

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration**

[Docket Nos. FMCSA-99-5748 and FMCSA-99-6156 (formerly OMCS-99-5748 and OMCS-99-6156)]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice announces the FMCSA's decision to renew the exemptions from the vision requirement in 49 CFR 391.41(b)(10) for 14 individuals.

DATES: This decision is effective January 3, 2002. Comments from interested persons should be submitted by January 28, 2002.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit>. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywockarte, Office of Bus and Truck Standards and Operations, (202) 366-2987; for information about legal issues related to this notice, Mr. Joseph Solomey, Office of the Chief Counsel, (202) 366-1374, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Electronic Access and Filing**

You may see all comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>.

Background

Fourteen individuals have requested renewal of their exemptions from the vision requirement in 49 CFR

391.41(b)(10) which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. They are Woodrow E. Bohley, Kenneth E. Bross, Charlie F. Cook, Russell W. Foster, Curtis N. Fulbright, Vincent I. Johnson, Richard L. Loeffelholz, Herman C. Mash, Frank T. Miller, Charles E. O'Dell, Martin Postma, Robert G. Rascicot, Jon H. Wurtele, and Walter M. Yohn, Jr. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 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." Accordingly, the FMCSA has evaluated the 14 petitions for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

On January 3, 2000, the agency published a notice of final disposition announcing its decision to exempt 40 individuals, including 11 of these applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10) (65 FR 159). The qualifications, experience, and medical condition of each applicant were stated and discussed in detail at 64 FR 54948 (October 8, 1999). Two comments were received, and their contents were carefully considered by the agency in reaching its final decision to grant the petitions (65 FR 159). On November 30, 1999, the agency published a notice of final disposition announcing its decision to exempt 33 individuals, including 3 of these applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10) (64 FR 66962). The qualifications, experience, and medical condition of the applicant were stated and discussed in detail at 64 FR 40404 (July 26, 1999). Three comments were received, and their contents were carefully considered by the agency in reaching its final decision to grant the petition (64 FR 66962). The agency determined that exempting the individuals from 49 CFR 391.41(b)(10) was likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption as long as the vision in each applicant's better eye continued to meet the standard specified in 49 CFR 391.41(b)(10). As a condition of the exemption, therefore, the agency imposed requirements on the individuals similar to the grandfathering provisions in 49 CFR 391.64(b) applied to drivers who participated in the agency's former vision waiver program.

These requirements are as follows: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that vision in the better eye meets

the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests 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.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for an additional 2-year period. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 14 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285; 63 FR 54519; 63 FR 66226; 64 FR 16517), and each has requested timely renewal of the exemption. These 14 applicants have submitted evidence showing that the vision in their 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 their records of safety while driving with their respective vision deficiencies over the past 2 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, the FMCSA concludes that extending the exemption for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption for each renewal applicant.

Discussion of Comments

The Advocates for Highway and Auto Safety (AHAS) expresses continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, the AHAS objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by the AHAS were addressed at length in 66 FR 17994 (April 4, 2001). We will not address

these points again here, but refer interested parties to that earlier discussion.

Conclusion

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA extends the exemptions from the vision requirement in 49 CFR 391.41(b)(10) granted to Woodrow E. Bohley, Kenneth E. Bross, Charlie F. Cook, Russell W. Foster, Curtis N. Fulbright, Vincent I. Johnson, Richard L. Loeffelholz, Herman C. Mash, Frank T. Miller, Charles E. O'Dell, Martin Postma, Robert G. Rascicot, Jon H. Wurtele, and Walter M. Yohn, Jr., subject to the following conditions: (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 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 2 years unless rescinded earlier by the 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. 31315 and 31136(e).

Request for Comments

The FMCSA has evaluated the qualifications and driving performance of the 14 applicants here and extends their exemptions based on the evidence introduced. The agency will review any comments received 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. 31315 and 31136(e). While comments of this nature will be entertained at any time, the FMCSA requests that interested parties with information concerning the safety records of these drivers submit comments by January 28, 2002. All comments will be considered and will be available for examination in the

docket room at the above address. The FMCSA will also continue to file in the docket relevant information which becomes available. Interested persons should continue to examine the docket for new material.

Authority: 49 U.S.C. 322, 31136 and 31315; and 49 CFR 1.73.

Issued on: December 19, 2001.

Brian M. McLaughlin,

Associate Administrator, Policy and Program Development.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[DOT Docket No. FMCSA-99-5867]

Parts and Accessories Necessary for Safe Operation; Renewal of Fuel Tank Exemptions for Vehicles Manufactured by the Ford Motor Company

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

ACTION: Grant of applications for exemptions.

SUMMARY: The FMCSA is granting the application from the Ford Motor Company (Ford) for a renewal of exemptions for the vehicles specified at the end of this notice from certain fuel tank design and certification labeling requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions enable motor carriers to operate commercial motor vehicles (CMVs) manufactured by Ford, and equipped with fuel tanks that do not meet the FMCSA's requirements that fuel tanks be capable of receiving fuel at a rate of at least 20 gallons per minute, and be labeled or marked by the manufacturer to certify compliance with the design criteria. The FMCSA believes the terms and conditions of the exemptions have ensured a level of safety that is equivalent to the level of safety that would be achieved by complying with the regulations, and that renewing the exemptions would not adversely affect highway safety. The exemptions continue to preempt inconsistent State and local requirements applicable to interstate commerce.

DATES: The exemptions are effective on December 27, 2001. The exemptions expire on December 29, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366-4009, Federal Motor Carrier Safety

Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments that were submitted to this docket in response to the previous notice by using the universal resource locator (URL) <http://dms.dot.gov>, and by requesting the docket referenced at the beginning of this notice. You can examine and copy this document and all comments received at the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001 from 9 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

Background

Ford's Applications for Exemptions

Ford applied for exemptions for the vehicles specified at the end of this notice from 49 CFR 393.67(c)(7)(ii), which requires that certain fuel tank systems on CMVs be designed to permit a fill rate of at least 20 gallons (75.7 liters) per minute, and 49 CFR 393.67(f)(2) and (f)(3), which require that liquid fuel tanks be marked with the manufacturer's name and a certification that the tank conforms to all applicable rules in § 393.67, respectively.

On August 10, 1999 (64 FR 43417), the FHWA published a notice of intent to grant Ford's applications. The FHWA requested public comment on Ford's applications and the agency's safety analysis, and presented other relevant information known to the agency. After considering all the comments received, the agency granted the exemptions on December 20, 1999 (64 FR 71184). In that notice (at 71185), the agency noted that the 20 gallon per minute rate referenced in the FMCSA's regulations, while appropriate for diesel fuel-powered vehicles, mandates that fill pipes on gasoline-powered vehicles be capable of receiving fuel at twice the maximum rate gasoline pumps are designed to dispense fuel. The vehicles in question are gasoline-fueled and are capable of receiving fuel at a rate of 17 gallons per minute.

The exemptions covered § 393.67(c)(7)(ii), Construction of liquid fuel tanks; fill pipe, and §§ 393.67(f)(2) and (f)(3)(ii) which require that liquid fuel tanks be marked with the manufacturer's name, and a certification