

Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(l)(1).

**Cesar Perez,**

*Senior Transportation Engineer, Federal Highway Administration, Sacramento, California.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0303]

#### 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 21 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 were granted April 18, 2015. The exemptions expire on April 18, 2017.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, (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. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### I. 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> and/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.

**Privacy Act:** In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

##### II. Background

On March 18, 2015, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (80 FR 14240). That notice listed 21 applicants' case histories. The 21 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 21 applications on their merits and made a determination to grant exemptions to each of them.

##### III. 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 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 21 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 Best disease, toxoplasmosis scar, corneal scar, hemorrhage, retinal detachment, amblyopia, displaced pupil, cataract, macular drusen, esotropia, refractive amblyopia, complete loss of vision, maculopathy, chronic central serous retinopathy, hyperopia, retinal tear, calcification of cornea, and failed penetrating keratoplasty. In most cases, their eye conditions were not recently developed. Thirteen of the applicants were either born with their vision impairments or have had them since childhood.

The eight individuals that sustained their vision conditions as adults have had it for a range of one to 29 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 21 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 in careers ranging from one to 29 years. In the past three years, one of drivers was involved in a crash and two were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant

were stated and discussed in detail in the March 18, 2015 notice (80 FR 14240).

#### IV. 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.

FMCSA believes it 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 21 applicants, one driver was involved in a crash, and two 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 21 applicants listed in the notice of March 18, 2015 (80 FR 14240).

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 21 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.

#### V. Discussion of Comments

FMCSA received four comments in this proceeding. The comments are discussed below.

Casey Fleming agrees with the proposal to grant the 21 drivers in this proceeding exemptions from the Federal vision standard.

Larry Worley agrees with the proposal to grant Ronald J. Gruszecki an exemption from the Federal vision standard.

An anonymous commenter agrees with the proposal to grant Raymond W. Pitts an exemption from the Federal vision standard.

An anonymous commenter agrees with the proposal to grant Neal S. Anderson, Robert D. Arkwright, Randy

A. Cimei, and Ronald J. Gruszecki exemptions from the Federal vision standard.

#### IV. Conclusion

Based upon its evaluation of the 21 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)):

Neal S. Anderson (MN)  
 Robert D. Arkwright (MS)  
 Charles D. Ashworth, Jr. (KY)  
 Randy A. Cimei (IL)  
 Ronald J. Gruszecki (IL)  
 Gerald L. Harper (MO)  
 Alan L. Helfer, Sr. (IL)  
 Steven R. Jones (KS)  
 William F. Laforce (VT)  
 Robert N. Lewis (OH)  
 Ryan T. McKinney (TN)  
 Freeman A. Miller (OH)  
 Larry G. Murray (LA)  
 Thomas W. Oberschlake (OH)  
 Dennis R. Ohl (MO)  
 J.W. Peebles (TN)  
 Craig C. Perrotta (MA)  
 Raymond W. Pitts (FL)  
 Jeffrey A. Porter (CT)  
 Marty J. Prouty (IA)  
 Daniel A. Rau (NJ)

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: May 29, 2015.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[[Docket No. FMCSA-2013-0436]

#### Parts and Accessories Necessary for Safe Operation; Denial of the International Window Film Association's Exemption Application

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

**ACTION:** Denial of exemption application.

**SUMMARY:** FMCSA denies an exemption application from the International Window Film Association (IWFA) to allow the use of glazing in the windows to the immediate right and left of the driver that does not meet the light transmission requirements specified in the Federal Motor Carrier Safety Regulations (FMCSR). The current rule permits windshields and side windows of commercial motor vehicles (CMVs) to be tinted as long as the light transmission is not restricted to less than 70 percent of normal. While IWFA contended that a reduction of light entering the truck cab interior can (1) significantly improve driver comfort, (2) reduce eye strain, and (3) reduce the heat load of the interior environment, thus making the driver more comfortable as well as lowering energy use for cooling, it failed to provide any evidence that motor carriers operating CMVs equipped with glazing that blocks more normal light than currently permitted will achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mike Huntley, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC-PSV, (202) 366-5370; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

#### SUPPLEMENTARY INFORMATION:

##### Background

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

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 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. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

#### IWFA Application for Exemption

IWFA applied for an exemption from 49 CFR 393.60(d) to allow the use of glazing in the windows to the immediate right and left of the driver that does not meet the light transmission requirements specified in the FMCSRs. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.60(d) of the FMCSRs permits coloring or tinting of windshields and the windows to the immediate right and left of the driver, as long as the "parallel luminous transmittance through the colored or tinted glazing is not less than 70 percent of the light at normal incidence in those portions of the windshield or windows which are marked as having a parallel luminous transmittance of not less than 70 percent." The transmittance restriction does not apply to other windows on the commercial motor vehicle.

In its application, IWFA states:

Many commercial operators, however, have been unable to obtain the approved film products in a timely and local basis; this has generated a significant volume of inquiries to federal, state, and association offices. We are therefore requesting a favorable consideration for the use of a market-standard 50%-type of film with a 7% measurement tolerance (to accommodate variances in glass, glass condition, film manufacturing variation, and meter differences.) This would allow the standard 50%-type film to be used on CMVs for the windows to the immediate right and left of the driver. This film is the same minimum visibility requirement used in the majority of states for automobiles and is essentially "clear" to the extent that, in most cases, it is difficult to determine if a vehicle even has had film applied. Since a reduction of light entering the truck cab interior will decrease not only available visible light but also scattered light (sometimes called "interference haze" by optical researchers), it can significantly improve driver comfort and reduce eye strain while also allowing films to be used which can also reduce the heat load of the interior environment, thus making the driver more comfortable as well as lowering energy use for cooling.