

Act; the USTR records compiled to respond to requests and appeals; USTR personnel assigned to handle requests and appeals; other agencies or entities that have referred requests concerning USTR records, or that have consulted with USTR regarding the handling of particular requests; submitters or subjects of records or information that have provided assistance to USTR in making access or amendment determinations; and The National Archives and Records Administration (NARA), Office of Government Information Services (OGIS).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

We may disclose records or information contained in the records, as a routine use to:

1. A federal, state, local or foreign agency or entity for the purpose of consulting with that agency or entity to enable USTR to make a determination as to the propriety of access to or correction of information, or for the purpose of verifying the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment of information.

2. A federal agency or entity that furnished the record or information for the purpose of permitting that agency or entity to make a decision as to access to or correction of the record or information, or to a federal agency or entity for purposes of providing guidance or advice regarding the handling of particular requests.

3. A submitter or subject of a record or information in order to assist USTR in making a determination as to access or amendment.

4. OGIS, to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with the FOIA, and to facilitate OGIS' offering of dispute resolution services to resolve disputes between persons making FOIA requests and administrative agencies.

5. A congressional office in response to an inquiry made on behalf or at the request of the subject individual.

6. The legal representative of USTR or another federal agency, including the US Department of Justice, or other retained counsel, when USTR or any of its employees are a party to or have a significant interest in litigation or an administrative proceeding.

7. A court, magistrate, administrative tribunal, or alternative dispute resolution mediator in the course of presenting evidence, including

disclosures to counsel or witnesses in the course of civil discovery, litigation or settlement negotiations or in connection with criminal proceedings, when the information is relevant and necessary and USTR or any of its employees are a party to or have a significant interest in the proceeding.

8. The appropriate federal, state, local, territorial, tribal or foreign law enforcement authority or other appropriate entity responsible for investigation, enforcement, implementation or prosecution, where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law whether criminal, civil or regulatory in nature.

9. NARA for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records are maintained in file folders and electronic media.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records are organized by the number assigned to the request or appeal. USTR can search the electronic database by the name of the requester or appellant.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Records are retained and disposed of in accordance with NARA's General Records Schedule 14.

**ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:**

File folders are maintained in cabinets in secure facilities and access to the files is restricted to individuals whose role requires use of the records. The computer servers in which records are stored are located in secure, guarded facilities. Individuals accessing the system are authenticated using encrypted certificates and data stored to the database may require digital signatures.

**RECORD ACCESS PROCEDURES:**

In accordance with the procedures set forth in 15 CFR part 2004, subpart C, direct inquires in writing to the USTR Privacy Act Office. Heightened security may delay mail delivery. To avoid mail delays, we strongly suggest that you email your request to [PRIVACY@ustr.eop.gov](mailto:PRIVACY@ustr.eop.gov). Our mailing address is: Privacy Act Office, Office of the US Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington DC 20509. To make sure that the Privacy

Act Office receives your request without delay, you should include the notation "Privacy Act Request" in the subject line of your email or on the front of your envelope and also at the beginning of your request.

**CONTESTING RECORD PROCEDURES:**

See record access procedures.

**NOTIFICATION PROCEDURES:**

See record access procedures.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**Janice Kaye,**

*Chief Counsel for Administrative Law, Office of the U.S. Trade Representative.*

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**BILLING CODE 3290-F7-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

[Docket No. FMCSA-2016-0210]

**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 22 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 were granted November 22, 2016. The exemptions expire on November 22, 2018.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-113, Washington, DC 20590-0001. Office hours are 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 SE., Washington, DC, between 9 a.m. and 5 p.m., ET, 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 [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**II. Background**

On October 20, 2016, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (81 FR 72664). That notice listed 22 applicants' case histories. The 22 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 22 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 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 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 limitation and demonstrated their ability to drive safely. The 22 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, enucleation, glaucoma, macular atrophy, macular scar, maculopathy, optic atrophy, optic neuropathy, prosthetic eye, retinal detachment, and retinal scar. In most cases, their eye conditions were not recently developed. Fourteen of the applicants were either born with their vision impairments or have had them since childhood.

The 8 individuals that sustained their vision conditions as adults have had it for a range of 3 to 36 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 22 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 52 years. In the past three years, no drivers were involved in crashes and no drivers were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the October 20, 2016 notice (81 FR 72664).

**IV. 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.

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 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 22 applicants, no drivers were involved in crashes and no drivers were convicted of a 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 22 applicants listed in the notice of October 20, 2016 (81 FR 72664).

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 22 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.

#### V. Discussion of Comments

FMCSA received two comments in this proceeding. An anonymous commenter stated that they believe the drivers should not be granted the exemptions, citing safety concerns related to their vision loss. The basis for granting exemptions is explained in Section IV of this document, and FMCSA has determined that all drivers listed in this document meet the criteria required for an exemption. Deb Carlson stated that Derrick P. Moore currently holds an intrastate exemption in Minnesota, and that James F. McLaughlin was involved in a motor vehicle crash and cited for an equipment violation in 2016. The motor vehicle crash was in Mr. McLaughlin’s personal vehicle and not a CMV. The equipment violation was not a moving violation. Therefore, neither of these incidents are disqualifying factors for obtaining a vision exemption.

#### IV. Conclusion

Based upon its evaluation of the 22 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):

Gary A. Behrends (NE)  
 Harry R. Brewer (TN)  
 Johnnie B. Bush (MS)  
 Nathan J. Bute (IN)  
 Gary L. Cox (KY)  
 Kevin J. Embrey (IL)  
 Peter J. Faber (NE)  
 Ricky L. Gillum (OH)  
 Johnny E. Hill (AL)  
 Justin A. Hooper (MO)  
 John R. Horst (PA)  
 Robert E. Kelley, Jr. (WA)  
 David L. Manktelow (MA)  
 James F. McLaughlin (MN)  
 Derrick P. Moore (MN)  
 Richard L. Moores (CO)  
 Brian T. Morrison (MO)  
 Tad W. Sexsmith (WA)  
 Dennis M. Varga, Jr. (OH)  
 Michael J. Weber (NJ)  
 Mark B. Wilmer (VA)  
 Hezekiah Woodrup Sr. (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: December 8, 2016.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA–2000–7257, Notice No. 84]

### Railroad Safety Advisory Committee; Notice of Meeting Postponement

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** FRA announces the postponement of the fifty-seventh meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process.