



ADVOCATES
FOR HIGHWAY
AND AUTO SAFETY

DEPT. OF TRANSPORTATION

00 DEC -1 PM 12:33

117432

December 4, 2000

Docket No. FMCSA-2000-8203-2
Dockets Management Facility
Room PL-401
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Qualification of Drivers; Exemption Applications; Vision
65 FR 66293, Nov. 3, 2000

Advocates for Highway and Auto Safety (Advocates) files these comments regarding the Federal Motor Carrier Safety Administration's (FMCSA) notice announcing the agency decision to renew exemptions for nine applicants from the federal vision requirement, 49 Code of Federal Regulations 391.41(b)(10).

Advocates objects to the issuance of the FMCSA final decision as a *fait accompli* without providing prior notice and opportunity for public comment. The agency has summarily renewed the exemptions, effective November 9, 2000, without any opportunity for public input prior to the decision to renew. This procedure violates due process considerations and the dictates of the Administrative Procedure Act, 5 U.S.C. § 553 *et seq.* Renewals of exemptions should be subject to the same notice and comment process as required for the initial determination to grant the exemption. Nothing in the exemption statute, 49 U.S.C. § 31315, states anything to the contrary.

In addition, the notice provides only a summary statement that the applicants qualify for exemption renewal. The agency makes specific reference only to the fact that the vision impairment of the applicants remain stable. 65 FR 66293, 66294. The agency concludes from a review of the applicants' driving records, which has not been shared with the public, that "each applicant continues to meet the vision exemption standards." *Id.* The agency does not present to the public for review any of the information the agency relied on in making its determination. Neither does the agency provide any follow up information similar to the information presented to the public in the initial notice that accompanied the agency's "preliminary" determinations on behalf of the 9 applicants. No mention is made of driving mileage accrued during the two years of the prior exemption nor any information regarding the accident and citation experience of the applicants. Nowhere does the agency state that none or the 9 drivers were involved in accidents or received citations for moving violations. Even if these events do not disqualify the drivers from consideration of a renewal of their exemption, the agency should provide the public with the same record and information it reviewed in coming to its decision that the exemption of each driver should be renewed.

Henry M. Jasny
General Counsel

