This notice applies to other Federal agency decisions as of the issuance date of this notice and all laws under which actions were taken including, but not limited to:

3. Air: Clean Air Act, 42 U.S.C. 7401–7671(q).

(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 SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 552a(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 www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

II. Background

On November 2, 2015, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (80 FR 67472). That notice listed 28 applicants’ case histories. The 28 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 28 applications on their merits and made a determination to grant exemptions to each of them.

III. Vision and Driving Experience of the Applicants

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

FMCSA recognizes that some drivers do not meet the vision requirement but have found their driving to accommodate their vision limitation and demonstrated their ability to drive...
safely. The 28 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, cataract, central scotoma, chorioretinal scar, complete loss of vision, detached retina, esotropia, macular degeneration, myopic degeneration, ocular aneurysm, optic nerve atrophy, optic nerve coloboma, optic neuropathy, prothetic eye, refractive amblyopia, and retinal detachment. In most cases, their eye conditions were not recently developed. Sixteen of the applicants were either born with their vision impairments or have had them since childhood.

The 12 individuals that sustained their vision conditions as adults have had it for a range of 6 to 25 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 28 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 in careers ranging for 3 to 43 years. In the past three years, no drivers were involved in crashes, and 2 drivers were convicted of moving violations in CMVs. Their experience and driving records and experience with the vision deficiency...

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 premise 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.

FMCSA believes it 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 convicted offenses—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 28 applicants, no drivers were involved in crashes, and 2 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.

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 28 applicants.
listed in the notice of November 2, 2015 (80 FR 67472).

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 28 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 391.41(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.

V. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based upon its evaluation of the 28 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)):

Hector J. Lopez (NC)
John V. Narretto, Jr. (LA)
Branden J. Ramos (CA)
Sonny Scott (OH)
Jarrod R. Seirer (KS)
Vince A. Thompson (OR)
Daniel R. Viscaya (NC)
Carlos Vives, Jr. (NJ)
Otis H. Wright, Jr. (MD)

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: February 24, 2016.

Larry W. Minor,
Associate Administrator for Policy.

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration
[Notice No. NHTSA–2015–0091; Notice 2]

Cooper Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Cooper Tire & Rubber Company (Cooper), has determined that certain Cooper tires do not fully comply with paragraph S5.5.1(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, New Pneumatic Tires Radial Tires for Light Vehicles. Cooper filed a report dated August 13, 2015, pursuant to 49 CFR part 573, Defect and Noncompliance Responsibility and Reports. Cooper then petitioned NHTSA under 49 CFR part 556 requesting a decision that the subject noncompliance is inconsequential to motor vehicle safety.


SUPPLEMENTARY INFORMATION:

I. Overview: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Cooper submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of Cooper’s petition was published, with a 30-day public comment period, on October 22, 2015 in the Federal Register (80 FR 64057). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: http://www.regulations.gov/. Then follow the online search instructions to locate docket number “NHTSA–2015–0091.”

II. Tires Involved: Affected are approximately 1,350 Cooper Weather-Master S/T2 size 215/70R15 tires manufactured between April 26, 2015 and May 29, 2015.

III. Noncompliance: Cooper explains that the noncompliance is that the inboard sidewalls of the subject tires are labeled with an incorrect manufacturer’s identification mark and therefore do not fully meet all applicable requirements of paragraph S5.5.1(b) of FMVSS No. 139. Specifically, the tires are labeled with manufacturer’s identification mark “U8” instead of “U9.”

IV. Rule Text: Paragraph S5.5.1 of FMVSS No. 139 requires in pertinent part:

S5.5.1 Tire Identification Number.

(b) Tires manufactured on or after September 1, 2009. Each tire must be labeled with the tire identification number, except for the date code and, at the discretion of the manufacturer, any optional code, must be labeled on the other sidewall of the tire. Except for retreaded tires, either the tire identification number or a partial tire identification number, containing all characters in the tire identification number, except for the date code and, at the discretion of the manufacturer, any optional code, must be labeled on the other sidewall of the tire. Except for retreaded tires, if a tire does not have an intended outbound sidewall, the tire must be labeled with the tire identification number required by 49 CFR part 574 on one sidewall and with either the tire identification number or a partial tire identification number, containing all characters in the tire identification number except for the date code and, at the discretion of the manufacturer, any optional code, on the other side wall.

V. Summary of Cooper’s Petition: Cooper states its belief that the subject noncompliance is inconsequential to motor vehicle safety because while the subject tires contain an incorrect manufacturer’s identification mark on