



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0026]

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 18 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. They are unable to meet the vision requirement in one eye for various reasons. The exemptions enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: The exemptions were applicable on February 16, 2018. The exemptions expire on February 16, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, S.E., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. 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> and/or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

II. Background

On January 16, 2018, FMCSA published a notice announcing receipt of applications from 18 individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (83 FR 2311). The public comment period ended on February 15, 2018, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to driver a CMV 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 a 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 red, green, and amber.

III. Discussion of Comments

FMCSA received one comment in this proceeding. Vanessa Jones commented that drivers with a visual deficiency should have to take a specific driving test to demonstrate safe operation with the deficiency rather than relying on a review of the driving record to determine their level of safety. In addition, she indicated that vision exempted drivers should not be seen by an optometrist and instead should be seen by a specialized eye doctor.

FMCSA conducts a thorough review of a 3-year Commercial and Personal Driving record in conjunction with actual driving experience with their vision deficiency to determine if an equivalent or greater level of safety is likely to be achieved by granting the exemptions as would be without the exemptions. Drivers are not granted a Commercial Driver's License (CDL) by the Federal Government but by their State. Each state has specific skill testing requirements that must be met.

FMCSA has utilized a Medical Expert Panel consisting of a team of Medical Doctors who have extensively researched and recommended the process that the Agency follows to qualify these drivers. FMCSA requires all individuals applying for a vision exemption to be evaluated by an optometrist or ophthalmologist. Both optometrists and ophthalmologists are medically qualified to evaluate the applicant's eye conditions when applying to the vision exemption program. The examination includes identifying and defining the nature of the vision deficiency, how long the deficiency has been present, stability, visual acuity, field of vision, and color vision.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, 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. The exemption allows applicants to operate CMVs in interstate commerce.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision as well as their driving records and experience driving with the vision deficiency. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the January 16, 2018, Federal Register notice (83 FR 2311) and will not be repeated in this notice.

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 18 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 amblyopia, aphakia, cataracts, central scarring, complete loss of vision, glaucoma, macular scarring, retinal detachment, retinal scarring. In most cases, their eye conditions were not recently developed. Nine of the applicants were either born with their vision impairments or have had them since childhood. The nine individuals that sustained their vision conditions as adults have had it for a range of 4 to 26 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 a valid license to operate a CMV. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. 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 applicants in this notice have driven CMVs with their limited vision in careers ranging for 3 to 70 years. In the past three years, one driver was involved in a crash, and two drivers were convicted of moving violations in CMVs. 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.

Consequently, FMCSA finds that in each case 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.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) each driver must 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 certified Medical Examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) each driver must 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) each driver must 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 also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 18 exemption applications, FMCSA exempts the following drivers from the vision requirement, 49 CFR 391.41(b)(10), subject to the requirements cited above:

Michael H. Eheler, II (WI)	Roberto Espinosa (FL)
Lee J. Gaffney (OH)	Mark S. Hale (AL)
Raymundo Maldonado (TX)	Mickey D. McCoy (TN)

Colin D. McGregor (WI)	Thomas B. Miller (VA)
Ryan J. Plank (PA)	Donald J. Poague (GA)
Jose R. Ponce (TX)	Ronald F. Prezzia (IL)
Jorge A. Rodriguez (CA)	Jimmy W. Rowland (FL)
Aaron R. Rupe (IL)	Charles L. Sauls (FL)
Gery M. Shoultz (IN)	Juan D. Zertuche, Jr. (TX)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (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 prior to being 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: April 23, 2018.

Larry W. Minor,
Associate Administrator for Policy.

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