

ACTION: Notice of public meeting.

SUMMARY: The DOT seeks views on regulatory implementation of changes made by SAFETEA-LU to the TIFIA statute. All interested persons are invited to offer views at two public meetings.

DATES: The first public meeting will be held on April 21, 2006, in San Francisco, CA, beginning at 9 a.m. The second public meeting will be held on April 25, 2006, in New York, NY, beginning at 1 p.m.

ADDRESSES: The first public meeting will be held at the Omni San Francisco Hotel, 500 California Street, San Francisco, CA 94104. The second public meeting will be held at the Marriott Financial Center, 85 West Street, New York, NY 10006.

FOR FURTHER INFORMATION CONTACT: Robert Clarke Brown, (202) 366-6813, *Robert.C.Brown@fhwa.dot.gov*; Mark Sullivan, (202) 366-5785, *Mark.Sullivan@fhwa.dot.gov*. TIFIA Joint Program Office, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144), enacted in 2005, made certain changes to the Transportation Infrastructure Finance and Innovation Act (TIFIA), originally established in 1998 by the Transportation Equity Act for the 21st Century (TEA-21). The Department of Transportation is beginning a rulemaking to implement those 2005 statutory changes, as well as to make other changes to the current TIFIA rule. The DOT plans to publish a notice of proposed rulemaking later this year. Prior to publication of the proposed rule, the DOT seeks information and views from the public that might assist it in developing the proposed rule.

Public Meetings

The DOT invites participation in these meetings by all those interested in the TIFIA program, including but not limited to public officials, private citizens, bankers, financial advisors, attorneys, and officials of rating agencies, bond insurers, project developers and engineering and construction companies. Views on all aspects of TIFIA regulatory implementation, both changes required by the 2005 SAFETEA-LU amendments and recommended or needed changes to

the existing rule, are welcome. Meeting proceedings will be recorded. Written submissions are welcome, although not required for participation. The DOT is particularly interested in comments pertaining to the changes SAFETEA-LU made in the TIFIA statute.

The DOT expects each meeting to last approximately three hours. No pre-registration is required for participation.

Issued on: April 10, 2006.

A. Thomas Park,
Chief Financial Officer.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2005-23238]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 14 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSR). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10). The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective April 14, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366-4001, *maggi.gunnels@fmcsa.dot.gov*, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 8 a.m. to 5 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 January 31, 2006, FMCSA published a Notice of receipt of exemption applications from 14 individuals, and requested comments

from the public (71 FR 5105). The 14 individuals petitioned FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. They are: Nick D. Bacon, Donald G. Bostic, Jr., Johnny W. Bradford, Aaron C. Buck, James C. Davis, James H. Eldridge, Jr., Michael G. Gould, Albert L. Gschwind, Bruce A. Homan, Matthew J. Konecki, Rick P. Moreno, Roy J. Oltman, Monte L. Purciful, and Bernard J. Wood.

Under 49 U.S.C. 31315 and 31136(e), 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, FMCSA has evaluated the 14 applications on their merits and made a determination to grant exemptions to all of them. The comment period closed on March 2, 2006. Three comments were received, and fully considered by FMCSA in reaching the final decision to grant the exemptions.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSR 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)).

Since 1992, the Agency 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 degrees, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Pual Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket, FMCSA-98-4334). The panel's conclusion supports the Agency's view that the present visual acuity standard is reasonable and necessary as a general standard to ensure highway safety. 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 14 exemption applicants listed in this Notice fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, glaucoma, cataract macular degeneration and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but eight of the applicants were either born with their vision impairments or have had them since childhood. The eight individuals who sustained their vision conditions as adults have had them for periods ranging from 6 to 26 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. 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 skills 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.

While possessing a valid CDL or non-CDL, these 14 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 4 to 45 years. In the past 3 years, none of the drivers have had any convictions for traffic violations and none of them were involved in crashes.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the January 31, 2006 Notice (71 FR 5105).

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), 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 him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, 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, FMCSA requires a person to present verifiable evidence that he/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 crashes and traffic violations. Copies of the studies may be found at docket number FMCSA-98-3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study 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 crash 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 crash proneness from crash 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 crashes. (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of the American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash 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 14 applicants, we note that one of the applicants had a traffic violation for speeding and one of them was involved in a crash. 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, 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 between them are more compact. 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/she has been performing in intrastate commerce. Consequently, 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 is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to the 14 applicants

listed in the Notice of January 31, 2006 (71 FR 5105).

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, FMCSA will impose requirements on the 14 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

Advocates for Highway and Auto Safety (Advocates) expressed opposition to FMCSA's policy to grant exemptions from the FMCSR, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which 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.

Ms. Barb Sachau opposes the notion of granting vision exemptions to these drivers. She believes that two fully

functional eyes are needed to drive safely.

Ms. Sachau believes that the approval of vision exemptions make the roads much more dangerous.

In regard to these comments, the discussion under the heading, "Basis for Exemption Determination," explains in detail the evaluation methods the Agency utilizes prior to granting an exemption to ensure that the granting of an exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. To evaluate the effect of these exemptions on safety, 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, 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 crashes and traffic violations. Copies of the studies may be found at docket number FMCSA-98-3637.

An anonymous individual stated that he/she is in support of the vision program due to the thorough screening that all applicants must go through.

Conclusion

Based upon its evaluation of the 14 exemption applications, FMCSA exempts Nick D. Bacon, Donald G. Bostic, Jr., Johnny W. Bradford, Aaron C. Buck, James C. Davis, James H. Eldridge, Jr., Michael G. Gould, Albert L. Gschwind, Bruce A. Homan, Matthew J. Konecki, Rick P. Moreno, Roy J. Oltman, Monte L. Purciful, and Bernard J. 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 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 FMCSA for a renewal under procedures in effect at that time.

Issued on: April 10, 2006.

Larry W. Minor,
Director, Office of Bus and Truck Standards and Operations.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2005-23773]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 19 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSR). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10). The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective April 14, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366-4001, maggi.gunnels@fmcsa.dot.gov, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 8 a.m. to 5 p.m., 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 February 9, 2006, FMCSA published a Notice of receipt of exemption applications from 19 individuals, and requested comments from the public (71 FR 6826). The 19 individuals petitioned FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate