

III. Request for Exemption

A joint exemption application has been submitted by the National Cattlemen's Beef Association, Livestock Marketing Association, American Farm Bureau Federation, American Beekeeping Federation, American Honey Producers Association and the National Aquaculture Association ("applicants").

The applicants seek an exemption from the hours-of-service (HOS) requirements that: (1) Limit the maximum driving hours for property-carrying drivers to 11 [49 CFR 395.3(a)(3)]; and (2) limit the duty period for those drivers to 14 consecutive hours [49 CFR 395.3(a)(2)]. The applicants seek an exemption that after 10 consecutive hours off duty would allow them to: (1) Drive through the 16th consecutive hour after coming on duty; and (2) drive a total of 15 hours during that 16-hour period. The applicants cite the fact that livestock haulers are currently permitted to operate in "an exempt zone within a radius of 150 air miles" of the source of an agricultural commodity. The Agency, in implementing this provision, has stated that time spent working within the 150 air-mile radius does not count toward the driver's daily and weekly HOS limits. Accordingly, the 15- and 16-hour limits requested by the applicants would begin after a livestock hauler travels outside the 150 air-mile radius. The requested exemptions would apply to all livestock, insect, and aquatic animal transporters and their drivers.

According to applicants, for purposes of this exemption application, livestock is defined in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 [7 U.S.C. 1471]. The term "insects" should be interpreted to mean insects that are used as pollinators such as honeybees. The term "aquatic species" is defined in the National Aquaculture Policy Act as "any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant." 16 U.S.C. 2801. However, this application does *not* seek to include aquatic plants.

Applicants advise that their drivers would comply with all other HOS rules, including the 60/70 hour limits. They advise that drivers operating under the proposed exemption would reach the 60-hour on-duty limit as early as at the end of the 90th hour and would then take 34 consecutive hours off duty. They then could resume duty at the start of the 125th hour.

The applicants cite 2018 Motor Carrier Management Information System

data from the Agency that identified 60,569 livestock motor carriers with 179,406 vehicles and 190,661 drivers. The FMCSA noted that 78,154 of those drivers operated within a 100 air-mile radius HOS exemption, leaving 112,507 CMV drivers who would likely be subject to the Agency's HOS regulations. The applicants are concerned that the 11- and 14-hour rules were not crafted with livestock haulers in mind and thus do not accommodate the unique character of their loads and nature of their trips. In certain circumstances, livestock haulers are required to carry live animals over significant distances. Those circumstances are dictated by factors primarily related to the health and welfare of the livestock; the lifecycle of the livestock; and the locations of farms and ranches, viable grazing lands and feedlots, and final processing facilities. The applicants state that the maximum driving and on-duty limits of the HOS regulations as applied to their operations may place the well-being of livestock at risk during transport and impose significant burdens on livestock haulers, particularly in rural communities across the country.

The applicants state that, while the majority of their trips fall within the current HOS regulations, some of the longer trips cannot be completed under the 11- and 14-hour rules. These trips are affected by "immutable factors" such as weather. In the cattle industry, the locations of cow-calf operations, grazing lands, feedlots, and processing facilities necessarily determine how far a livestock hauler must travel in a single trip. Livestock haulers transport animals from farms and ranches to auction markets, where the stock is sold. Once sold, the animals are often transported to grazing lands and feed yards, mostly located in the Central Plains and Southwest. After grazing and feeding, livestock are transported a final time to processing facilities, where they are transformed into consumable meat and sold. In addition, transportation of bees necessary to pollinate numerous crops, tree nuts, fruits, and vegetables are some of the longest trips in the country. While most these trips can be concluded within the current HOS rules, the applicants estimate that 25–30 percent of livestock-hauling trips would be conducted under the requested exemption.

The applicants cite the following negative impacts to their industry if the exemption is not granted: (1) Livestock haulers would be unable to test innovative fatigue risk-management safety countermeasures; (2) public safety measures to ensure animal welfare and

prevent the spread of disease would continue to be hampered by the current HOS rules; and (3) driver shortages and resulting transportation cost increases would be further aggravated.

The applicants assert that granting this exemption would not negatively impact motor vehicle safety because the exemption would likely be used by a limited number of commercial drivers who are experienced, plan their trips carefully, operate specialized equipment, and routinely undergo transportation training. The applicants add the following relating to an equivalent level of safety if the exemption is granted: (1) Livestock haulers are a defined, safe subset of all CMV drivers; (2) transporting live animals requires prudent route planning, specialized equipment, and safe driving practices; and (3) many livestock haulers already undergo specialized training that includes fatigue prevention, recognition, and management. As this last point relates to an equivalent level of safety, according to the applicants, the HOS rules are intended to mitigate the risk of driver fatigue and its role in CMV crashes. However, research demonstrates that the number of driving hours is only one aspect of fatigue management—as many factors contribute to safe driving. The applicants propose to craft industry-sponsored training programs that include appropriate fatigue management principles.

