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**Authority:** 49 U.S.C. 322, 31315 and 31136; 49 CFR 1.73.

Issued on: September 18, 2000.

**Julie Anna Cirillo,**

*Acting Assistant Administrator, Federal Motor Carrier Safety Administration.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[FMCSA Docket No. 2000-7165] - 3

#### Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of final disposition.

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**SUMMARY:** The FMCSA announces its decision to exempt 60 individuals from the vision requirement in 49 CFR 391.41(b)(10).

**DATES:** September 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** For information about the vision exemptions in this notice, Ms. Sandra Zywockarte, Office of Bus and Truck Standards and Operations, (202) 366-2987; for information about legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366-2519, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

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##### Background

Sixty-three individuals petitioned the FMCSA for an exemption of the vision requirement in 49 CFR 391.41(b)(10),

which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. They are Elijah Allen, Jr., Charles Leon Baney, Walter F. Blair, Jullie A. Bolster, Gary Bryan, Timothy John Bryant, Thomas A. Burke, Monty Glenn Calderon, Ronald Lee Carpenter, Charles Casey Chapman, Milton Coleman, David Earl Corwin, Adam D. Craig, Eric L. Dawson, III, Richard L. Derick, Joseph A. Dunlap, John C. Edwards, Jr., Calvin J. Eldridge, Ronald G. Ellwanger, Marcellus Albert Garland, George J. Ghigliotto, Ronald E. Goad, Steven F. Grass, Randolph D. Hall, Reginald I. Hall, Sherman William Hawk Jr., Daniel J. Hillman, Gordon William Howell, Roger Louis Jacobson, Robert C. Jeffres, Alfred C. Jewell, Jr., Anton R. Kibler, James Alonzo Kneece, Ronnie L. LeMasters, Samuel Joseph Long, Steven G. Luther, Lewis V. McNeice, Barry B. Morgan, Richard O'Neal, Jr., Dewey Owens, Jr., Richard E. Perry, Douglas McArthur Potter, Gregory Martin Preves, James M. Rafferty, Paul C. Reagle, Sr., Glenn E. Robbins, Daniel Salinas, Salvador Sarmiento, Wayne Richard Sears, Garry R. Setters, Hoyt M. Shamblin, Lee Russell Sidwell, Jesse M. Sikes, Harold A. Slesman, James E. Smith, Daniel A. Sohn, Denney Vern Traylor, Noel Stuart Wangerin, Brian W. Whitmer, Jeffrey D. Wilson, Joseph F. Wood, William E. Woodhouse, and Rick A. Young. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 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." Accordingly, the FMCSA evaluated the petitions on their merits and made a preliminary determination that the waivers should be granted. On May 23, 2000, the agency published notice of its preliminary determination and requested comments from the public (65 FR 33406). The comment period closed on June 22, 2000. One comment was received, and its content was carefully considered by the FMCSA in reaching the final decision to grant the petitions.

The FMCSA has not made a decision on three applicants (Gary Bryan, Steven F. Grass and Glenn E. Robbins). Subsequent to the publication of the preliminary determination, the agency received additional information from its check of these applicants' motor vehicle records, and we are evaluating that information. A decision on these three petitions will be made in the future.

#### Vision and Driving Experience of the Applicants

The vision requirement 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 FHWA 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°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket). The panel's conclusion supports the FMCSA's (and previously the FHWA's) view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The 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 60 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinal detachment, macular and corneal scarring, ocular histoplasmosis and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. Over half of the applicants were either born with their vision impairments or have had them since childhood. The other individuals who sustained their vision conditions as adults have had them for periods ranging from 5 to 32 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, can perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of a valid commercial driver's license (CDL). Before issuing a CDL, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate the 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. The Federal interstate qualification standards, however, require more.

While possessing a valid CDL, these 60 drivers have been authorized to drive a CMV in intrastate commerce even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 5 to 49 years. In the past 3 years, the 60 drivers had three convictions for traffic violations among them. Three drivers were involved in accidents in their CMVs, but there were no injuries and none of the CMV drivers received a citation. The drivers were convicted of two moving traffic violations, one of them was for speeding and one was for "Traffic Control Device."

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in a May 23, 2000, notice (65 FR 33406). Since the docket comments did not focus on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants as a group, however, is supported by the information published at 65 FR 33406.

#### Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the 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 these drivers to drive in interstate commerce as opposed to restricting them to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. 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 accidents and traffic violations. Copies of the studies have been added to the docket.

