

Issued on: May 7, 2008.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

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BILLING CODE 4910-EX-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA-99-5748, FMCSA-99-6156, FMCSA-99-6480, FMCSA-00-7363, FMCSA-01-9258, FMCSA-03-16564, FMCSA-05-23238, FMCSA-06-23773]

#### Qualification of Drivers; Exemption Renewals; Vision

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA, in an earlier notice, announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 34 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366-4001, [fmcsamedical@dot.gov](mailto: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>.

##### Background

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. The notice was published on March 5, 2008 (FR 73 11989), and the comment period ended on April 4, 2008.

#### Discussion of Comments

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

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. 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.

#### Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 34 renewal applications, FMCSA renews the Federal vision exemptions for Scott E. Ames, Otto J. Ammer, Jr., Nick D. Bacon, Mark A. Baisden, Johnny W. Bradford, Lawrence M. Daley, Clifford H. Dovel, Ray L. Emert, Arthur L. Fields, John W. Forgy, Daniel R. Franks, Glenn E. Gee, Rupert G. Gilmore, III, Albert L. Gschwind, Walter R. Hardiman, George A. Hoffman, III, Laurent G. Jacques, Michael W. Jones, Matthew J. Konecki, Duane R. Krug, Paul E. Lindon, Jack D. Miller, Eric M. Moats, Sr., Rick Moreno, Robert W. Nicks, Joseph S. Nix, IV., Monte L. Purcifil, George S. Rayson, Luis F. Saavedra, Gerald M. Smith, Edward J. Sullivan, Steven Valley, Darel G. Wagner, and Bernard J. Wood.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal 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.

Issued on: May 6, 2008.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-290 (Sub-No. 299X); STB Docket No. AB-1024X]

#### Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Chesapeake, VA; Norfolk and Portsmouth Belt Line Railroad Company—Discontinuance of Trackage Rights Exemption—in Chesapeake, VA

Norfolk Southern Railway Company (NSR) and Norfolk and Portsmouth Belt Line Railroad Company (NPBL)<sup>1</sup> (collectively, applicants) have jointly filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* for NSR to discontinue service over, and for NPBL to discontinue trackage rights over, 0.90 miles of railroad between milepost NS 1.40 and milepost NS 2.30, in Chesapeake, VA. The line traverses United States Postal Service Zip Code 23324.

NSR and NPBL have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the service discontinuance/discontinuance of trackage rights shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this

<sup>1</sup> NPBL is jointly owned by NSR and CSX Transportation, Inc.