The exemption is requested for a period of five years. A copy of the application for exemption is available for review in the docket for this notice.

Issued on: January 30, 2019.

Larry W. Minor,

Associate Administrator of Policy.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0208]

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 14 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate

commerce. They are unable to meet the vision requirement in one eye for various reasons. The exemptions enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: The exemptions were applicable on December 28, 2018. The exemptions expire on December 28, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, 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., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA–2018–0208, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. 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, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

II. Background

On November 27, 2018, FMCSA published a notice announcing receipt of applications from 14 individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (83 FR 60954). The public comment period ended on December 27, 2018, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that

granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV 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.

III. Discussion of Comments

FMCSA received one comment in this proceeding. The commenter acknowledged that each applicant has been examined by an ophthalmologist or optometrist who has certified that, in the doctor’s opinion, the applicant has sufficient vision to perform all the tasks necessary to operate a CMV. However, they also noted that the 14 individuals listed in this notice should be subject to frequent testing to ensure that their driving abilities are not impacted by their vision.

FMCSA has evaluated the eligibility of each of these applicants and determined that granting the exemptions would result in a level of safety that is equal to, or greater than, that which would exist without the exemptions. As discussed in Section IV of this notice: Basis for Exemption Determination, each individual possesses a valid license to operate a CMV, and each individual has demonstrated his or her ability to safely operate a CMV in intrastate commerce for a three-year period as part of the application process. In addition, each applicant must continue to be physically examined every year by an ophthalmologist or optometrist and a Certified Medical Examiner so that they may continue to be qualified to operate a CMV in interstate commerce.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for up to five years 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. The exemption allows applicants to operate CMVs in interstate commerce. FMCSA grants

exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver’s medical certification.

The Agency’s decision regarding these exemption applications is based on medical reports about the applicants’ vision, as well as their driving records and experience driving with the vision deficiency. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the November 27, 2018, **Federal Register** notice (83 FR 60954) and will not be repeated in this notice.

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 14 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 amblyopia, aphakia, cataract, chorioretinal scar, complete loss of vision, corneal scar, diabetic retinopathy, glaucoma, macular drusen, and retinal detachment. In most cases, their eye conditions were not recently developed. Nine of the applicants were either born with their vision impairments or have had them since childhood. The five individuals that sustained their vision conditions as adults have had it for a range of 3 to 13 years. Although each applicant has one eye that 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 a valid license to operate a CMV. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV with their limited vision in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. 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 applicants in this notice have driven CMVs with their limited vision in careers ranging for 3 to 59 years. In the past three years, no drivers were involved in crashes, and no drivers were convicted of moving violations in CMVs. All the applicants achieved a record of safety while driving with their vision impairment that demonstrates 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.

Consequently, FMCSA finds that in each case 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.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must 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 certified Medical Examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) each driver must 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) each driver must 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 exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 14 exemption applications, FMCSA exempts the following drivers from the vision requirement, 49 CFR

391.41(b)(10), subject to the requirements cited above:

Doyle L. Bowen (NM)
Guillermo Casio Gamero (WA)
William L. Cave (MD)
Marc C. Goss (NE)
Richard J. Hard (IN)
Dennis W. Johnson (MO)
Ken I. Johnson (GA)
Ibrahim F. Khashan (GA)
Shelby M. Kuehler (KS)
Kendall S. Lane (OK)
Leonard Morris (NJ)
Gale L. O'Neil (PA)
Michael L. Sheldon (NE)
Pedro T. Tellez Alvarez (CA)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (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 prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: January 30, 2019.

Larry W. Minor,

Associate Administrator for Policy.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0237]

Hours of Service of Drivers: American Concrete Pavement Association, Inc.; Application for Exemptions

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

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

SUMMARY: FMCSA announces its decision to grant the American Concrete Pavement Association, Inc. (ACPA) exemptions from two requirements of the hours-of-service (HOS) regulations for drivers of certain commercial motor vehicles (CMVs): The 30-minute rest break provision; and the requirement that short-haul drivers utilizing the record of duty status (RODS) exception return to their work-reporting location within 12 hours of coming on duty. The first exemption will enable drivers transporting ready-mixed concrete and related materials and equipment in vehicles other than those outfitted with

rotating mixer drums, to use 30 minutes or more of on-duty "waiting time" to satisfy the requirement for the 30-minute rest break, provided they do not perform any other work during the break. The second exemption will allow these drivers to use the short-haul exception but return to their work-reporting location within 14 hours instead of the usual 12 hours.

DATES: This exemption is applicable February 6, 2019 and expires February 6, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-2722. Email: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, "FMCSA-2018-0237" in the "Keyword" box and click "Search." Next, click the "Open Docket Folder" button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). 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 compliance with the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b))