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 is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

**Exemption Decision**

Under 49 U.S.C. 31315 and 31136(e), FMCSA may renew an exemption for a two-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 procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 13 individuals who have requested renewal of their exemptions from 49 CFR 391.41(b)(10) concerning vision requirements in a timely manner. FMCSA has evaluated these 13 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

John D. Bolding, Jr.
Michael P. Curtin
Richard L. Elyard
Michael R. Forschino
Richard H. Hammann
Billy L. Johnson
Christopher J. Kane
Wallace F. Mahan, Sr.
Kirby G. Oathout
James R. Petre
William E. Reveal
Duane L. Riendeau
Janusz Tyrpien

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam 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 Each exemption will be valid for two years unless rescinded earlier by FMCSA.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).

**Basis for Renewing Exemptions**

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 13 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 66 FR 17994; 68 FR 15037; 68 FR 10301; 68 FR 19596). Each of these 13 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the 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 each record of safety while driving with the respective vision deficiencies over the past two 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, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

**Comments**

FMCSA will review comments received at any time 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). However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by May 2, 2005.

In the past FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates 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 Advocates were addressed at length in 69 FR 51346 (August 18, 2004). FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: March 28, 2005.

**Rose A. McMurray,**

*Associate Administrator, Policy and Program Development.*

[FR Doc. 05–6474 Filed 3–31–05; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[FMCSA Docket No. FMCSA–2005–20027]**

### Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of final disposition.

**SUMMARY:** The FMCSA announces its decision to exempt 28 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

**DATES:** April 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Office of Bus and Truck Standards and Operations, (202) 366–4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

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

**Background**

On January 14, 2005, the FMCSA published a notice of receipt of

exemption applications from 29 individuals, and requested comments from the public (70 FR 2701). The 29 individuals petitioned the FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. They are: Eddie Alejandro, Eldred S. Boggs, David F. Breuer, James T. Butler, Roger K. Cox, Richard S. Cummings, Joseph A. Dean, Donald P. Dodson, Jr., William H. Goss, Eric W. Gray, James K. Holmes, Daniel L. Jacobs, Jose M. Limon-Alvarado, Robert S. Loveless, Jr., Eugene R. Lydick, John W. Montgomery, Danny R. Pickelsimer, Zeljko Popovac, Juan Manuel M. Rosas, Francis L. Savell, Richie J. Schwendy, David M. Stout, Artis Suitt, Gregory E. Thompson, Kerry W. VanStory, Harry S. Warren, Carl L. Wells, Prince E. Williams, and Keith L. Wraight.

Under 49 U.S.C. 31315 and 31136(e), the 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, the FMCSA has evaluated the 29 applications on their merits and made a determination to grant exemptions to 28 of those persons who applied for them. The comment period closed on February 14, 2005. One comment was received, and its contents were carefully considered by the FMCSA in reaching the final decision to grant the exemptions.

The FMCSA has not made a decision on the application of Keith L. Wraight. Subsequent to the publication of the notice of applications and request for comments on January 14, 2005 (70 FR 2701), the agency received additional information from its check of his motor vehicle record, and we are evaluating that information. A decision on this application will be made in the future.

**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 standard red, green, and amber (49 CFR 391.41(b)(10)).

Since 1992, the agency has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., ''Visual Requirements and Commercial Drivers,'' October 16, 1998, filed in the docket, FMCSA–98–4334.) The panel's conclusion supports the agency's view that the present visual acuity standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 28 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinal and macular scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but 12 of the applicants were either born with their vision impairments or have had them since childhood. The 12 individuals who sustained their vision conditions as adults have had them for periods ranging from 13 to 46 years.

Although each applicant has one eye which does not meet the vision standard 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. The 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 performance tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, 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 disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 30 years. In the past 3 years, two of the drivers have had convictions for traffic violations. One of these convictions was for speeding and one was for ''failure to obey traffic sign.'' None of the drivers was involved in a crash.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the January 14, 2005, notice (70 FR 2701). Since there were no substantial docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants is supported by the information published on January 14, 2005 (70 FR 2701).

**Basis for Exemption Determination**

Under 49 U.S.C. 31315 and 31136(e), the 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. 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, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 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–98–3637.

We believe we can properly apply the principle to monocular drivers, because data from a former FMCSA waiver study program clearly demonstrates that the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338 and 13345; March 26, 1996.) Because experienced monocular drivers with

good driving records in the waiver program demonstrated their ability to drive safely, this fact 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 28 applicants receiving an exemption, we note that the applicants have had no crashes and only two traffic violations in the last 3 years. The applicants achieved this 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, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe 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 each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds exempting these applicants from the vision standard 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. 31315 and 31136(e) to 28 of the 29 applicants listed in the notice of January 14, 2005 (70 FR 2701).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the 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 391.64(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 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, 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 certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**Discussion of Comments**

The FMCSA received one comment in this proceeding. The comment was considered and is discussed below.

Advocates for Highway and Auto Safety (Advocates) expresses continued opposition to the FMCSA's policy to grant exemptions from the FMCSRs, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which the FMCSA presents driver information to the public and makes safety determinations; (2) objects to the agency's reliance on conclusions drawn from the vision waiver program; (3) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). The FMCSA's responses are restated below.

On the first issue regarding the manner in which the FMCSA presents driver information to the public and makes safety determinations, Advocates questions how various aspects of exemption application information are verified. In particular, Advocates states that the public is not advised about outside verification of each applicant's miles driven, the number of years driving commercial vehicles, the type of vehicle driven, and the most recent 3-year driving record. The number of years driving commercial vehicles is not the precise experience criterion used to determine an applicant's acceptability for an exemption. That determination is made on the most recent 3 years' experience before application. That experience and the type of vehicle driven is verified by the applicant's employer.

The recent 3-year driving record is verified through the Commercial Driver License Information System (CDLIS). This is another criterion used to determine if an applicant is acceptable. Total miles driven is not and never has been a criterion used to decide acceptability. It is, therefore, not verified. Mileage is presented as an indication of overall experience with CMVs.

Advocates states that the FMCSA needs to provide an accurate mileage figure for the recent 3-year period. This mileage is allegedly needed to determine whether an applicant's crashes and violations are accumulated at low or high exposure in the 3 years preceding the application. While this may be an interesting determination in

some contexts, it is not relevant to the determination of the driver's acceptability. An applicant is acceptable relative to a driving record if there are no crashes for which the driver was issued a citation nor was a contributing factor. It is not relevant whether these types of crashes occur at high or low exposure. If they are present, the driver is disqualified.

Advocates states that the FMCSA should require a minimum average annual miles driven or total mileage in order to qualify for an exemption. In making this statement, Advocates notes that mileage driven by applicants in the **Federal Register** notice ranges from as little as 37,000 miles over 17 years to over 3 million miles for two applicants with 30 and 32 years' driving experience respectively. The FMCSA believes defining a required minimum mileage for application would enact a spurious screening standard not supported by the results of the Vision Waiver Program. An examination of the data from the years the program was in operation shows the annual mileage driven ranged from as little as 1,000 miles to a maximum of 160,000 miles. The median annual miles driven was about 40,000 with 25 percent of the waiver holders usually driving less than 17,000 miles per year.

Although a minimum mileage standard is an inappropriate criterion, FMCSA believes miles driven does have value in the context of program evaluation. It is part of the basis for establishing whether a program has achieved a ''level of safety that is equivalent to, or greater than, the level of safety that would have been achieved'' absent from exemption. The other part of the safety determination is the number of crashes experienced by an exempt group where crashes and mileage are related through a statistical model named Poisson regression. In this model, the relationship is given as the number of crashes (nc) being equal to a rate (r) times mileage (m) ($nc=r \times m$). The rate in this model is usually referred to as the crash rate per some convenient unit of miles driven (1 million, for example). This rate is the basis through which the safety level of a program is determined and miles driven are an integral part of the determination. This framework, however, does not suggest that there is a minimum level of mileage that could be arbitrarily used for a screening decision.

Advocates states that the FMCSA should consider imposing a sliding scale standard for drivers with little driving experience, holding applicants with relatively low accumulations of mileage and years of experience to a higher safety standard during the 3-year review period. Advocates based this view on two factors: (1) Exposure is frequently used as a means of determining safety, as when the FMCSA uses the fatality rate as a measure of safety progress in truck-related crashes; and (2) greater driving experience would mean the drivers have had more time to adjust to driving with their vision deficiencies. The FMCSA believes that imposing a sliding scale standard, like the minimum mileage requirement discussed above, would enact a spurious screening standard, based on data taken from the Vision Waiver Program which was shown to have an acceptable level of safety.

Advocates states that, while the FMCSA provides some information on the applicant's separate experience with combination tractor-trailers and the straight trucks, the agency has not assessed the relative value in terms of driving experience between driving these types of vehicle configurations in predicting safety. This would suggest that there should be separate experience specifications for each type of CMV and that an exemption would be issued for a particular type of vehicle. Relative to this, Advocates formerly pointed to research literature concerned with the differences between the two types of trucks. This literature, however, does not address the operation of the two types of CMVs in relation to the visual conditions which are the focus of the exemption program. The best evidence of possible disparities in the operation of the CMV types is taken from the earlier Vision Waiver Program. The data taken from the program show that those driving straight trucks had a crash rate that was slightly higher than that of the combination truck operators (2.15 crashes per million miles driven versus 1.76). This difference was not statistically significant. As a result, it appears that a consideration of vehicle type in the application process is not necessary.

The same conclusion can be drawn in relation to Advocates' statement concerned with driving routines. Advocates states that the FMCSA has not made any attempt to distinguish between the kinds of driving routine the applicants experienced based on the type of driving they had done. To support the need to do this, they previously noted that the agency distinguished between five types of drivers and driving regimens in its May 2000 proposed rule on driver rest and sleep for safe operations. This proposal was concerned with driver fatigue. There is no evidence that there is a differential effect of fatigue on drivers with the vision conditions that are the focus of exemptions. Consequently, the FMCSA does not believe there is a need to issue exemptions for specific types of driving routine.

Advocates is concerned with the FMCSA's use of a 3-year driving record to screen drivers who apply for exemptions. They first claim that it is misleading to report a driving record for the most recent 3-year period in conjunction with drivers' self report of the total number of years driving. This is misleading, they state, because the addition of the unverified total years of driving gives the impression of a longer period of safe driving. The FMCSA had no intention of conveying this type of interpretation. Total years driving was reported, as was mileage, to give an overall indication of experience. For the purposes of screening, a recent 3-year driving record is the critical focus relative to safe driving.

Advocates then argues that a 3-year record may not be sufficient to guarantee a level of safety that is equivalent to or greater than that present in the absence of an exemption program. In support of this, it points to the comment filed by the Department of Motor Vehicles (DMV) for the State of California relative to a driver from that State who applied for an exemption (Mr. James N. Spencer at 65 FR 20245, April 14, 2000). The California DMV opposed the granting of an exemption to this driver because of his crash involvement and citation record in years 4 and 5 before applying for an exemption. The FMCSA finds California's comment inconsistent with California's issuance of an intrastate CDL on July 23, 1997, to the driver.

The FMCSA believes that using a 3-year driving record as a screening procedure in the application process is adequate to ensure the required level of safety. In *John C. Anderson* v. *Federal Highway Administration*, No. 98–3739 (8th Cir. May 1, 2000), the United States Court of Appeals for the Eighth Circuit affirmed the agency's 3-year requirement of driving with a vision impairment before being eligible for an exemption. This screening period was used in the Vision Waiver Program which was shown to have a level of safety that was better than the national norm. Moreover, as Advocates correctly points out, not all States maintain driving records for more than 3 years. Requiring some drivers to submit 3-year records and others to submit ones for a longer duration, as Advocates suggests, would be arbitrary and capricious.

In another comment, Advocates suggests that the agency is sanitizing the

information in the driving record to justify granting vision exemptions. Specific information provided on the crashes and violations of applicants is a presentation of the facts as we know them and not any attempt to downplay or explain away crashes and citations as Advocates suggests.

Advocates also comments that the opinions of ophthalmologists and optometrists are not persuasive and should not be relied on by the agency. The opinions of the vision specialists on whether a driver has sufficient vision to perform the tasks associated with operating a CMV are made only after a thorough vision examination including formal field of vision testing to identify any medical condition which may compromise the visual field such as glaucoma, stroke or brain tumor, and not just based on a Snellen test. The FMCSA believes it can rely on medical opinions regarding whether a driver's visual capacity is sufficient to enable safe operations. The medical information is combined with information on experience and driving records in the agency's overall determination of whether exempting applicants from the vision standard is likely to achieve a level of safety equal to that existing without the exemption.

