

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 May 12, 2008 (FR 73 27014), and the comment period ended on June 11, 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 24 renewal applications, FMCSA renews the Federal vision exemptions for Juan D. Adame, Louis N. Adams, Paul D. Crouch, Thomas G. Danclovic, John M. Doney, Curtis N. Fulbright, Joshua G. Hansen, Daniel W. Henderson, Edward W. Hosier, Burt A. Hughes, Craig T. Jorgensen, Jose A. Lopez, Earl E. Martin, Bobby L. Mashburn, Brian E. Monaghan, William P. Murphy, Roy J. Oltman, Albert K. Remsburg, III, Willard L.

Riggle, Robert H. Rogers, George L. Silvia, Darwin J. Thomas, Kenneth E. Walker, and Frankie A. Wilborn.

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: July 21, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

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

[Docket No. FMCSA-99-5748, FMCSA-99-6480, FMCSA-01-11426, FMCSA-02-11714, FMCSA-05-23099, FMCSA-06-23773]

Qualification of Drivers; Exemption Renewals; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 17 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 comment 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, 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 May 12, 2008 (FR 73 27017), and the comment period ended on June 11, 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 17 renewal applications, FMCSA renews the Federal vision exemptions for Guy M. Alloway, Joe W. Brewer, James D. Coates, Donald D. Dunphy, James W. Ellis, IV., John E. Engstad, David W. Grooms, Walter D. Hague, Jr., David A. Inman, Alfred G. Jeffus, Teddie W. King, Aaron C. Lougher, Lawrence C. Moody, Stanley W. Nunn, Roberto G. Serna, Bobby C. Spencer, and Kevin R. Stoner.

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: July 21, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Notice of Date for Submission of Requests for Confidential Treatment of Certain Early Warning Reporting Data

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: This notice establishes a submission date for those manufacturers that choose to submit requests for confidential treatment of Early Warning Reporting data on incidents involving a death or an injury, property damage claims or light vehicle production to send the requests to NHTSA's Chief Counsel.

DATES: Requests for confidential treatment of previously submitted Early Warning Reporting data on incidents involving a death or an injury, on property damage claims and on light vehicle production must be submitted to NHTSA's Chief Counsel by August 27, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew J. DiMarsico, NHTSA Office of the Chief Counsel, W41-227, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*Telephone:* 202-366-5263) (*Fax:* 202-366-3820).

SUPPLEMENTARY INFORMATION: The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, which was enacted in 2000, required NHTSA to prescribe rules establishing early warning reporting (EWR) requirements. 49 U.S.C. 30166(m). On July 10, 2002, NHTSA published regulations implementing the early warning reporting provisions. 49 CFR part 579 Subpart C, 67 FR 45822.

In general, the EWR regulations require manufacturers of motor vehicles (producing 500 or more vehicles annually), all manufacturers of child restraint systems and manufacturers of tires above a specified volume to report, on a quarterly basis, information on production, incidents involving fatalities and injuries based on claims and notices, claims for property damage, consumer complaints, warranty claims and field reports, and to submit copies of certain field reports. *See* 49 CFR 579.21-26. Manufacturers of motor vehicles that produce less than 500 vehicles annually, and all other equipment manufacturers, do not provide quarterly reports, but are required to report information on incidents involving death(s) based on claims or notices. *See* 49 CFR 579.27. Additionally, manufacturers were required to file initial reports containing historical data. *See* 49 CFR 579.28(c). The EWR rule did not address whether the information submitted by manufacturers would be released to the public.

On July 28, 2003, NHTSA published an appendix to its Confidential Business Information (CBI) rule that addressed the confidentiality of EWR data. *See* 49 CFR part 512 App. C, 68 FR 44209. The rule established class determinations that EWR information on production numbers (except for light vehicles), consumer complaints, warranty claims and field reports (including copies of reports) were confidential. NHTSA subsequently amended the rule to add a class determination that common green tire data are confidential. 69 FR 21409 (April 21, 2004). During the rulemaking, NHTSA declined to adopt a request by commenters that EWR data on deaths and injuries and on property damage claims (collectively, "EWR claims data") be accorded confidentiality. Instead, manufacturers could submit individualized requests for confidential treatment of their EWR claims data. If a manufacturer did not submit a request for confidential treatment of its EWR claims data, the agency would be free to disclose it.

Litigation over the provisions in NHTSA's rule on the confidentiality of EWR data was instituted in March of 2004. Public Citizen challenged the class determinations and sought to have them set aside. The Rubber Manufacturers Association (RMA), a trade association that includes tire manufacturers, intervened contending that all EWR information including EWR claims data is exempt from disclosure. This was based on the legal theory that the TREAD Act precluded the disclosure of the data and thus

under Exemption 3 of the Freedom of Information Act, 5 U.S.C. 552(b)(3),¹ NHTSA could not release EWR data. In addition, some RMA members submitted requests for confidentiality of EWR claims data, which NHTSA denied. RMA's complaint as an intervenor challenged those denials as well as the rule.

In light of the RMA claim in the lawsuit, NHTSA stayed the processing of requests for confidential treatment of EWR information until the matters in litigation were resolved. The agency further advised manufacturers that until further notice they should not request confidential treatment of EWR information.

In its resolution of the litigation, the District Court issued two opinions. In the first, the Court found that NHTSA had the authority to make the class determinations of confidentiality but had failed to follow proper notice and comment procedures when it did so. It remanded the matter back to NHTSA. *See Public Citizen, Inc. v. Mineta*, 427 F.Supp.2d 7 (D.D.C. 2006). In a subsequent decision, the Court rejected RMA's contention that the TREAD Act precluded NHTSA from releasing EWR data. *See Public Citizen, Inc. v. Mineta*, 444 F.Supp.2d 12 (D.D.C. 2006). RMA appealed. On July 22, 2008, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the judgment of the District Court on RMA's claim that the TREAD Act precluded the release of all EWR data. *Public Citizen, Inc., v. Rubber Manufacturers Association*, No. 06-5304, _ F.3d _ (DC Cir. 2008).

While RMA's appeal was pending, in response to the District Court's remand of the 2003 rule, NHTSA published a rule on the confidentiality of EWR data. *See* 72 FR 59434 (Oct. 19, 2007). The 2007 rule contained class determinations that EWR information on production numbers (except for light vehicles), consumer complaints, warranty claims, field reports (including copies of field reports) and common green tire data are confidential. Significantly, under the 2007 rule, EWR claims data is not covered by any class determinations. Accordingly, manufacturers seeking confidential treatment for EWR claims data may do so by submitting individual requests for

¹ Exemption 3 incorporates the various nondisclosure provisions contained in other Federal statutes. It provides for the withholding of information specifically exempted from disclosure by statute, provided that such statute "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. 552(b)(3).