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Before the
**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION**

December 31, 1998
WASHINGTON, DC

Comments of
AMERICAN TRUCKING ASSOCIATIONS
On

**NOTICE OF PETITIONS AND INTENT TO
GRANT APPLICATIONS FOR EXEMPTIONS**

REQUEST FOR COMMENTS

**VISION REQUIREMENTS IN THE
FEDERAL MOTOR CARRIER SAFETY REGULATIONS**

FHWA DOCKET NO. FHWA 98-4334 - 3
Federal Register [Vol.63, No. 230]



**Without Trucks
America Stops**



**AMERICAN
TRUCKING
ASSOCIATIONS**



★ **Driving Trucking's Success**

Safety Policy

December 30, 1998

Docket Clerk
US DOT Dockets, Room PL-401
400 Seventh Street, SW
Washington, DC 20590-0001

Re: FHWA Docket No. FHWA-98-4334

Dear Sir/Madam:

The American Trucking Associations (ATA) with headquarters offices at 2200 Mill Road, Alexandria, VA 223 14-4677, files these comments in response to the Federal Highway Administration's (FHWA) Notice of Petitions and Intent to Grant Applications for Exemption; Request for Comments (63 Fed. Reg., 66226, December 1, 1998). According to the notice, FHWA has made a preliminary determination to grant the application of 24 individuals for an exemption from the vision requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). According to the notice, granting 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). **ATA opposes FHWA's intent to grant these exemptions.**

Statement of Interest

ATA is a federation of trucking and transportation associations in every state. Through 50 affiliated state trucking associations, 14 affiliated national organizations, and more than 3,000 direct company members, ATA represents over 35,000 motor carriers and suppliers of every type, including but not limited to, for-hire carriers, truck leasing companies, and truck-equipment manufacturers and other suppliers of goods and services to carriers

The ATA Safety Policy Department (Department) participates in rulemaking proceedings before federal and state agencies that regulate safety and health issues affecting the trucking industry. In representing the trucking industry, ATA has submitted comments to FHWA on all aspects of the Federal Motor Carrier Safety Regulations (FMCSRs) including proposals for waivers and other issues pertaining to the medical qualifications of drivers. With full-time safety specialists, the Department also offers ATA members a wide range of safety and health services, including educational materials, seminars, and individual consultations and on-site audits.



American Trucking Associations, Inc.

The ATA Position

ATA continues to oppose the erosion of the medical standards currently set forth in 49 CFR 391 (41)(b). ATA has been consistent in its opposition to the granting of vision waivers as illustrated in its written comments to FHWA in response to docket nos. MC-96-2, FHWA-97-2825, and FHWA-98-3637. This current docket provides for the granting of vision exemptions to which ATA opposes with the same vigor as it has to the granting of vision waivers.

ATA firmly opposes FHWA's intent to grant 24 exemptions to its vision standards (49CFR 391.41 (b)(10)). Industry experience clearly demonstrates that the current vision requirements have served well in ensuring that the drivers of the nation's trucks are in sufficiently good health to be able to safely perform their duties. The efficacy of the current regulations is, in large part, responsible for the very small number of accidents in which the medical condition of the drivers was reported as a causative factor.

In addition, it is generally acknowledged that 90-95% of a driver's actions are determined primarily by what he/she sees. The driver must be able to monitor changing conditions of the road, weather and traffic. In addition, the continued adaptation of Intelligent Transportation System (ITS) technology provide for an ever-increasing array of gauges and other displays being added to the interior of the vehicle. This increases the demand for the driver's attention to visual detail and need for increased, not decreased, visual acuity.

FHWA plans to monitor the driving records of the 24 drivers who are seeking exemptions, as it does for the over 2,000 drivers who were grandfathered in under section 391.64. FHWA maintains that the drivers who seek vision exemptions have excellent driving records. However, it is unknown if these drivers drive long distances. The demands of driving long distances can produce eye strain and fatigue in drivers with 20/20 vision, let alone those drivers with monocular vision.

Many ATA members have expressed concerns that FHWA will use the supposed excellent safety records of the drivers in the waiver program and past waiver studies as justification to allow less stringent vision requirements. The fact is that neither FHWA's vision waiver program or the past safety performance of what we presume are intrastate drivers will ever be a good predictor of how drivers with impaired vision in one eye will operate in the future. This is especially true for drivers who have operated solely in intrastate commerce, as may be the case of the 24 drivers that FHWA intends to exempt from its vision requirements.

In addition, the continued granting of vision exemptions will result in thousands of such exemptions. As will be discussed below, the enactment of the Transportation Equity Act for the 21st Century (TEA-21) makes this a forgone conclusion by providing FHWA with a greater ability to grant exemptions. It is our understanding that FHWA is planning to consider an additional 2,000 exemptions to its vision requirements. To that end, FHWA will

never have the resources to adequately monitor the driving records of thousands of CMV operators it will exempt from its vision requirements. This inability to adequately monitor the safety performance of thousands of exempt drivers will substantially compromise public and driver safety.

Prior to TEA-21, FHWA had to show that such an exemption was consistent with the public interest and the safe operation of a CMV before it could issue an exemption to a regulation. However, Section 4007 of TEA-21 allows FHWA to grant an exemption 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.” This new language reduces the burden placed upon FHWA to show that drivers who are exempted from its vision standard will operate CMVs in as a safe a manner as those who follow the law. As stated above, FHWA’s inability to monitor the safety performance of thousands of exempt drivers will compromise public and driver safety. In addition, such an inability on the part of FHWA will make it impossible for the agency to adequately justify the statutory subjective basis for issuing exemptions.

While we agree with the need for FHWA to have some latitude in issuing waivers and exemptions to its regulations, that latitude should not apply to exempting otherwise non-qualified drivers from FHWA’s vision requirements. The issue of public and driver safety should not be measured on the likelihood that exempting CMV operators from vision requirements may or may not provide the same level of safety as those operators who pass the vision requirements. The result may likely be a slow but steady decline in public and driver safety.

The ability of drivers to pass vision requirements is vital to the trucking industry. ATA members view the need for peripheral vision as crucial in obtaining a commercial drivers license (CDL) to operate a commercial motor vehicle (CMV) in interstate commerce. According to one ATA member, “[T]he peripheral vision factor is of main concern.” That concern lies in the fact that the direction of head movement takes away total vision perception. For example, when a driver with monocular vision is checking mirrors, the one eye must focus on that item alone. This creates a loss of total vision awareness of what is happening in two other directions – front and opposite side. We agree with that member’s assertions. Other ATA member concerns include possible problems, such as foreign objects in the “good” eye could cause temporary blindness.

ATA acknowledges that individual states can and do grant vision waivers to operate CMVs in intrastate commerce. The passage of TEA-21 will likely provide for the states to issue vision exemptions as well. This creates additional problems for motor carriers that operate primarily in intrastate commerce. Those motor carriers will continue to experience a lack of control over the medical requirements of their drivers, and hence highway and public safety.

The Americans With Disabilities Act

In Section 4.6 of its Technical Assistance Manual on Title I of the Americans with Disabilities Act (ADA), the Equal Employment Opportunity Commission (EEOC) clearly states that the ADA does not override health and safety requirements established under other federal laws. The EEOC provides the following example:

An employee who is being hired to drive a vehicle in interstate commerce must meet safety requirements established by the U.S. Department of Transportation.

Complying with FHWA safety requirements, including the vision standards, is an “essential function” of the job of any commercial vehicle driver. Clearly, the 24 drivers in question cannot meet these safety requirements. While the FHWA has conducted numerous studies to determine whether the vision standards for monocular-visioned drivers could be safely changed, it has yet not seen fit to change its regulatory scheme to reduce the standards.

The granting of vision exemptions effectively removes the preemptive effect that FHWA regulations have over the ADA, and forces motor carriers to assume the risk of waiving vision requirements that the FHWA itself has not determined can be safely waived. Motor carriers, who have a legal responsibility to the public for maintaining highway safety, are therefore placed in the unenviable position of having to choose between allowing exempted drivers to operate their vehicles or face possible litigation for violation of the ADA if they refuse to hire such drivers. Forcing motor carriers to make such a choice could have a dramatic impact on both public and highway safety.

It is crucial to understand where the line is drawn between requiring medically qualified drivers who do not endanger the public safety, and the ADA’s concern for the individual rights of disabled persons. However, under force of case law and rulemaking, this line is rapidly moving. We urge FHWA to note the court decision on **Buck v. DOT** (D.C. Circuit 6-13-95), as it relates to hearing impaired drivers. In that case the plaintiffs claim was denied in the circuit court. Of particular interest is paragraph 6 of the background section of the decision:

Where the agency (DOT) has established a certain safety standard (49 CFR 391(41)(b)11), however, and there is no way in which an individual with a certain handicap can meet that standard, the law does not require the pointless exercise of allowing him to try. In this case the agency has reasonably determined - at least until it is presented with evidence to the contrary - that in order to operate a vehicle safely a driver must be able to hear with a certain acuity.

Clearly, the same case can be made as strongly, if not increasingly so, for the ability of a driver to be able to see with a certain acuity. That acuity is set forth by existing FMCSR vision standards in which FHWA has yet to present evidence that exemptions to those standards provides for a safer driver.

Conclusions and Recommendation

- The trucking industry continues to oppose the granting of waivers and exemptions to drivers who cannot meet existing medical standards.
- The latitude that TEA-21 gives FHWA over its ability to issue waivers and exemptions should not extend to the agency's existing vision requirements.
- If FHWA chooses to exempt drivers from the vision requirements, ATA strongly recommends that said drivers be subjected to annual medical examinations and annual vision checks by an optometrist or ophthalmologist.
- Drivers who are granted vision exemptions should be required to report involvement in any DOT-recordable accident directly to FHWA and should be required to undergo a medical examination and required evaluation of his or her vision before being authorized to drive a CMV.
- FHWA should clarify its predominance over the Americans with Disabilities Act, as it applies to safety-sensitive jobs and tasks.

ATA appreciates the opportunity to comment on this notice and proposed issuing of 24 vision exemptions. If there are further questions about the trucking industries position on this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,



David Osiecki, V.P
Safety Policy
Safety Department



Stuart Flatow, Director
Occupational Safety and Health
Safety Department