

professional medical opinion, I feel Harry McSuley has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. McSuley reported that he has driven straight trucks for 55 years, accumulating 1,650,000 miles, and tractor-trailer combinations for 53 years, accumulating 3,445,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Robert S. Metcalf*

Mr. Metcalf, 57, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20 and in the left, 20/300. Following an examination in 2008, his optometrist noted, "Aside from needing glasses for reading, Mr. Metcalf should have not problems driving a commercial vehicle without correction." Mr. Metcalf reported that he has driven straight trucks for 31 years, accumulating 620,000 miles, and tractor-trailer combinations for 28 years, accumulating 1.7 million miles. He holds a Class A CDL from Arizona. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Elmer R. Miller*

Mr. Miller, 64, has complete loss of vision in his left eye due to a traumatic injury sustained in 1986. The best corrected visual acuity in his right eye is 20/30. Following an examination in 2008, his ophthalmologist noted, "I certify that, in my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Miller reported that he has driven straight trucks for 47 years, accumulating 564,000 miles. He holds a Class C operator's license from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Richard L. Moreland*

Mr. Moreland, 49, has complete loss of vision in his right eye due to a traumatic injury sustained in 1966. The visual acuity in his left eye is 20/20. Following an examination in 2008, his optometrist noted, "Based on these findings, I feel Richard L. Moreland has the visual abilities to safely continue to operate a commercial motor vehicle in interstate commerce because his visual loss has been present since 1966." Mr. Miller reported that he has driven straight trucks for 23 years, accumulating 230,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no

crashes and no convictions for moving violations in a CMV.

*Stanley J. Morris*

Mr. Morris, 46, has complete loss of vision in his left eye due to a traumatic injury since childhood. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2008, his optometrist noted, "I certify that, in my medical opinion, the applicant's visual deficiency is stable and has sufficient vision to perform the driving tasks required to operate a commercial motor vehicle, and that the applicant's condition will not adversely affect his ability to operate a commercial motor vehicle safely." Mr. Morris reported that he has driven straight trucks for 11 years, accumulating 264,000 miles, and tractor-trailer combinations for 6 years, accumulating 399,000 million miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Barbara C. Pennington*

Ms. Pennington, 45, has a prosthetic right eye due to enucleation following a traumatic injury in 1991. The best corrected visual acuity in her left eye is 20/20. Following an examination in 2008, her ophthalmologist noted, "The vision is stable in her left eye and Ms. Pennington is able to operate a commercial motor vehicle from an ocular standpoint." Ms. Pennington reported that she has driven straight trucks for 1 year, accumulating 50,000 miles, and tractor-trailer combinations for 15 years, accumulating 1.5 million miles. She holds a Class A CDL from Florida. Her driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Ronald M. Scott*

Mr. Scott, 52, has loss of vision in his right eye due to a traumatic injury that occurred in 1984. The visual acuity in his right eye is count fingers and in the left eye, 20/15. Following an examination in 2008, his optometrist noted, "I feel that Mr. Scott has more than sufficient vision in his left eye to perform the driving tasks required to operate a commercial vehicle." Mr. Scott reported that he has driven straight trucks for 30 years, accumulating 2.6 million miles, and tractor-trailer combinations for 30 years, accumulating 3 million miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Jeremichael Steele*

Mr. Steele, 41, has loss of vision in his left eye due to a retinal scar sustained from a traumatic injury as a child. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2008, his optometrist noted, "In my medical opinion, Mr. Steele has sufficient vision to perform the driving tasks to operate a commercial vehicle." Mr. Steele reported that he has driven tractor-trailer combinations for 6 years, accumulating 240,000 miles, and buses for 7 years, accumulating 63,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes, and one conviction for a moving violation in a CMV; he changed lanes improperly.

**Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business January 12, 2009. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: December 5, 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-00-7006; FMCSA-00-7363; FMCSA-01-10570; FMCSA-02-12294; FMCSA-04-18885; FMCSA-06-24783]**

**Qualification of Drivers; Exemption Applications; Vision**

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

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal

Motor Carrier Safety Regulations for 12 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective January 3, 2009. Comments must be received on or before January 12, 2009.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-00-7006; FMCSA-00-7363; FMCSA-01-10570; FMCSA-02-12294; FMCSA-04-18885; FMCSA-06-24783, using any of the following methods.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

*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 19476). This information is also available at <http://DocketInfo.dot.gov>.

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

##### Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-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 procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

##### Exemption Decision

This notice addresses 12 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 12 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are: Robert W. Brown, David D. Bungori, Jr., Benny J. Burke, David R. Cox, Gary T. Hicks, Robert T. Hill, John C. McLaughlin, Kenneth D. Sisk, David W. Skillman, Rick N. Ulrich, Stephen D. Vice, and Larry D. Wedekind.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination 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 and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded 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(e) and 31315.

##### Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 12 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (73 FR 20245; 65 FR 57230; 67 FR 71610; 69 FR 64810; 71 FR 66217; 57 FR 57266; 69 FR 62741; 71 FR 62147; 65 FR 45817; 65 FR 77066; 67 FR 71610; 69 FR 64810; 72 FR 184; 66 FR 53826; 66 FR 66966; 69 FR 17267; 71 FR 43556; 67 FR 46016; 67 FR 57267; 69 FR 51346; 71 FR 50970; 69 FR 53493; 69 FR 62742; 71 FR 32183; 71 FR 41310). Each of these 12 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

##### Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these

drivers submit comments by January 12, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 12 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: December 5, 2008.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

[Docket Number FRA-2006-25040]

#### **Capital Metropolitan Transportation Authority; Notice of Public Hearing**

On August 8, 2006, the Federal Railroad Administration (FRA) published a notice (Notice) in the **Federal Register** announcing Capital Metropolitan Authority's (CMTA) request for a waiver of compliance from certain provisions of Title 49 of the Code of Federal Regulations (CFR) for the operation of a new planned Commuter Rail Service (CRS) that will share trackage with the Austin Area

Terminal Railroad (AUAR), a common carrier freight railroad. As explained in the Notice, CMTA is constructing a 32-mile rail system (27 miles shared with AUAR) linking the City of Leander, Texas, with downtown Austin, TX. CMTA plans to utilize temporal separation of freight and passenger operations on the shared trackage and a light rail style, non-FRA compliant Diesel-Multiple Unit (DMU) vehicle in order to offer a "one seat ride" operating on both the CMTA mainline and in city streets with tight curvature."

As detailed in the Notice, CMTA seeks a waiver of compliance from certain regulatory provisions of 49 CFR parts 219 (Control of Alcohol and Drug Use), 221 (Rear end marking device), 223 (Safety glazing standards), 225 (Railroad accident/incident reporting), 229 (Railroad locomotive safety standards), 231 (Railroad safety appliance standards), 238 (Passenger equipment safety standards), 239 (Passenger train emergency preparedness) and 240 (Qualification and certification of locomotive engineers).

Noting that certain provisions in 49 CFR part 231 pertaining to safety appliances are statutorily required, and therefore not subject to FRA's waiver authority, CMTA also requests that FRA exercise its authority under 49 U.S.C. 20306 to exempt CMTA from certain provisions of Chapter 203, Title 49, of the United States Code because the "CMTA DMU vehicles will be equipped with their own array of safety devices resulting in equivalent safety." Specifically, CMTA requests that for purposes of its planned CRS system, FRA exempt it from the requirements of 49 U.S.C. 20302 mandating that railroad vehicles be equipped with (1) Handbrakes, (2) sill steps; and (3) side and end handholds.

CMTA indicates that the DMU vehicles it plans to utilize for its CRS service are equipped with automatic spring applied parking brakes, as opposed to conventional hand brakes as required by Section 20302. CMTA further indicates that the parking brakes will be controlled by the one-person crew operating the vehicle from control stands within the vehicle and that the parking brakes are capable of holding a vehicle on a six percent grade at an 84.5 ton load. Accordingly, CMTA states the parking brake of its DMU vehicles serves the same purpose of a conventional hand brake, but in a manner that provides an equivalent or superior level of safety.

CMTA further indicates that sill steps (required by Section 20302) are not necessary for safety on the DMU

vehicles and would not enhance the safety of the vehicles. Specifically, CMTA explains that the door threshold of the vehicles is 23.5 inches above the top of the rail, and such configuration renders sill steps unnecessary.

CMTA also indicates that side and end handholds (required by Section 20302) are not necessary for safety on its DMU vehicles and in fact, such appliances might present a safety hazard in the street-running environment of its planned CRS system. Specifically, noting that handholds are typically intended for use by crew members performing yard and service duties, CMTA notes that its operations will not involve any such activities from positions outside and adjacent to the vehicle or near vehicle doors. Instead, CMTA indicates that yard moves will be controlled from the control stand within the vehicle by the on-board operator and switches will be hand thrown. Therefore, CMTA notes that there is no need for personnel to mount or dismount the vehicles using external appliances of any kind. Further, CMTA expresses reservation about installing external handholds because of the street-running characteristics of its planned CRS service noting that such appliances would give pedestrians "the opportunity to grab onto something on the outside of the vehicle with the intention to hitch an unlawful," and unsafe, ride.

In accordance with 49 U.S.C. 20306, FRA may exempt CMTA from the above statutory requirements based on evidence received and findings developed at a hearing demonstrating that the statutory requirements "preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations under existing law." Accordingly, in order to receive evidence and develop findings to determine whether FRA should invoke its discretionary authority under 49 U.S.C. 20306 in this instance, a public hearing is scheduled to begin at 9 a.m. on Thursday, January 8, 2009, at the Hilton Garden Inn located at 815 14th Street, NW., in Washington, DC. Interested parties are invited to present oral statements at the hearing. The hearing will be informal and will be conducted by a representative designated by FRA in accordance with FRA's Rules of Practice (49 CFR 211.25). The hearing will be a non-adversarial proceeding; therefore, there will be no cross examination of persons presenting statements. FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those