

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration**

[Docket No. FMCSA-2000-7918; FMCSA-2001-10578; FMCSA-2003-15268; FMCSA-2003-15892; FMCSA-2005-21711; FMCSA-2005-22194; FMCSA-2005-22727; FMCSA-2006-25246; FMCSA-2007-0017]

**Qualification of Drivers; Exemption Applications; Vision**

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

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 19 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective January 27, 2012. Comments must be received on or before February 6, 2012.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA-2000-7918; FMCSA-2001-10578; FMCSA-2003-15268; FMCSA-2003-15892; FMCSA-2005-21711; FMCSA-2005-22194; FMCSA-2005-22727; FMCSA-2006-25246; FMCSA-2007-0017, using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1-(202) 493-2251.

*Instructions:* Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any

personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

**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:****Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

**Exemption Decision**

This notice addresses 19 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 19 applications for renewal on their merits and decided to extend each

exemption for a renewable two-year period. They are:

Donald J. Bierwith, Jr. (CT)  
 Arthur L. Bousema (CA)  
 Norman E. Braden (CO)  
 Theodore W. Cozat (MI)  
 Matthew W. Daggs (MO)  
 Donald R. Date, Jr. (MD)  
 Gordon R. Fritz (WI)  
 Ronald K. Fultz (KY)  
 John E. Kimmert, Jr. (WA)  
 Robert S. Larrance (TN)  
 Robert C. Leathers (MO)  
 Jason L. Light (WA)  
 Donald R. McCracken (OR)  
 Kenneth R. Murphy (WA)  
 Michael J. Richard (LA)  
 Robert E. Sanders (LA)  
 Robert A. Sherry (PA)  
 Stephen G. Sniffin (CT)  
 John R. Snyder (WA)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

**Basis for Renewing Exemptions**

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 19 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 66286; 66 FR 13825; 66 FR 53826; 66 FR 66966; 68 FR

10300; 68 FR 37197; 68 FR 48989; 68 FR 52811; 68 FR 61860; 68 FR 69434; 70 FR 41811; 70 FR 48797; 70 FR 57353; 70 FR 61165; 70 FR 61493; 70 FR 71884; 70 FR 72689; 71 FR 646; 71 FR 4632; 72 FR 180; 72 FR 9397; 72 FR 52422; 72 FR 58359; 72 FR 62897; 72 FR 67340; 72 FR 71995; 73 FR 5259; 74 FR 34394; 74 FR 60021; 74 FR 65845; 74 FR 64124; 75 FR 1451). Each of these 19 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

#### Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by February 6, 2012.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 19 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after

careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: December 27, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA-1999-6439, Notice No. 23]

#### Adjustment of Nationwide Significant Risk Threshold

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of adjustment of nationwide significant risk threshold.

**SUMMARY:** In accordance with Appendix D to Title 49 Code of Federal Regulations (CFR) Part 222, Use of Locomotive Horns at Highway-Rail Grade Crossings, FRA is updating the Nationwide Significant Risk Threshold (NSRT). This action is needed to ensure that the public has the proper threshold of permissible risk for calculating quiet zones established in relationship to the NSRT. This is the fifth update to the NSRT, which has fallen from 14,007 to 13,722.

**DATES:** The effective date is January 5, 2012.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald Ries, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 493-6299, or *Ronald.Ries@dot.gov*; or Kathryn Shelton, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 493-6038, or *Kathryn.Shelton@dot.gov*.

#### SUPPLEMENTARY INFORMATION:

##### Background

The NSRT is an average of the risk indexes for gated public crossings nationwide where train horns are routinely sounded. FRA developed this risk index to serve as one threshold of permissible risk for quiet zones established under this rule across the nation. Thus, a community that is trying to establish and/or maintain its quiet zone, pursuant to 49 CFR Part 222, can compare the Quiet Zone Risk Index calculated for its specific crossing corridor to the NSRT to determine whether sufficient measures have been taken to compensate for the excess risk that results from prohibiting routine sounding of the locomotive horn. (In the alternative, a community can establish its quiet zone in comparison to the Risk Index With Horns, which is a corridor-specific measure of risk to the motoring public when locomotive horns are routinely sounded at every public highway-rail grade crossing within the quiet zone.)

In 2006, when the final rule titled, "Use of Locomotive Horns at Highway-Rail Grade Crossings," was amended, the NSRT was 17,030 (71 FR 47614, August 17, 2006). In 2007, FRA recalculated the NSRT to be 19,047 (72 FR 14850, March 29, 2007). In 2008, FRA recalculated the NSRT to be 17,610 (73 FR 30661, May 28, 2008). In 2009, FRA recalculated the NSRT to be 18,775 (74 FR 45270, September 1, 2009). In 2010, FRA recalculated the NSRT to be 14,007 (75 FR 82136, December 29, 2010).

##### New NSRT

Using collision data from 2006 to 2010, FRA has recalculated the NSRT based on formulas identified in Appendix D to 49 CFR part 222. In making this recalculation, FRA noted that the total number of gated, non-whistle-ban crossings was 42,150.