In regard to Advocates' second issue regarding what inferences can be drawn from the results of the waiver study program, Advocates suggests that the agency cannot base the present proceedings on the results generated by the waiver study program because a valid research model was not used. In response to this concern, we note that the validity of research designs is a quality with many dimensions which cannot be accepted or dismissed in a blanket, simplistic statement. Validity can be concerned with the measurements used, the manner in which the study is performed (internal validity), or the application of the results for a broader inference (external validity). The approach used by the FMCSA for the assessment of risk is a valid design that has been used in epidemiology for studies of occupational health. These studies compare a treated or exposed group (such as the drivers who hold waivers) to a control group that is large and represents outcomes for the nation as a whole (*e.g.*, national mortality rates or truck crash rates). This design has been used to investigate risk relative to the hazards of asbestos and benzene with regulatory decisions based on the outcomes.

While the design has been successfully used in critical risk areas, its application has been challenged in adversarial proceedings. Most of the criticism has focused on the data used in the models (measurement validity). In these circumstances, it has been argued that exposure to hazards is not always clearly measured because recordkeeping is not accurate or complete. Criticism has also focused on the poor measurement of outcomes (*e.g.* the occurrence of disease or vehicle crashes). Threats to the validity of measurement were not a problem in the waiver program's risk assessment. Exposure, for example, in the assessment is manifested by participation in the waiver program (as in an exposure to a medical treatment or an employment condition) and through vehicle miles traveled (as exposure to risk). The measurement of participation in the program had no error by virtue of the required recordkeeping. Exposure to risk by vehicle miles traveled was measured by self-report and could, of course, contain errors. However, since reports were made on a monthly basis, it was not expected that the reporting for these short periods would contain significant systematic error over the life of the program.

The measurement of risk outcomes was determined through crash occurrence. Crash occurrence was verified in multiple ways through self-report (a program requirement), the Commercial Driver License Information System (CDLIS), State driving records, and police crash reports. As a result it is believed that the research approach used in the waiver program did not suffer flaws relative to the validity of measurement.

Criticism of internal validity was addressed in a sensitivity analysis. The original design proposed to use a sample of CMV operators without vision deficiencies as a comparison group. While the design was appealing, it had potential for flaws relative to internal validity. Because the vision deficiencies studied were a fixed condition, the drivers could not be randomly assigned to the waiver and comparison groups as is done in clinical trials, for example. Moreover, a comparison group could not be assembled from the general population of CMV operators due to a lack of volunteers. Instead, the information needed for comparison was taken from the General Estimates System (GES). GES is an annual survey of police crash reports sponsored by the National Highway Traffic Safety Administration that is based on sound statistical sampling principles. Estimates derived from the survey (national crash rates) represent national crash rate norms for large trucks.

While the national norms in the GES data are effective for a comparison at the national level, they raise questions in relation to internal validity. When random assignment to the treatment and comparison groups cannot be used, internal validity can be questioned. The necessary approach to obtaining valid results, in this case, is to thoroughly examine a study for bias and make adjustments as necessary. To do this, additional information (*e.g.* demographic and operational data) is needed for both the treatment and comparison groups to determine if the samples are balanced. GES did not have these data, so internal validity could be questioned because adjustments could not be made. Under these circumstances, bias, if it existed, would remain hidden.

To address this question, the agency performed a sensitivity analysis to assess the impact of possible hidden bias (Rosenbaum, P.R. Observational Studies, New York, Springer-Verlag 1995). The analysis examined outcomes under various levels of possible hidden bias and the results showed that the comparison with GES crash rates is insensitive to hidden bias. The results of this sensitivity analysis, filed in docket number FMCSA–99–5578, provide evidence to support the internal validity of the comparison to GES data.

The remaining facet of validity that is of concern for the waiver program assessment involves its relevance in the regulatory setting (external validity). The structure of these types of epidemiological investigations provides a high level of external validity. Being able to compare outcomes to a national norm places the focus in proper perspective for regulatory matters. This, of course, is their strength relative to the waiver program where the GES crash rates represent a national safety norm.

Based on the various assessments, it is clear that the results of the waiver program risk analysis are valid. The measurement of exposure and risk outcomes was conducted with virtually no error. The external validity is ensured because a national norm is the focus of comparison and, based on the sensitivity analysis, the internal validity is substantiated.

