

Commercial Vehicle Safety Alliance (CVSA) also commented. Its members include representatives of Federal, State and local governments, as well as representatives of private industry. CVSA commented briefly that it did not oppose or support the exemption. Comments are available for review in the docket for this notice.

FMCSA Response

The DOE did not base its request for an exemption on its status as a Federal agency. Rather, it provided the same justification for the request that would be required of any non-governmental agency.

FMCSA Decision

The FMCSA has evaluated DOE's application for exemption and the public comments. The Agency believes that DOE will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)].

Terms of the Exemption

Period of the Exemption

This exemption from the requirements of 49 CFR 395.3(a)(3)(ii) is granted for the period from 12:01 a.m., July 1, 2013, through 11:59 p.m. on June 30, 2015.

Extent of the Exemption

The exemption is restricted to DOE's contract driver-employees transporting security-sensitive radioactive materials. This exemption is limited to the provisions of 49 CFR 395.3(a)(3)(ii) to allow contract driver-employees transporting security-sensitive radioactive materials to be treated the same as drivers transporting explosives, as provided in § 395.1(q). These drivers must comply with all other applicable provisions of the FMCSRs.

Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Notification to FMCSA

The DOE must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must include the following information:

- a. Date of the accident,

- b. City or town, and State, in which the accident occurred, or closest to the accident scene,

- c. Driver's name and driver's license number and State of issuance

- d. Vehicle number and State license plate number,

- e. Number of individuals suffering physical injury,

- f. Number of fatalities,

- g. The police-reported cause of the accident,

- h. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and

- i. The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be emailed to MCPSD@DOT.GOV.

Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: May 22, 2013.

Anne S. Ferro,
Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. **FMCSA-2012-0268**]

Hours of Service of Drivers: Trailways Companies Application for Exemption

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

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant Adirondack Trailways, Pine Hill Trailways, New York Trailways ("Trailways") and all other regular-route passenger carriers and their drivers an exemption from the hours-of-service (HOS) record of duty status (RODS) requirement to enter a change in duty status on the daily log for breaks in driving time of 10 minutes or less, for the limited purpose of picking up or dropping off passengers, baggage, or small express packages. FMCSA extended the request to all regular-route passenger carriers and

their drivers rather than limiting it to Trailways' drivers. The exemption will allow these drivers to perform their daily duties without having to record entries in the daily log for breaks in driving time of 10 minutes or less. Such activity will not be considered a change of duty status for the purposes of 49 CFR 395.8(c).

DATES: This exemption is effective from May 31, 2013 to May 31, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; Telephone: 202-366-4325. Email: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

Trailways (Adirondack Trailways, Pine Hill Trailways, and New York Trailways) offers scheduled passenger-carrier service throughout New York State and to Montreal and Toronto. Trailways stated that its exemption application was for fixed-route carriers and their drivers who are often away from the controls of the vehicle for brief periods of time of less than 10 minutes to assist passengers or make one of several passenger pick-ups and drop-offs along the route.

Trailways advised that until March 2011 it and other motor carriers had been operating in accordance with a 1996 interpretation of 49 CFR 395.8(c) issued by the Federal Highway Administration (FHWA). The 1996 interpretation excluded regular-route passenger carrier CMV drivers from having to record a location entry on the driver's RODS for non-driving periods of less than 10 minutes. This guidance was not included in the compilation and re-publication of all Agency regulatory guidance on April 4, 1997 (62 FR 16370), and is no longer valid.

In March 2011, New York State officials began enforcing a literal interpretation of the rule, requiring that a change in duty status be entered on the log any time the driver leaves the operating controls of the CMV. Trailways is concerned that the violations will have a negative effect on the companies' and the drivers' Safety Management System scores, as well as schedules and passenger service because of the delays needed to make the entries.

Instead of complying with the provisions in 49 CFR 395.8(c), Trailways requested that its drivers with regularly scheduled routes be exempted from changing their duty status from "driving" to "on-duty not driving" when making stops of less than 10 minutes.

Trailways notes that the 1996 interpretation reduced the amount of total time a driver could drive in a duty period. Without the 1996 interpretation, the time drivers spend at stops to load passengers, freight, etc. would be on-duty/not driving, increasing the driving time available, but creating an additional administrative distraction every time the driver leaves the controls regardless of the reason or the limited amount of time away from the vehicle controls. Trailways further advised that its carriers provide flag stops and that having to update the log at each such stop increases the amount of time that the motorcoach may be delaying traffic while waiting for the pick-up and/or discharge of passengers and luggage, and then waiting for the driver to update the log before continuing the route. According to Trailways, in many instances the large number of brief stops will not fit on the log if the driver makes all of the required entries.

