

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration**

[Docket No. FMCSA-2007-0017]

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 28 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. 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 January 8, 2008. The exemptions expire on January 8, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)-366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 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 Federal Document Management System (FDMS) at <http://www.regulations.gov>.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the

comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78; Apr. 11, 2000). This information is also available at <http://Docketinfo.dot.gov>.

Background

On November 28, 2007, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (72 FR 67341). That notice listed 28 applicants' case histories. The 28 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, 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 28 applications on their merits and made a determination to grant exemptions to all of them. The comment period closed on December 28, 2007.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs 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 a 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)).

FMCSA 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 28 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinal detachment, macular scar, macular degeneration, cataract, retinal scar, alternating exotropia, and loss of vision

due to trauma. In most cases, their eye conditions were not recently developed. All but seven of the applicants were either born with their vision impairments or have had them since childhood. The seven individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 25 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 28 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 3 to 42 years. In the past 3 years, four of the drivers had convictions for traffic violations and three of them were involved in crashes.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the November 28, 2007 notice (72 FR 67341).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, 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 the past 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 demonstrated safe driving records in the waiver program 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 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 28 applicants, three of the applicants had a traffic violation for speeding, one of the applicants had a traffic violation for passing in a wrong lane, and three applicants were involved in crashes. 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. 31136(e) and 31315 to the 28 applicants listed in the notice of November 28, 2007 (72 FR 67341).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 28 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

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

Advocates for Highway and Auto Safety (Advocates) expressed opposition to FMCSA's policy to grant exemptions from the FMCSRs, 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. 31136(e) and 31315); 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.

One individual opposes the granting of vision exemptions to vision impaired drivers. She believes that granting vision exemptions to drivers makes the roads more dangerous. This individual also believes that the Agency's policies are too lax.

In regard to this comment, 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.

Conclusion

Based upon its evaluation of the 28 exemption applications, FMCSA exempts Thomas E. Anderson, Garry A. Baker, Richard D. Becotte, Timothy W. Bickford, James E. Blazer, Terry S. Brookshire, Jr., Wayne A. Burnett, Theodore W. Cozat, Zibbie L. Dawsey, Alex G. Dlugolenski, Karen Y. Duvall, Gordon R. Fritz, John A. Graham, Jimmy D. Gregory, Taras G. Hamilton, Larry K. Lentz, Boleslaw Makowski, Joseph W. Meacham, Charles M. Moore, Anthony D. Oviatt, John R. Parsons, III, Steven S. Reinsvold, Michael J. Richard, Glenn T. Riley, George E. Todd, Gary S. Warren, Bradley A. Weiser, and Eddie L. Williams, 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. 31136(e) and 31315, 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. 31136 and 31315.

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: December 31, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8-106 Filed 1-7-08; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of an Alternatives Analysis/Environmental Impact Statement for High-Capacity Transit Improvements in the Tempe South Corridor

AGENCY: Federal Transit Administration, U.S. Department of Transportation.

ACTION: Notice of Intent To Prepare an Alternatives Analysis/Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) and Valley Metro Rail, Inc. (METRO) intend to prepare an Alternatives Analysis (AA) and Environmental Impact Statement (EIS) on proposed high capacity transit improvements, including potential bus rapid transit (BRT), light rail transit (LRT), modern streetcar, or commuter rail in the Tempe South Corridor in the Cities of Tempe and Chandler in Maricopa County, Arizona. The proposed study area is bounded on the north by the Loop 202 (Red Mountain Freeway); Loop 101 (Price Freeway) on the east; Loop 202 (Santan Freeway) on the south; and the Tempe Branch of the Union Pacific Railroad on the west. The AA/EIS will be prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) and its implementing regulations. The AA/EIS process will be initiated with a scoping process that provides opportunities for the public to comment on the scope of the EIS, including the project's purpose and need, the alternatives to be considered, and the impacts to be evaluated in the AA and Draft Environmental Impact Statement (DEIS). This input will be used to assist decisionmakers in determining a locally preferred alternative (LPA) for the Tempe South Corridor. Upon selection of an LPA, METRO will request permission from FTA to enter into preliminary engineering per requirements of New Starts regulations 49 CFR Part 611. The Final Environmental Impact Statement (FEIS) will be issued after FTA approves entrance into preliminary engineering.

The purpose of this notice is to alert interested parties regarding the intent to prepare the AA/EIS, to provide information on the nature of the

proposed project and possible alternatives, to invite public participation in the AA/EIS process, including comments on the scope of the EIS as proposed in this notice, to announce that public scoping meetings will be conducted, and to identify participating agency contacts.

DATES: Written and e-mailed comments on the scope of study, including the project's purpose and need, the alternatives to be considered, and the impacts to be assessed, should be sent to Valley Metro Rail, Inc. (METRO) on or before February 13. See **ADDRESSES** below for the street address and e-mail address to which written comments may be sent. Public scoping meetings to accept comments on the scope of the study will be held on the following dates:

- Tuesday, January 29, 2007 at 6 p.m., Corona del Sol High School, 1001 East Knox Road, Tempe, Arizona 85284.
- Wednesday, January 30, 2007 at 6 p.m., Tempe Public Library, 3500 South Rural Road, Tempe, Arizona 85282.

Potential participating and cooperating agencies will be invited by phone or letter to an interagency scoping meeting planned to be held on the following date:

- Thursday, February 7, 2007 at 10 a.m., Valley Metro Rail (METRO), 101 North 1st Avenue, Suite 1300, Phoenix, AZ 85003.

The project's purpose and need and the initial set of alternatives proposed for study will be presented at these meetings. The buildings used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in a scoping meeting should contact Dawn Coomer, City of Tempe, 31 E. Fifth Street, Tempe, AZ 85281, 480-350-8550 at least 48 hours in advance of a meeting in order for METRO and the City of Tempe to make the necessary arrangements.

Scoping materials will be available at the meetings and through the project's Web site at <http://www.metrolightrail.org/tempesouth>. Hard copies of the scoping materials are also available from Mr. Marc Soronson, whose contact information is given in **ADDRESSES** below.

ADDRESSES: Written comments should be sent to the attention of Mr. Marc Soronson, Valley Metro Rail, Inc., 101 North 1st Avenue, Suite 1300, Phoenix, AZ 85003. E-mail: tempesouth@metrolightrail.org. Phone: (602) 744-5545 Fax: (602) 252-7453. The locations of the public scoping meetings are given above under **DATES**.