366-1374, FMCSA, Department of Transportation, 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 and Filing

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

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. 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(e).

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.

Issued on: December 4, 2000.

Brian M. McLaughlin,
Director, Office of Policy Plans and Regulations.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Hazardous Materials Transportation: Status of Applications for Preemption Determination

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice Regarding Preemption Determinations Delayed Beyond 180 Days.

SUMMARY: This notice advises interested parties that RSPA's Office of the Chief Counsel maintains (on its internet website and in paper form) a chart showing the current status of each administrative proceeding on applications for a determination that Federal hazardous material transportation law preempts requirements of States, political subdivisions of States, or Indian tribes. When a decision has not been issued within 180 days after publication of a notice of the application in the **Federal Register**, this chart includes the reasons why the decision is delayed and an estimate of the additional time necessary before the decision will be