

RockTenn (USDOT 153734) operates a paper mill located in Chattanooga, Tennessee, its principal place of business. Its shipping and receiving departments are on opposite sides of the paper mill, requiring driver/employees to travel on a public road to shuttle trailers as needed. These drivers utilize this public road—Compress Street—an average of forty times per day to go from their shipping to receiving department and to load their trailers in the shipping department. These drivers do not transport any material farther than the paper mill lots and/or Compress Street. The distance traveled on Compress Street is approximately 275 feet in one direction, and one tractor is used to perform this work. Because the material being transported is received from or destined for other States, the local travel is interstate in nature.

The initial RockTenn exemption application for relief from the HOS rule was submitted in 2009; a copy of the application is in the docket. That application fully described the nature of shipping operations encountered by CMV drivers employed by RockTenn.

RockTenn's shipping department currently works 12-hour shifts for 4 days, and then allows employees 4 days off duty. The schedule is subject to change. Usually there are two shipping department employees on each shift. One employee drives a fork-lift truck loading trailers with finished goods, and the other operates the tractor shuttling trailers. These employees do not drive a CMV continuously during their shift(s).

At times, RockTenn may operate on three 8-hour shifts with employees working a double (16-hour) shift when "rotating back." According to RockTenn, the problem arises because of the double-shift, and also on occasion when a shipping department driver does not report for work as scheduled. On a Monday, for example, if an individual worked the weekend, his or her shift would normally have to "hurry back" within 8 hours. As a result of the mandatory 10 hours off-duty requirement for drivers, without the exemption RockTenn would be required to schedule these drivers' shifts to start later than other employees. This would create at least 2 hours when the company cannot load or transport trailers with finished goods due to the absence of the drivers. Furthermore, as a result of the 14-hour driving windows, they would "work short" without the exemption, creating on-time delivery issues for other employees, who are allowed to work an entire "double shift" (16 hours) when necessary.

RockTenn requested a limited exemption from 49 CFR part 395 for its

shipping department CMV drivers, as well as others with a valid CDL who on occasion must substitute, allowing all such drivers to drive as late as the 16th hour since coming on duty and return to work with a minimum of at least 8 hours off duty. If exempt from the normal HOS requirements, these employees could follow the same work schedule as other RockTenn employees on their shift, and would be able to work for the full 16 hours of a "double shift." RockTenn could therefore minimize the chances of delayed shipments that might occur if their drivers were not allowed to work the same schedule as other employees.

RockTenn acknowledged in its application that these drivers would still be subject to all of the other FMCSRs, including possessing a CDL, random drug testing, medical certification, and other driver-qualification requirements.

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

### Terms of the Exemption

#### *Period of the Exemption*

The requested exemption is proposed to be effective April 17, 2014, through 11:59 p.m. on April 16, 2016, for drivers employed by RockTenn operating CMVs on Compress Street in Chattanooga, Tennessee, between the company's shipping and receiving departments.

#### *Extent of the Exemption*

The exemption would be restricted to drivers employed by RockTenn operating CMVs on the route specified above. This exemption would be strictly limited to the provisions of 49 CFR 395.3(a)(1), referring to a required minimum of 10 hours off duty before the start of a duty period, and 395.3(a)(2), commonly referred to as the "14-hour rule." When operationally necessary, drivers would be allowed up to a 16-hour duty period and no fewer than 8 hours off duty prior to the duty period.

#### *Preemption*

During the period this exemption would be in effect, no State would be allowed to enforce any law or regulation that conflicted with or was inconsistent with this exemption with respect to a firm or person operating under the exemption (49 U.S.C. 31315(d)).

#### *Notification to FMCSA*

RockTenn would be required to 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 would be required to 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,
  - d. Vehicle number and state license 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, motor carrier safety regulations, and
  - i. The total driving time and total on-duty time period prior to the accident.
- Reports filed under this provision would be emailed to [MCPSD@DOT.GOV](mailto:MCPSD@DOT.GOV).

#### *Termination*

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

Issued on: January 10, 2014.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2014-01695 Filed 1-28-14; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0170]

#### 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 43 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in

one eye. 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 January 29, 2014. The exemptions expire on January 29, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs Division, (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>.

*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 acknowledgement 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).

**Background**

On November 12, 2013, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (78 FR 67454). That notice listed 43 applicants' case histories. The 43 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 43 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 a 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 requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 43 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including refractive amblyopia, central retinal vein occlusion, retinal detachment, ocular histoplasmosis, amblyopia, prosthetic eye, aphakia, corneal scarring, macular hole, complete loss of vision, macular degeneration, anisometropic amblyopia, retinal damage, retinal hole, optic nerve staphyloma, longstanding peripheral retinal degeneration, wet macular degeneration, and enucleated eye. In most cases, their eye conditions were not recently developed. Thirty-one of the applicants were either born with their vision impairments or have had them since childhood.

The twelve individuals that sustained their vision conditions as adults have had it for a period of 3 to 34 years.

Although each applicant has one eye which does not meet the vision requirement 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 requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 43 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 of careers ranging from 3 to 52 years. In the past 3 years, three of the drivers were involved in crashes and three were convicted for moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the November 12, 2013 notice (78 FR 67454).

**Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement 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 the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, 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 43 applicants, three of the drivers were involved in crashes and three were convicted of moving violations in a CMV. 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 requirement 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 43 applicants listed in the notice of November 12, 2013 (78 FR 67454).

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 43 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 requirement 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 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. The comment is discussed below.

An anonymous commenter suggested that visually-impaired drivers take a road test at their licensing bureau on a periodic basis to determine their continued ability to drive commercially.

### Conclusion

Based upon its evaluation of the 43 exemption applications, FMCSA exempts Dennis S. Anderson (MN), Calvin J. Barbour (NY), Martin D. Bellcour (WI), Walter A. Breeze (OH), Joseph A. Burdey (NJ), Donald G. Carstensen (IA), Jamie D. Daniels (IA), James A. Esposito, Jr. (PA), Mark A. Farnsley (IN), Michael L. Fiamingo (PA), Kenric J. Fields (DE), Chris L. Granby (MI), Dustin K. Heimbach (PA), Randall Hjelmtveit (MN), Robert W. Horner (OH), Abdelhamid S. Jaafreh (OH), Leonard R. Jackson (IN), Randy G. Kinney (IL), Ronnie R. Lockamy (NC), Hector Marquez (TX), Leonard A. Martin (NV), Dennis R. Martinez (NM), Jeffrey D. McGill (IL), Fred A. Miller, Jr. (CA), Joseph K. Parley (WI), Robert L. Pearson (GA), Andres Regalado (CA), Riland O. Richardson (FL), Thenon D. Ridley (TX), Ryan R. Ross (SC), Troy M. Ruhlman (PA), Ricky E. Rumfield (TX), Ermanno M. Santucci (IL), Dennis M. Schwartzentruber (OH), Tigran Semerjyan (CA), Roger H. Sick (NY), Martina B. Talbott (IA), Kirk A. Thelen (MI), Nicholas J. Vance (OH), Hershel D. Volentine (LA), Gary D. Vollersten (CO), David R. Webb, Jr. (IL), and Wesley A. Willis (NJ) 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: January 10, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014-01693 Filed 1-28-14; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012-0081]

#### Qualification of Drivers; Application for Exemption; Implantable Cardioverter Defibrillator

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

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA has received applications from three individuals with implantable cardioverter defibrillators (ICDs) for an exemption from the cardiovascular disease standard in the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency's current advisory criteria for the applicable FMCSR recommends that CMV drivers with ICDs should not be qualified due to the likelihood of causing a loss of ability to operate a commercial motor vehicle (CMV) safely. If granted, an exemption would allow these individuals with ICDs to operate a CMV in interstate commerce.

**DATES:** Comments must be received on or before February 28, 2014.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2012-0081 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:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

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

**Instructions:** Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please

see the Privacy Act heading below for further information.

**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., ET, 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).

#### FOR FURTHER INFORMATION CONTACT:

Charles Horan, Director, Office of Carrier, Driver, and Vehicle Safety Standards (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-306, 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

FMCSA has the authority to grant exemptions from the FMCSRs; pursuant to 49 U.S.C. 31315 and 31136(e) as amended by Section 4007 of the Transportation Equity Act for the 21st Century (TEA- 21) [Pub. L. 105-178, June 9, 1998, 112 Stat. 107, 401]. On August 20, 2004, FMCSA published a final rule implementing the changes made by section 4007 (69 FR 51589). The current regulations require FMCSA to publish a notice of each exemption request in the **Federal Register**. The Agency must provide the public with 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 (49 CFR 381.315(a)).

The Agency reviews the safety analyses and the public comments 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)). If the Agency denies the request, it must state the reason for doing so. If the Agency decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. If granted, the exemption may be renewed (49 CFR 381.315(c) and 381.300(b)).

The three individuals included in this notice have each requested an exemption from the provisions of 49 CFR 391.41(b)(4), which applies to drivers who operate CMVs in interstate commerce, as defined in 49 CFR 390.5. Section 391.41(b)(4) states that:

“. . . a person is physically qualified to drive a commercial motor vehicle if that person has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope (temporary loss of consciousness due to a sudden decline in blood flow to the brain), dyspnea (shortness of breath), collapse, or congestive cardiac failure.”

The FMCSA provides medical advisory criteria as recommendations for use by medical examiners in determining whether drivers with certain medical conditions, procedures, and/or treatments should be certified to operate CMVs in interstate commerce in accordance with the various physical qualification standards in 49 CFR part 391, subpart E. The advisory criteria are currently set out as part of the medical examination report published with 49 CFR 391.43. The advisory criteria for section 391.41(b)(4) provide that:

The term “has no current clinical diagnosis of” is specifically designed to encompass: “a *clinical diagnosis of*” (1) a current cardiovascular condition, or (2) a cardiovascular condition which has not fully stabilized regardless of the time limit. The term “*known to be accompanied by*” is designed to include a clinical diagnosis of a cardiovascular disease (1) which is accompanied by symptoms of syncope, dyspnea, collapse or congestive cardiac failure; and/or (2) which is likely to cause syncope, dyspnea, collapse, or congestive cardiac failure. It is the intent of the FMCSRs to render unqualified, a driver who has a current cardiovascular disease which is accompanied by and/or likely to cause symptoms of syncope, dyspnea, collapse, or