



[4910-EX-P]

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

[Docket No. FMCSA-2019-0009]

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

**DATES:** The exemptions were applicable on June 22, 2019. The exemptions expire on June 22, 2021.

**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 W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, (202) 366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Public Participation**

##### **A. Viewing Documents and Comments**

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to <http://www.regulations.gov/docket?D=FMCSA-2019-0009> and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

## **B. Privacy Act**

In accordance with 5 USC 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 May 22, 2019, FMCSA published a notice announcing receipt of applications from 14 individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (84 FR 23629). The public comment period ended on June 21, 2019, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to 12 out of 14 of these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual

acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

### **III. Discussion of Comments**

FMCSA received one comment in this proceeding. Robert Welsch stated that the FMCSA should update the vision requirement to reflect that individuals who have a combined visual acuity of at least 20/40 and visual acuity of one eye of at least 20/40 are qualified to driver rather than making them apply for an exemption.

Modifications to the Medical Requirements for Commercial Drivers at § 391.41(b)(1-10) are outside the scope of this notice. However, FMCSA has begun actions to update the vision standard at § 391.41(b)(10).

### **IV. Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-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 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision, as well as their driving records and experience driving with the vision deficiency. The qualifications, experience, and medical condition of each

applicant were stated and discussed in detail in the May 22, 2019, *Federal Register* notice (84 FR 23629) and will not be repeated here.

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 12 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, chorioretinal scar, macular chorioretinal scars, macular degeneration, optic atrophy, prosthesis, and retinal detachment. In most cases, their eye conditions did not develop recently. Six of the applicants were either born with their vision impairments or have had them since childhood. The six individuals that developed their vision conditions as adults have had them for a range of 4 to 28 years. Although each applicant has one eye that does not meet the vision requirement in § 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV.

Doctors' opinions are supported by the applicants' possession of a valid license to operate a CMV. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV with their limited vision in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic

signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions.

The applicants in this notice have driven CMVs with their limited vision in careers ranging for 3 to 96 years. In the past three years, no drivers were involved in crashes, and no drivers were convicted of moving violations in CMVs. Twelve of the applicants achieved a record of safety while driving with their vision impairment that demonstrates the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

Consequently, FMCSA finds that in 12 of the 14 cases exempting these applicants from the vision requirement in § 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. Two applicants, Donald K. Etter (PA) and Victor H. Lopez-Campa (KS), were involved in crashes after the publication of the May 22, 2019 notice. Donald K. Etter (PA) has not yet submitted required documentation about the crash. Victor H. Lopez-Campa (KS) was involved in a CMV crash for which he received a citation and/or contributed. Therefore, FMCSA is unable to conclude that granting an exemption to these individuals is likely to achieve a level of safety equal to that existing without the exemption.

## **V. Conditions and Requirements**

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) each driver must be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better

eye continues to meet the standard in § 391.41(b)(10) and (b) by a certified medical examiner (ME) who attests that the individual is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**VI. Preemption**

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

**VII. Conclusion**

Based upon its evaluation of the 14 exemption applications, FMCSA exempts the following 12 drivers from the vision requirement, § 391.41(b)(10), subject to the requirements cited above:

Cesar Avila (PA)	Scott R. Barber (IL)
Jonathan A. Brown (GA)	Glenn E. Coombes (TX)
John A. DeVos (VT)	Marc Enderson (ND)
Robert R. Enoch (NC)	Juan O. Gonzalez (TX)
Vashion E. Hammond (FL)	John M. Harvey (TX)
Jerry L. Hofer (NM)	Mark A. Schlesselman (OH)

In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: August 29, 2019.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2019-19262 Filed: 9/5/2019 8:45 am; Publication Date: 9/6/2019]