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#### SUPPLEMENTARY INFORMATION:

##### Participation at the Public Meeting

Submit requests to present a statement at the public meeting to Mr. Marv Nuss as listed in the section titled **FOR FURTHER INFORMATION CONTACT** above. The FAA should receive your requests to present oral statements at the public meeting no later than 10 days prior to the meeting. Include a written summary of oral remarks you would like to present and the estimated time needed for your presentation. Requests received after the date specified above will be scheduled during the meeting if time allows; however, the names of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers available at the meeting. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Those persons desiring to have audiovisual equipment available should notify the FAA when they request placement on the agenda.

##### Background

The average airplane in the general aviation fleet of the United States is approximately 35 years old. We expect the average age to continue to rise. By the year 2020, the average general aviation airplane will be almost 50 years old. In 1991, Congress mandated that the FAA establish an Aging Aircraft Program to focus on age-related structural problems for the air carrier fleet. Congress specifically excluded general aviation (GA) aircraft from the mandate. However, the FAA determined that as the GA fleet gets older, there is also concern about ensuring the continued airworthiness of these airplanes. The diversity of the fleet makes dealing with continued airworthiness difficult. The wide variety of designs and uses poses problems unique to GA.

In 2000, the FAA held a public meeting on this subject. Ideas were exchanged and FAA worked with industry to institute several initiatives. However, since that meeting there have been GA fatal accidents caused by the effects of airplane aging. There have also been primary component failures caused by the effects of airplane aging that were discovered before catastrophic failure. The FAA is taking a more proactive role in managing the risk associated with continued airworthiness. The FAA is concerned about issues such as service difficulty experiences and reporting, modification

and inspection programs, and continued field support from type certificate holders.

The FAA has determined that in the interest of the public we should hold a public meeting on this subject to share information and gather additional data. Accordingly, the FAA will conduct this public meeting in Kansas City, Missouri.

The FAA anticipates that the agency, industry, and the general public will use the public meeting as a forum to share information, resolve questions, and discuss potential solutions concerning the continued airworthiness of older general aviation airplanes.

##### Public Meeting Procedures

The FAA has established the following procedures for this meeting:

1. Admission and participation in the public meeting are free. The meeting will be open to all persons who have requested in advance to present statements or who register on the first day of the meeting (between 8 a.m. and 8:30 a.m.). Time availability for presentations and seating will be made according to the order of reservation.

2. Representatives from the FAA will conduct the public meeting. A technical panel of FAA personnel will discuss information presented by participants.

3. The public meeting is intended as a forum to share information and resolve questions concerning the continued airworthiness of older general aviation airplanes. Those sharing information will include industry, the general public, and operators of general aviation aircraft. Participants must limit their presentations to the issue of continued airworthiness of older general aviation airplanes.

4. All interested parties will have the opportunity to present any additional information not currently available to the FAA. The FAA will then have the opportunity to explain the methodology and technical assumptions supporting its current observations.

5. FAA personnel, industry, and public participants may engage in a full discussion of all technical material presented at the meeting. Anyone presenting conclusions will be expected to submit their supporting data to the FAA.

6. The FAA will try to accommodate all speakers. Time may be limited for each presentation.

7. Sign and oral interpretations will be made available at the meeting, including assistive listening devices, if requested 15 calendar days before the meeting.

8. A court reporter will record the meeting (except for any breakout sessions). Any person interested in

purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

9. The FAA will review and consider all material presented by participants at the public meeting. Position papers or material presenting views or information related to the subject of the meeting may be accepted at the discretion of the presiding officer. The FAA requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

10. Statements made by FAA personnel are intended to facilitate discussion of the issues or to clarify issues.

11. The meeting is designed to share information and solicit public views and additional information. The meeting will be conducted in an informal and nonadversarial manner.

Issued in Kansas City, Missouri, on January 18, 2006.

**David R. Showers,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2005-22727]

#### 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 22 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41 (b)(10).

**DATES:** The exemptions are effective January 27, 2006.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366-4001, [mgunnels@fmcsa.dot.gov](mailto:mgunnels@fmcsa.dot.gov), FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

You may see all the comments online through the Document Management System (DMS) at <http://dmses.dot.gov>.

**Background**

On November 30, 2005, FMCSA published a notice of receipt of exemption applications from 22 individuals, and requested comments from the public (70 FR 71884). The 22 individuals petitioned FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. They are: Kerry L. Baxter, Donald J. Bierwirth, Jr., Arthur L. Bousema, Curtis F. Caddy, III, Paul D. Crouch, Matthew Dags, Donald R. Date, Jr., Douglas M. Fuller, Michael Grzybowski, David L. Jones, John E. Kimmet, Jason L. Light, Douglas J. Mauton, Dennis L. Maxcy, Robert Mollicone, William P. Murphy, John V. Nehls, Dean B. Ponte, John P. Rodrigues, Paul D. Schmautz, Robert A. Sherry, Thomas E. Voyles, Jr.

Under 49 U.S.C. 31315 and 31136(e), 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 22 applications on their merits and made a determination to grant exemptions to all of them. The comment period closed on December 30, 2005. One comment was received, and fully considered by FMCSA in reaching the final decision to grant the exemptions.

**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)).

Since 1992, the agency has undertaken studies to determine if this

vision standard should be amended.

The final report from our medical panel recommends changing the field of vision standard from 70 to 120 degrees, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Pual Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket, FMCSA-98-4334.) The panel's conclusion supports the agency's view that the present visual acuity standard is reasonable and necessary as a general standard to ensure highway safety. FMCSA also 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 22 exemption applicants listed in this notice fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinal detachment, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but five of the applicants were either born with their vision impairments or have had them since childhood. The five individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 13 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 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 22 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 44 years. In the past 3 years, four of the drivers have had five convictions for traffic violations. Two of these convictions were for speeding, two were for seatbelt violations in a CMV, and one was for

failure to obey a traffic sign. None of the applicants were involved in crashes.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the November 30, 2005 notice (70 FR 71884).

**Basis for Exemption Determination**

Under 49 U.S.C. 31315 and 31136(e), 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 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-98-3637.

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 with good driving records in the waiver program demonstrated their ability to drive safely 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 22 applicants receiving an exemption, we note that the applicants have had no collisions and a total of five traffic violations among them in the last 3 years. The applicants achieved this 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 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. 31315 and 31136(e) to the 22 applicants listed in the notice of November 30, 2005 (70 FR 71884).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 22 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

Advocates for Highway and Auto Safety (Advocates) express continued opposition to FMCSA’s policy to grant exemptions from the FMCSRs, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which FMCSA presents driver information to the public and makes safety determinations; (2) objects to the agency’s reliance on conclusions drawn from the vision waiver program; (3) claims the agency

has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

#### Conclusion

Based upon its evaluation of the 22 exemption applications, FMCSA exempts Kerry L. Baxter, Donald J. Bierwirth, Jr., Arthur L. Bousema, Curtis F. Caddy, III, Paul D. Crouch, Matthew Daggs, Donald R. Date, Jr., Douglas M. Fuller, Michael Grzybowski, David L. Jones, John E. Kimmert, Jason L. Light, Douglas J. Mauton, Dennis L. Maxcy, Robert Mollicone, William P. Murphy, John V. Nehls, Dean B. Ponte, John P. Rodrigues, Paul D. Schmutz, Robert A. Sherry, Thomas E. Voyles, 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. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the 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. 31315 and 31136.

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 20, 2006.

**Rose A. McMurray,**

*Associate Administrator, Policy and Program Development.*

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