We believe we can properly apply the principle to monocular drivers because data from the vision waiver 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). 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 to 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 accident 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 accident proneness from accident 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 accidents. (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 accident 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 60 applicants, we note that cumulatively the applicants have had only three accidents and two traffic violation in the last 3 years. None of the accidents resulted in bodily injury or issuance of a citation against the applicant. 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, the FMCSA

concludes their ability to drive safely can be projected into the future.

We believe applicants' intrastate driving experience provides 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 exist on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances are more compact than on highways. 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 5 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 or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting 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 will grant the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e).

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, the FMCSA will impose requirements on the 60 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 its driver qualification file, or keep a copy in his/her driver qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving so

it may be presented to a duly authorized Federal, State, or local enforcement official.

#### Discussion of Comments

The FMCSA received one comment in this proceeding. The comment was considered and is discussed below.

The Advocates for Highway and Auto Safety (AHAS) expresses opposition to the FMCSA's policy to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs), including the driver qualification standards. Specifically, the AHAS: (1) asks the agency to clarify the consistency of the exemption application information, (2) objects to the agency's reliance on conclusions drawn from the vision waiver program, (3) raises procedural objections to this proceeding, (4) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)), and finally, (5) suggests that a recent Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by the AHAS 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), and a Final Determination for 56 drivers, FMCSA Docket No. 2000-7006, also published in today's **Federal Register**. We will not address these points again herein but refer interested parties to those earlier discussions for reasons why the points were rejected.

Notwithstanding the FMCSA's ongoing review of the vision standard, as evidenced by the medical panel's report dated October 16, 1998, and filed in this docket, the FMCSA must comply with *Rauenhorst v. United States Department of Transportation, Federal Highway Administration*, 95 F.3d 715 (8th Cir. 1996), and grant individual exemptions under standards that are consistent with public safety. Meeting those standards, the 60 veteran drivers in this case have demonstrated to our satisfaction that they can continue to operate a CMV with their current vision safely in interstate commerce because they have demonstrated their ability in intrastate commerce. Accordingly, they qualify for an exemption under 49 U.S.C. 31315 and 31136(e).

#### Conclusion

After considering the comments to the docket and based upon its evaluation of the 60 waiver applications in accordance with the *Rauenhorst* decision, the FMCSA exempts Elijah Allen, Jr., Charles Leon Baney, Walter F. Blair, Jullie A. Boster, Timothy John Bryant, Thomas A. Burke, Monty Glenn

Calderon, Ronald Lee Carpenter, Charles Casey Chapman, Milton Coleman, David Earl Corwin, Adam D. Craig, Eric L. Dawson, III, Richard L. Derick, Joseph A. Dunlap, John C. Edwards, Jr., Calvin J. Eldridge, Ronald G. Ellwanger, Marcellus Albert Garland, George J. Ghigliotty, Ronald E. Goad, Randolph D. Hall, Reginald I. Hall, Sherman William Hawk, Jr., Daniel J. Hillman, Gordon William Howell, Roger Louis Jacobson, Robert C. Jeffres, Alfred C. Jewell, Jr., Anton R. Kibler, James Alonzo Kneece, Ronnie L. LeMasters, Steven G. Luther, Samuel Joseph Long, Lewis V. McNeice, Barry B. Morgan, Richard O'Neal, Jr., Dewey Owens, Jr., Richard E. Perry, Douglas McArthur Potter, Gregory Martin Preves, James M. Rafferty, Paul C. Reagle, Sr., Daniel Salinas, Salvador Sarmiento, Wayne Richard Sears, Garry R. Setters, Hoyt M. Shamblin, Lee Russell Sidwell, Jesse M. Sikes, Harold A. Slesman, James E. Smith, Daniel A. Sohn, Denny Vern Traylor, Noel Stuart Wangerin, Brian W. Whitmer, Jeffrey D. Wilson, Joseph F. Wood, William E. Woodhouse, and Rick A. Young from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (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 its driver qualification file, or keep a copy in his/her driver qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

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 the FMCSA for a renewal under procedures in effect at that time.

**Authority:** 49 U.S.C. 322, 31315 and 31136; 49 CFR 1.73.

Issued on: September 18, 2000.

**Julie Anna Cirillo,**

*Acting Assistant Administrator, Federal Motor Carrier Safety Administration.*

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