Trailways noted that the maximum possible driving time would be reduced and that traffic congestion could be reduced if the exemption were granted. FMCSA believes this would ensure that operations under the exemption would be at least as safe as operations that

comply with the requirements on change of duty status.

FMCSA sought public comment on the need to extend Trailways' request to all regular-route for-hire passenger carrier drivers. Including all regular-route for-hire passenger carrier drivers in this exemption precludes the need for other carriers to file identical exemption requests, and provides for consistent enforcement because the same provisions will be applied to all similar scenarios involving brief stops by drivers of these carriers during their regular-route operations.

A copy of Trailways' exemption application is available for review in the docket for this notice.

Public Comments

On October 1, 2012, FMCSA published notice of this application, and asked for public comment (77 FR 60007). Ten comments were received to the public docket. An anonymous submitter stated "In my opinion I don't see a reason in not granting this request." Mr. Gale C. Ellsworth, of Trailways, Fairfax, Virginia, supported the application and stated that "the 'exemption' is a common industry practice that was approved and authorized in a rulemaking interpretation requested by Greyhound in 1996." He further stated that "Greyhound supports the current request by Trailways, which became more important during 2011, when law enforcement and DOT agents began writing this practice as violations, which now affect a carrier's system safety ratings in the FMCSA's public record." Mr. Russell S. Gaillard supported the application by stating, "I request that these drivers be exempted from the requirement to enter a change in duty status on the daily log for breaks in driving time of 10 minutes or less, for the limited purposes such as picking up or discharging passengers, baggage and/or package express items." Ms. Veronica Rodriguez said, "I think an exemption like this one will benefit all fixed route drivers." Mr. William Woodsrow Gentry, Jr., commented, "I support the stand that the change of status is not correct for drivers. If they are just picking up someone and loading luggage then they should remain On Duty Status." Additionally, Concord Coach Lines Inc., Greyhound, SMART Transportation Division, Teamsters Local 118, and United Motorcoach Association all supported Trailways' application for the exemption. All comments are available for review in the docket for this notice.

FMCSA Decision

The FMCSA has evaluated Trailways' application for exemption and the public comments. The Agency believes that Trailways will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (49 CFR 381.305(a)).

Terms of the Exemption

Period of the Exemption

The limited exemption from the HOS record of duty status requirements of 49 CFR 395.8(c) is granted for the period from 12:01 a.m. on May 31, 2013 through 11:59 p.m. on May 31, 2015.

Extent of the Exemption

The exemption is restricted to drivers employed by Trailways and other regular-route for-hire passenger-carrier drivers. Instead of complying with the provisions in 49 CFR 395.8(c), these drivers are exempted from changing their duty status from "driving" to "on-duty not driving" when making stops of less than 10 minutes. These drivers must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399).

Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Notification to FMCSA

Trailways and other regular-route for-hire passenger-carriers must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must include the following information:

- a. Date of the accident,
- b. City or town, and State, in which the accident occurred, or closest to the accident scene,
- c. Driver's name and driver's license number and State of issuance,
- d. Vehicle number and State license plate number,
- e. Number of individuals suffering physical injury,
- f. Number of fatalities,
- g. The police-reported cause of the accident,
- h. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and

i. The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be emailed to MCPSD@dot.gov.

Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: May 22, 2013.

Anne S. Ferro,
Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2008-0106; FMCSA-2009-0086]

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 13 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: July 1, 2013. Comments must be received on or before July 1, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA-2008-0106; FMCSA-2009-0086], 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.

Instructions: 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 Federal Docket Management System (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 Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT:

Elaine M. Papp, Chief, Medical Programs Division, 202-366-4001, 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:

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 13 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 13 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Michael D. Abel (NE)
Kenneth W. Dunn (TN)
Johnny K. Hiatt (NC)
Jeffrey M. Mueller (MO)
Joseph E. Pfaff (IL)
Jerry G. Sexton (GA)
Paul A. Wolfe (OH)
Paul M. Christina (PA)
Edward J. Grant (IL)
Richard S. Hoffman (ID)
George M. Nelson (OH)
Cecil R. Rhodes (OH)
Christopher A. Weidner (CT)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements 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 provides 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 retains 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.