

exemptions without any opportunity for public comment prior to the decision to renew and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). We will not address these points again here, but refer interested parties to that earlier discussion.

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 the individuals listed in Table 1 below:

TABLE 1.—APPLICANTS FOR EXEMPTION FROM § 391.41(B)(1) VISION REQUIREMENTS

Elijah A. Allen, Jr	James W. Frion	Larry D. Johnson	Wayne R. Sears.
John W. Arnold	Marcellus A. Garland	Marvin L. Kiser, Jr	Lee R. Sidwell
James H. Bailey	Shawn G. Gaston	David R. Lambert	David L. Slack.
Victor F. Brast, Jr	James F. Gereau	James R. Lanier	Philip Smiddy.
John P. Brooks	George J. Ghiigliotty	Ronnie L. LeMasters	James C. Smith.
Benny J. Burke	Ronald E. Goad	James S. Lewis	Daniel A. Sohn.
Derric D. Burrell	Esteban G. Gonzalez	Steven G. Luther	James N. Spensor, Jr.
Monty G. Calderon	Harlan L. Gunter	Lewis V. McNeice	Roger R. Strehlow.
Anthony J. Cesternino	Thanh Van Ha	Duane D. Mims	John T. Thomas.
Milton Coleman	Reginald I. Hall	William A. Moore, Jr	Darel E. Thompson.
Adam D. Craig	James O. Hancock	Barry B. Morgan	Ralph A. Thompson.
Eric L. Dawson III	Paul A. Harrison	Leonard J. Morton	Denney V. Traylor.
Roger A. Dennison	Sherman W. Hawk, Jr	Kevin J. O'Donnell	Noel S. Wangerin.
Richard L. Derick	Daniel J. Hillman	Gregory M. Preves	Brian W. Whitmer.
Craig E. Dorrance	Thomas J. Holtmann	James M. Rafferty	Jeffrey D. Wilson.
Joseph A. Dunlap	Gordon W. Howell	Richard O. Rankin	Larry M. Wink.
John C. Edwards, Jr	Roger L. Jacobson	Paul C. Reagle, Sr	Joseph F. Wood.
Calvin J. Eldridge	Robert C. Jeffres	Doyle R. Roundtree	William E. Woodhouse.
Willie P. Estep	Alfred C. Jewell, Jr	Daniel Salinas	Rick A. Young.

The exemption is subject to the following conditions: (1) Each individual must have a physical exam 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) Each individual must 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) Each individual must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain 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 rescinded earlier by the FMCSA. The exemption will be rescinded 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 each of the 76 applicants here and extends their exemptions based on the evidence introduced. The agency will review any comments received concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). While comments of this nature will be entertained at any time, the FMCSA requests that interested parties with information concerning the safety records of these drivers submit comments by October 9, 2002. All comments will be considered and will be available for examination as stated in the ADDRESSES section. The FMCSA will also continue to file in the docket relevant information that becomes available.

Issued on: September 9, 2002.
Brian M. McLaughlin,
Associate Administrator, Policy and Program Development.
 [FR Doc. 02-22826 Filed 9-6-02; 8:45 am]
BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2002-12294]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to exempt 29 individuals from the vision requirement in 49 CFR 391.41(b)(10).

DATES: September 9, 2002.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, you may contact Ms. Sandra Zywockarte, Office of Bus and Truck Standards and Operations, (202) 366-2987, 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

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

Background

On July 11, 2002, the FMCSA published notice of its receipt of applications from 30 individuals, and requested comments from the public (67 FR 46016). The 30 individuals petitioned the FMCSA for an exemption 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: Danny Adams, Michael D. Armstrong, Thomas E. Barnhart, William J. Bell, Frank R. Berritto, Robert B. Brewer, Jr., Jack D. Clodfelter, James W. Collins, Douglas W. Cotney, Tommy J. Cross, Jr., Daniel K. Davis III, Eric D. Davis, Gary R. Evans, Shelton L. Harvey, Gary T. Hicks, Walter R. Morris, Barbara C. Pennington, Stephen C. Perdue, Allen V. Pickard, Larry A. Prieue, Gary L. Reveal, Billy L. Riddle, Randolph L. Rosewicz, Robert L. Savage, Kenneth D. Sisk, Kenneth E. Suter, Jr., Patrick D. Talley, Loren R. Walker, Edward C. Williams, and Timothy J. Wilson.

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. Accordingly, the FMCSA has evaluated the 30 petitions on their merits and made a determination to grant the exemptions to 29 of them. The comment period closed on August 12, 2002. One comment was received, and its contents were carefully considered by the FMCSA in reaching the final decision to grant the petitions.

The FMCSA has not made a decision on the application of Eric D. Davis. Subsequent to the publication of the notice of applications and request for comments, the agency received additional information from its check of his motor vehicle record, and we are evaluating that information. A decision on this petition will be made in the future.

Vision and Driving Experience of the Applicants

The vision requirement 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)).

Beginning in 1992, the Federal Highway Administration (FHWA) has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket, FHWA-98-4334.) The panel's conclusion supports the FMCSA's (and previously the FHWA's) view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also 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 29 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, macular scar, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but nine of the applicants were either born with their vision impairments or have had them since childhood. The nine individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 32 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. The 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 performance tests designed to evaluate their qualifications to operate a CMV. All 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. The Federal interstate qualification standards, *i.e.*, the FMCSRs, however, require more.

