

Issued on: July 27, 2012.

Larry W. Minor,

Associate Administrator for Policy.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012-0159]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 10 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective August 6, 2012. The exemptions expire on August 6, 2014.

FOR FURTHER INFORMATION CONTACT:

Elaine M. Papp, Chief, Medical Programs Division, (202) 366-4001, 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:

Electronic Access

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

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 FDMS is available 24 hours each day, 365 days each year. If you want

acknowledgement 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>.

Background

On June 18, 2012, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (77 FR 36336). That notice listed 10 applicants' case histories. The 10 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

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. Accordingly, FMCSA has evaluated the 10 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs 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 requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive

safely. The 10 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including complete loss of vision, enucleation, amblyopia, prosthesis, and optic atrophy. In most cases, their eye conditions were not recently developed. Eight of the applicants were either born with their vision impairments or have had them since childhood. The individuals that sustained their vision conditions as adults have had it for a period of 12 to 40 years.

Although each applicant has one eye which does not meet the vision requirement 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, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 10 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 4 to 41 years. In the past 3 years, one of the drivers was involved in a crash, and none of the drivers was convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the June 18, 2012, notice (77 FR 36336).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement 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 each of these drivers to drive

in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. 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 crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA-1998-3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study 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). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as 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 crash 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 crash proneness from crash 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 crashes (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 crash 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 10 applicants, one of the drivers was involved in a crash, and none was convicted of moving violations in a CMV. All the applicants achieved a 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, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide 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 exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. 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 3 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/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement 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 is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 10 applicants listed in the notice of June 18, 2012 (77 FR 36336).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will

impose requirements on the 10 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 requirement 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, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the 10 exemption applications, FMCSA exempts Donald S. Dickerson (WV), Michael J. Ernst (NE), Derek L. Jones, Sr. (GA), Richard L. Miller (IN), James R. Morgan (MI), William C. Sanders (TN), Dan P. Till (TX), Richard D. Tucker II (NC), Jay A. Turner (OH), and Jack L. Woolever (MO) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each 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.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: July 30, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012-19124 Filed 8-3-12; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Notice of Fiscal Year 2013 Safety Grants and Solicitation for Applications

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

ACTION: Notice; change in application due dates.

SUMMARY: This notice informs the public of FMCSA's Fiscal Year (FY) 2013 safety grant opportunities and FMCSA's projected application due dates. FMCSA announces these grant opportunities based on authorities provided for in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, as amended by the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141, (2012). The Agency's safety grant programs in FY 2013 include the Motor Carrier Safety Assistance Program (MCSAP) Basic and Incentive grants; New Entrant Safety Audit grants; MCSAP High Priority grants; Commercial Motor Vehicle (CMV) Operator Safety Training grants; Border Enforcement grants (BEG); Commercial Driver's License Program Improvement (CDLPI) grants; Performance and Registration Information Systems Management (PRISM) grants; Safety Data Improvement Program (SaDIP) grants; and the Commercial Vehicle Information Systems and Networks (CVISN) grants. The Commercial Driver's License Information System (CDLIS) Modernization grants were not continued in the MAP-21 authorization and, therefore, FMCSA will not be soliciting applications for this grant program in FY 2013.

FOR FURTHER INFORMATION CONTACT: Please contact the following FMCSA staff with questions or needed information on the Agency's grant programs:

MCSAP Basic/Incentive Grants—Jack Kostelnik, jack.kostelnik@dot.gov, 202-366-5721.

New Entrant Safety Audits Grants—Jack Kostelnik, jack.kostelnik@dot.gov, 202-366-5721.

MCSAP High Priority Grants—Cim Weiss, cim.weiss@dot.gov, 202-366-0275.

CMV Operator Safety Training Grants—Crystal Polk, crystal.polk@dot.gov, 202-366-0734.

BEG—Jackie Cambridge, jackie.cambridge@dot.gov, 202-366-1351.

CDLPI Grants—James Ross, james.ross@dot.gov, 202-366-0133.

SaDIP Grants—Jackie Cambridge, jackie.cambridge@dot.gov, 202-366-1351.

PRISM Grants—Julie Otto, julie.otto@dot.gov, 202-366-0710.

CVISN Grants—Julie Otto, julie.otto@dot.gov, 202-366-0710.

All staff may be reached at FMCSA, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background and Purpose

For each grant program, FMCSA will post a notice of funding availability (NOFA) at www.grants.gov. The NOFA will provide specific information on the application process; national funding priorities for FY 2013; evaluation criteria; required documents and certifications; grantee matching share and maintenance of expenditure requirements; and additional information related to the availability of funds. General information is provided below for each individual grant program.

To ensure the timely review and award of all grants, applications must be submitted in accordance with the instructions provided in each NOFA and contain all required information and attachments. FMCSA strongly encourages applicants to dedicate the resources necessary to submit timely and complete applications. Applications will be returned if required documents are missing or incomplete or additional information is needed.

MCSAP Basic and Incentive Grants

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109-59, §§ 4101(a), 4106, 119 Stat. 1144, 1714, 1717-19 (2005), as amended by Moving Ahead for Progress in the 21st Century Act, Public Law 112-141 §§ 32601, 32603(a), (2012) authorizes FMCSA's Motor Carrier Safety Grants. MCSAP Basic and Incentive formula grants are governed by 49 U.S.C. 31102-31104 and 49 CFR Part 350. Under the Basic and Incentive grant programs, a State lead

MCSAP agency, as designated by its Governor, is eligible to apply for MCSAP Basic and Incentive grant funding by submitting a commercial vehicle safety plan (CVSP). See 49 CFR 350.201, 350.205, and 350.213. Pursuant to 49 U.S.C. 31103 and 49 CFR 350.303, FMCSA will reimburse each lead State MCSAP agency no more than 80 percent of eligible costs incurred in a fiscal year. Each State will provide a 20 percent match to qualify for the program. The FMCSA Administrator waives the requirement for matching funds for the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (49 CFR 350.305). In accordance with 49 CFR 350.323, the MCSAP Basic grant funds will be distributed proportionally to each State's lead MCSAP agency using the following four, equally weighted (25 percent) factors:

(1) 1997 road miles (all highways) as defined by the FMCSA;

(2) All vehicle miles traveled as defined by the FMCSA;

(3) Population—annual census estimates as issued by the U.S. Census Bureau; and

(4) Special fuel consumption (net after reciprocity adjustment) as defined by the FMCSA.

A State's lead MCSAP agency may qualify for MCSAP Incentive funds pursuant to 49 CFR 350.327(a) if the agency can demonstrate that the State's CMV safety program meets or exceeds any or all of the following five categories:

(1) Reduction in the number of large truck-involved fatal crashes;

(2) Reduction in the rate of large-truck-involved fatal crashes or maintenance of a large-truck-involved fatal crash rate that is among the lowest 10 percent of such rates for MCSAP recipients;

(3) Upload of CMV crash reports in accordance with current FMCSA policy guidelines;

(4) Verification of Commercial Driver's Licenses during all roadside inspections; and

(5) Upload of CMV inspection data in accordance with current FMCSA policy guidelines.

Incentive funds are distributed in accordance with 49 CFR 350.327(b).

The FMCSA calculates the amount of Basic and Incentive funding each State is to receive. This information is provided to the States and is made available on the Agency's Web site. The projected FY 2013 distribution is available at <http://www.fmcsa.dot.gov/safety-security/safety-initiatives/mcsap/mcsapforms.htm>. The amount indicated is based on FY 2012 estimated awards,