Although the foregoing discussion successfully addresses Advocates' concerns about validity, there is another issue that was engaged to complete the scrutiny of the waiver program risk assessment. A full examination would consider all facets of how results are obtained. In particular, obtaining valid results that point to a clear causal connection between an action and an outcome rests on ruling out other

influences on the outcome. While this appears to be largely accomplished based on an examination of the various types of validity, there remained an additional potential threat to the validity of the results. Relative to this, it had been argued that the drivers in the various waiver programs have lower crash rates because they were aware of being monitored, and monitoring is a strong motivation to exercise care. To address this possible threat, the agency conducted a follow-up assessment after the waived drivers were given grandfather rights in March 1996 and were no longer monitored. Conducted in June 1998, the agency made an assessment of the drivers' crash experience for the period from March to December 1996. The results, on file in docket FMCSA–99–5578, showed that the drivers who had been in the program continued to have a crash rate that was lower than the national norm.

In regard to their third issue, Advocates believes that the agency misinterpreted the current law on exemptions by considering it slightly more lenient than the previous law. Regardless of how one characterizes the new exemption language, the FMCSA strictly adheres to the statutory standard for granting an exemption. In short, we determine whether granting the exemption is likely to achieve an equal or greater level of safety than exists without the exemption.

Advocates' final point suggesting that the Supreme Court decision, *Albertsons, Inc.* v. *Kirkingburg*, 119 S.Ct. 2162 (June 22, 1999) affects the legal validity of vision exemptions is without support. Vision exemptions are granted under FMCSA's statutory authority and standards, which were not at issue in the case.

**Conclusion**

Based upon its evaluation of the 28 exemption applications, the FMCSA exempts Eddie Alejandro, Eldred S. Boggs, David F. Breuer, James T. Butler, Roger K. Cox, Richard S. Cummings, Joseph A. Dean, Donald P. Dodson, Jr., William H. Goss, Eric W. Gray, James K. Holmes, Daniel L. Jacobs, Jose M. Limon-Alvarado, Robert S. Loveless, Jr., Eugene R. Lydick, John W. Montgomery, Danny R. Pickelsimer, Zeljko Popovac, Juan Manuel M. Rosas, Francis L. Savell, Richie J. Schwendy, David M. Stout, Artis Suitt, Gregory E. Thompson, Kerry W. VanStory, Harry S. Warren, Carl L. Wells, and Prince E. Williams 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. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the 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. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: March 28, 2005.

**Rose A. McMurray,**

*Associate Administrator, Policy and Program Development.*

[FR Doc. 05–6476 Filed 3–31–05; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34631]**

### Union Pacific Railroad Company—Acquisition and Operation Exemption—Line of Denver Terminal Railroad Company, d/b/a Denver Rock Island Railroad

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of exemption.

**SUMMARY:** Under 49 U.S.C. 10502, the Board is granting a petition for exemption from the prior approval requirements of 49 U.S.C. 11323–25 for Union Pacific Railroad Company to acquire and operate approximately 3.23 miles of rail line of the Denver Terminal Railroad Company, d/b/a Denver Rock Island Railroad (DRIR), extending from DRIR milepost 0.72 near Sandown to DRIR milepost 3.95 at Belt Junction, in Denver, CO, subject to standard labor protective conditions.

**DATES:** The exemption will be effective on May 1, 2005. Petitions to stay must be filed by April 18, 2005. Petitions to reopen must be filed by April 26, 2005.

**ADDRESSES:** Send an original and 10 copies of all pleadings referring to STB Finance Docket No. 34631 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of all pleadings to petitioner's representative, Robert T. Opal, General Commerce Counsel, 1400 Douglas Street, Stop 1580, Omaha, NE 68179–0001.

**FOR FURTHER INFORMATION CONTACT:** Eric S. Davis, (202) 565–1608. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, e-mail, or call: ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail *asapdc@verizon.net;* telephone (202) 306–4004. (Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.)

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 24, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 05–6277 Filed 3–31–05; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

March 24, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before May 2, 2005 to be assured of consideration.

**Financial Management Service (FMS)**

*OMB Number:* 1510–0047.

*Form Number:* TFS 2211.

*Type of Review:* Extension.

*Title:* List of Data (A) and List of Data (B).

*Description:* Information from insurance companies to provide Treasury a basis to determine acceptability of companies applying for a Certificate of Authority to write or reinsure Federal surety bonds or an Admitted Reinsurer (not on excess risks to U.S.).

*Respondents:* Business or other for-profit.