

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 11 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 11 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are: Henry Ammons, Jr., Michael D. Archibald, David S. Carman, Cedric E. Foster, Glen T. Garrabrant, Alan L. Johnston, Dennis I. Nelson, Rance A. Powell, Shannon E. Rasmussen, Garfield A. Smith, Henry L. Walker.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination 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 and retain 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 Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was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 11 applicants has satisfied the entry conditions for

obtaining an exemption from the vision requirements (65 FR 45817; 65 FR 77066; 68 FR 10300; 70 FR 7546; 65 FR 66286; 66 FR 13825; 67 FR 76439; 68 FR 10298; 70 FR 7545). Each of these 11 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard 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 standards. 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 March 9, 2009.

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 11 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 based on the merits of each case and 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: January 29, 2009.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2000-7006; FMCSA-2000-7363; FMCSA-2001-10570; FMCSA-2002-12294; FMCSA-2004-18885; FMCSA-2006-24783]

#### Qualification of Drivers; Exemption Renewals; Vision

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 12 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366-4001, [maggi.gunnels@dot.gov](mailto:maggi.gunnels@dot.gov), FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at <http://www.regulations.gov>.

## Background

Under 49 U.S.C. 31136(e) and 31315, 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. The comment period ended on January 12, 2009.

## Discussion of Comments

FMCSA received no comments in this proceeding.

## Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 12 renewal applications, FMCSA renews the Federal vision exemptions for Robert W. Brown, David D. Bungori, Jr., Benny J. Burke, David R. Cox, Gary T. Hicks, Robert T. Hill, John C. McLaughlin, Kenneth D. Sisk, David W. Skillman, Rick N. Ulrich, Stephen D. Vice and Larry D. Wedekind.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by 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. 31136 and 31315.

Issued on: January 29, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-1999-5578; FMCSA-1999-5748; FMCSA-1999-6480; FMCSA-2000-7165; FMCSA-2001-11426; FMCSA-2002-11714; FMCSA-2002-12294; FMCSA-2003-14223; FMCSA-2004-17195; FMCSA-2004-17984; FMCSA-2005-21254; FMCSA-2005-22194; FMCSA-2005-23238; FMCSA-2006-24015; FMCSA-2006-24783]

### Qualification of Drivers; Exemption Renewals; Vision; Correction

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

**ACTION:** Notice of final disposition; Correction.

**SUMMARY:** On September 9, 2008 (73 FR 52451), October 17, 2008 (73 FR 61927), and October 31, 2008 (73 FR 65009), the Federal Motor Carrier Safety Administration (FMCSA) published four notices of final disposition in the **Federal Register** with an inadvertent error in each. Those notices stated that the Agency did not receive comments in the proceedings. This document corrects that error, because it was brought to the Agency's attention that comments had been submitted. This correction does not affect the Agency's previous decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for the individuals specifically identified in the September 9, 2008, October 17, 2008 and October 31, 2008 final disposition notices.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (202)-366-4001, [fmcamedical@dot.gov](mailto:fmcamedical@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:

#### Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at <http://www.regulations.gov>, by accessing the docket numbers in the heading of this notice.

## Background

FMCSA announced in the September 9, 2008, October 17, 2008 and October 31, 2008 notices that no comments were received in the proceedings. This was in error. The notices should read that comments were received. The Advocates for Highway and Auto Safety filed the same comment in all four proceedings.

### Corrections

1. In notice FR Doc. E8-20890 beginning on page 52451, second column, under the separate headings of *Discussion of Comments* and *Conclusion*, in the issue of Tuesday, September 9, 2008:

2. In notice FR Doc. E8-224695 beginning on page 61927, second column, under the separate headings of *Discussion of Comments* and *Conclusion*, in the issue of Friday, October 17, 2008:

3. In notice FR Doc. E8-224698 beginning on page 61927, third column, under the separate headings of *Discussion of Comments* and *Conclusion*, in the issue of Friday, October 17, 2008:

4. In notice FR Doc. E8-26059 beginning on page 65010, first column, under the separate headings of *Discussion of Comments* and *Conclusion*, in the issue of Friday, October 31, 2008, change to read as follows:

### Discussion of Comments

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

Advocates for Highway and Auto Safety (Advocates) expressed opposition to FMCSA's policy to grant exemptions from the FMCSR, 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. 31136(e) and 31315); 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, but refer interested parties to those earlier discussions.

### Conclusion

FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcements and concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers. The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon evaluation of the renewal applicants, FMCSA stands by its decision to renew the exemptions from the Federal Motor Carrier Safety regulations for the 39 individuals specified in the September 9, 2008 final disposition notice, the 34 individuals