

31315 and 31136(e) to the 29 applicants listed in the notice of September 1, 2004 (69 FR 53493).

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 two comments in this proceeding. The comments were considered and are discussed below.

Mr. William Whitaker did not comment on the receipt of applications for exemption, but requested information about applying for an exemption for himself. FMCSA is responding to him separately by letter.

Advocates for Highway and Auto Safety (Advocates) expresses continued opposition to the FMCSA's policy to grant exemptions from the FMCSRs, 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 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

Based upon its evaluation of the 29 exemption applications, the FMCSA exempts Paul G. Albrecht, David W. Brown, David J. Caldwell, Walden V. Clarke, Donald O. Clopton, Awilda S. Colon, Richard B. Eckert, Charles B. Edwards, Zane G. Harvey, Jr., Robert T. Hill, Dale E. Johnson, Jimmy D. Johnson II, Jeffrey M. Keyser, Donnie A. Kildow, Carl M. McIntire, John C. McLaughlin, Daniel A. McNabb, David G. Meyers, Thomas L. Oglesby, Michael J. Paul, Russell A. Payne, Rodney M. Pegg, Raymond E. Peterson, Zbigniew P. Pietranik, Dennis E. Pinkston, John C. Rodriguez, Robert B. Schmidt, Wesley L. Schoonover, and Charles E. Wood from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

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: October 21, 2004.

**Rose A. McMurray,**

*Associate Administrator, Policy and Program Development.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party

seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

#### Long Island Rail Road (Waiver Petition Docket Number FRA-2004-18854)

The Long Island Rail Road (LIRR) seeks a waiver of compliance from certain provisions of the *Railroad Locomotive Safety Standards*, 49 CFR part 229. Specifically, LIRR requests relief from the requirements of 49 CFR 229.27(a)(2) *Annual Tests* and 49 CFR 229.29(a) *Biennial Tests*, applicable to a control group of five EMD DE/DM30-AC locomotives equipped with Computer Controlled Brake I (CCB I) type brake equipment furnished by New York Air Brake Corporation (NYAB) of Watertown, New York.

The five locomotives designated for the control group will be Model EMD DE/DM30-AC, built by General Motor's Electro Motive Division (EMD), accepted new by LIRR in 1999, and equipped with NYAB's CCB I brake equipment. The LIRR currently operates a fleet of forty six (46) of this model type(s) and configured locomotives. The current CCB I periodic brake equipment maintenance intervals are 1840 days (five years) in accordance with the FRA Docket Number 2000-7367.

In October 2003, CCB I, from a randomly selected locomotive at the end of a five-year COT&S interval, was removed and sent to New York Air Brake for tests and a tear-down inspection. A test report of this equipment was submitted to the FRA from NYAB to comply with Section 5.1.6 of ABT-3164 as related to the CCB I product five year COT&S 2000-7367 waiver. In summary of that report, New York Air Brake noted that the LIRR's CCB I air brake equipment was fully serviceable at five years of age.

As a result of the NYAB report, the LIRR is seeking relief on the 1840 day (5 year) COT&S on five locomotive described as the "control group of locomotives". The control group of locomotives will be utilized as a test to determine CCB I brake condition when the maintenance cycle is extended past five-year maintenance interval.

The control group of five locomotives will all have their COT&S extended past the 1840 (5 year) COT&S with the following proposed schedule: one locomotive to 2208 days (6 years), two locomotives to 2576 days (7 years), and the two remaining locomotives to 2944 days (8 years). During the testing period for the control group, the remaining locomotives in the LIRR fleet will continue regularly scheduled periodic

maintenance of CCB I equipment at the established 1840-day interval.

Part 229.27(a)(2) requires that, "Brake cylinder relay valve portions, main reservoir safety valves, brake pipe vent valve portions, feed and reducing valve portions in the air brake system (including related dirt collectors and filters) shall be cleaned, repaired, and tested" at intervals that do not exceed 368 calendar days. Part 229.29(a) requires in part that "\* \* \* all valves, valve portions, MU locomotive brake cylinders and electric-pneumatic master controllers in the air brake system (including related dirt collectors and filters) shall be cleaned, repaired, and tested at intervals that do not exceed 736 calendar days.

LIRR requests these provisions be temporarily waived on the "control group of locomotives" to allow them to conduct a long term test program designed to show that NYAB's electronic air brake technology has sufficiently improved overall system reliability and safety to a point where it is now possible to move toward a component repair as required, performance based COT&S criterion similar in scope to that outlined in a previous waiver granted on September 1, 2000 to CSX Transportation in Docket FRA-1999-6252. This referenced waiver covers CSXT locomotives utilizing NYAB's Computer Controlled Brake (CCB) equipment, with the intent of moving to a component repair as

required, performance-based COT&S criterion.

As part of this waiver request, LIRR recommends that a detailed test plan, necessary for properly tracking and documenting the results, be jointly developed between LIRR, NYAB, and FRA. At the completion of the test program, LIRR further requests that the FRA conduct a formal review of the results relative to the objective of moving toward a "performance-based COT&S" criterion. In addition, the LIRR and NYAB are currently in the process of establishing test plans to specify the on-locomotive tests and tear-down inspection procedures for the CCB I components from the "control group of locomotives". The plans will be submitted to the FRA for approval when they are complete. LIRR will also submit to the FRA the locomotive road numbers that will be representative of the locomotives that will be comprised in the "control group of locomotives".

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver

Petition Docket Number FRA-2004-18854) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL-401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78). The Statement may also be found at <http://dms.dot.gov>.

Issued in Washington, DC, on October 20, 2004.

**Grady C. Cothen, Jr.,**

*Acting Associate Administrator for Safety.*

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