While possessing a valid CDL or non-CDL, these 29 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 40 years. In the past 3 years, two of the drivers have had convictions for traffic violations. One of these convictions was for Speeding, and one was for "Using the Second Lane of a Three-Lane Highway." Three drivers were involved in one accident each, and one driver was involved in two accidents in a CMV, but none of these received a citation.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the July 11, 2002, notice. Since there were no docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants is supported by the information published at 67 FR 46016.

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the 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 them to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the 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, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 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 accidents and traffic violations. Copies of the studies have

been added to the docket. (FHWA-98-3637)

We believe we can properly apply the principle to monocular drivers, because data from the vision waiver 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 with good driving records in the waiver program demonstrated their ability to drive safely 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 accident 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 accident proneness from accident 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 accidents. (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 accident 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 29 applicants receiving an exemption, we note that the applicants have had only five accidents and two traffic violations in the last 3 years. The applicants achieved this 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, the FMCSA

concludes their ability to drive safely can be projected into the future.

We believe 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 are more compact than on highways. 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 or she has been performing in intrastate commerce. Consequently, the 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 will grant the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to 29 of the 30 applicants listed in the July Notice.

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 29 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

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 comment to the docket and based upon its evaluation of the 29 exemption applications in accordance with *Rauenhorst v. United States Department of Transportation, Federal Highway Administration*, 95 F.3d 715 (8th Cir. 1996), the FMCSA exempts Danny Adams, Michael D. Armstrong, Thomas E. Barnhart, William J. Bell, Frank R. Berritto, Robert B. Brewer, Jr., Jack D. Clodfelter, James W. Collins, Douglas W. Cotney, Tommy J. Cross, Jr., Daniel K. Davis III, Gary R. Evans, Shelton L. Harvey, Gary T. Hicks, Walter R. Morris, Barbara C. Pennington, Stephen C. Perdue, Allen V. Pickard, Larry A. Prieue, Gary L. Reveal, Billy L. Riddle, Randolph L. Rosewicz, Robert L. Savage, Kenneth D. Sisk, Kenneth E. Suter, Jr., Patrick D. Talley, Loren R. Walker, Edward C. Williams, and Timothy J. Wilson 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 31316(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 31316. 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: September 3, 2002.

Brian M. McLaughlin,

Associate Administrator, Policy and Program Development.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002-13272]

Defect and Noncompliance Reports, Part 573; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). This document describes a renewal of a collection of information for 49 CFR part 573, Defect and Noncompliance Reports, currently assigned the OMB control number 2127-0004, for which NHTSA intends to seek OMB approval.

Under the Paperwork Reduction Act of 1995 (PRA), before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. OMB has promulgated regulations describing what must be included in such a document.

Pursuant to OMB's regulations (at 5 CFR 1320.8(d)), public comments are invited on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Comments must be received on or before November 8, 2002.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and must be submitted to Docket Management, Room PL-401, 400 Seventh Street SW., Washington, DC 20590. The Docket is open on weekdays from 9:30 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. George Person, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Room 5326, Washington, DC 20590. Mr. Person's telephone number is (202) 366-5210.

SUPPLEMENTARY INFORMATION:

Title: 49 CFR part 573, Defect and Noncompliance Reports.

Type of Request: Renewal.

OMB Clearance Number: 2127-0004.

Requested Expiration Date of

Approval: Three years from effective date of final rule.

Summary of Collection of Information: NHTSA's statute at 49 U.S.C. 30112 and 30116 through 30121 requires manufacturers of motor vehicles and motor vehicle equipment to recall and remedy their products that do not comply with applicable Federal motor vehicle safety standards or that

contain a defect related to motor vehicle safety. The manufacturer must notify NHTSA, owners, purchasers, and dealers of such defects and noncompliances. Additionally, the manufacturer must furnish NHTSA with a true copy of all notices, bulletins, and other communications to the manufacturer's dealers, owners and purchasers regarding any defect or noncompliance in the manufacturer's vehicle or item of equipment.

To implement this authority, in 1978 NHTSA promulgated 49 CFR part 573, Defect and Noncompliance Reports, (with amendments through 2002). This regulation sets out the following requirements, among others:

(1) Manufacturers are to provide specific information in reports that must be filed with NHTSA within five working days of a decision that a safety-related defect or noncompliance exists;

(2) Manufacturers are to submit quarterly reports to NHTSA on the progress of recall campaigns for six consecutive calendar quarters beginning with the quarter in which the campaign was initiated;

(3) Manufacturers are to furnish copies to NHTSA of notices, bulletins, and other communications to dealers, owners, or purchasers regarding any defect or noncompliance; and

(4) Manufacturers are to retain records of owners or purchasers of their products that have been involved in a recall campaign.

Description of the Need for the Information and Proposed Use of the Information: NHTSA needs this

information to ensure that manufacturers are remedying safety-related defects and noncompliances in their products. Additionally, NHTSA makes this information available to the public. If the manufacturers did not provide the information, it would be a violation of law which could subject the manufacturer to a civil penalty and possible injunctive sanctions, and NHTSA's efforts to monitor the effectiveness of recall campaigns, as part of its overall mission of improving public safety on the Nation's highways, would be substantially impaired.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Responses to the Collection of Information): All manufacturers of motor vehicles and motor vehicle equipment are required to comply with these requirements whenever they conduct a recall. There have been approximately 500 such reports provided to NHTSA annually in recent years. Although fewer than 250 manufacturers submit such reports in any given year, there are approximately