

medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) 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 (4) 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.

### Conclusion

Based upon its evaluation of the thirty-two exemption applications, FMCSA exempts, Shale W. Anderson, Charles L. Arnburg, Ronald D. Ayers, Kenneth F. Blessing, Ronald A. Boyle, Garrett D. Couch, Stanley P. Eickhoff, Peter B. Galvin, Mark W. Garver, Richard S. Jackson, Alfred K. Kataoka, Donald S. Keller, Edwin I. Longstreth, Jason M. Luper, Craig S. Lynn, George M. Michael, Jr., Thomas J. Millard, Travis F. Moon, Kenneth M. Pachniak, Robert M. Pardoe, James A. Patchett, Joseph D. Pfandner, Harold L. Phillips, William Rhoten, Jr., Heath A. Senkel, Ronald R. Unruh, Norman J. Vantuyle, II., Danny E. Vawn, John M. Warden, Donald E. Weadon, Douglas W. Williams, Thomas A. Woehrl from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two 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(e) 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: November 4, 2010.

**Larry W. Minor,**

*Associate Administrator, Office of Policy and Program Development.*

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**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2010-0201]

#### 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 15 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 November 16, 2010. The exemptions expire on November 16, 2012.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366-4001, [fmcamedical@dot.gov](mailto:fmcamedical@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 DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

### Background

On September 9, 2010, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (75 FR 54958). That notice listed 15 applicants' case histories. The 15 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 15 applications on their merits and made a determination to grant exemptions to each of them.

### 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 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)).

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 15 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, complete loss of vision, loss of an eye, macular scarring and prosthesis. In most cases, their eye conditions were not recently developed. 11 of the applicants were either born with their vision impairments or have had them since childhood. The 4 individuals who sustained their vision conditions as adults have had them for periods ranging from 20 to 29 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 of 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 15 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, 5 of the drivers were involved in crashes or convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the September 9, 2010 notice (75 FR 54958).

#### **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-1998-3637.

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 15 applicants, one of the applicants had a traffic violation for speeding, one of the applicants was cited for a cell phone violation, one of the applicants had a traffic violation for an improper turn at an intersection, one of the applicants had a traffic violation for operating a CMV while uninsured and one of the applicants was involved in a crash. All the applicants achieved a 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 that 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 15 applicants listed in the notice of September 9, 2010 (75 FR 54958).

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 15 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 one comment in this proceeding. This comment was considered and discussed below.

The Pennsylvania Department of Transportation stated that it was in favor of granting a Federal vision exemption to Mark E. Lapp.

#### Conclusion

Based upon its evaluation of the 15 exemption applications, FMCSA exempts James B. Bierschbach, John P. Catalano, Tyrone O. Friese, Randy M. Lane, Mark E. Lapp, David S. Matheny, Frank G. Merrill, Shannon L. Puckett, Leo S. Ruiz, Jr., Ronald B. Shafer, Thomas M. Sharp, Ranjodh Singh, Kenneth M. Sova, Mark A. Thornton and Earl L. White, Jr., 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: November 8, 2010.

**Larry W. Minor,**

*Associate Administrator, Office of Policy and Program Development.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. EP 552 (Sub No. 2)]

#### Notice of Railroad-Shipper Transportation Advisory Council Vacancies

**AGENCY:** Surface Transportation Board (Board), DOT.

**ACTION:** Notice of vacancies on the Railroad-Shipper Transportation Advisory Council (RSTAC) and solicitation of nominations.

**SUMMARY:** The Board hereby gives notice of 2 vacancies on RSTAC for: (1) A representative of a Class I railroad; and (2) a representative of a small shipper. The Board is soliciting suggestions for candidates to fill these vacancies.

**DATES:** Suggestions of candidates for membership on RSTAC are due on December 13, 2010.

**ADDRESSES:** Suggestions may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's website, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 526 (Sub-No. 2), 395 E Street, SW., Washington, DC 20423-0001.

#### FOR FURTHER INFORMATION CONTACT:

Brian O'Boyle at 202-245-0536. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** The Board, created by Congress in 1996 to take over many of the functions previously performed by the Interstate Commerce Commission, exercises broad authority over transportation by rail carriers, including regulation of freight railroad rates and service (49 U.S.C. 10701-10747, 11101-11124), as well as

the construction, acquisition, operation, and abandonment of rail lines (49 U.S.C. 10901-10907) and railroad line sales, consolidations, mergers, and common control arrangements (49 U.S.C. 10902, 11323-11327).

RSTAC was established upon the enactment of the ICC Termination Act of 1995 (ICCTA), on December 29, 1995, to advise the Board's Chairman, the Secretary of Transportation, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives, with respect to rail transportation policy issues that RSTAC considers significant. RSTAC focuses on issues of importance to small shippers and small railroads, including car supply, rates, competition, and procedures for addressing claims. ICCTA directs RSTAC to develop private-sector mechanisms to prevent, or identify and address, obstacles to the most effective and efficient transportation system practicable. The Secretary of Transportation and the members of the Board cooperate with RSTAC in providing research, technical, and other reasonable support. RSTAC also prepares an annual report concerning its activities and recommendations on whatever regulatory or legislative relief it considers appropriate. RSTAC is not subject to the Federal Advisory Committee Act.

RSTAC consists of 19 members. Of this number, 15 members are appointed by the Chairman of the Board, and the remaining 4 members are the Secretary of Transportation and the Members of the Board, who serve as *ex officio*, nonvoting members. Of the 15 members to be appointed, 9 members are voting members and are appointed from senior executive officers of organizations engaged in the railroad and rail shipping industries. At least 4 of the voting members must be representatives of small shippers, as determined by the Chairman, and at least 4 of the voting members must be representatives of Class II or III railroads. The remaining 6 members to be appointed—3 representing Class I railroads and 3 representing large shipper organizations—serve in a nonvoting, advisory capacity, but are entitled to participate in RSTAC deliberations.

RSTAC is required by statute to meet at least semiannually, and has chosen to meet 4 times in 2011, with the first meeting tentatively scheduled in March 2011. Meetings are generally held at the Board's headquarters in Washington, DC, although some may be held in other locations.