

Date	Time	Start attempts (engine activity)
		sample accepted. BrAC (alcohol present, <i>e.g.</i> , 0.030). lock.
	1653	warning given.
	1656	start attempt. sample accepted. BrAC (alcohol absent, <i>e.g.</i> , 0.015). unlock.
	1657	ignition keyed. starter active.
	1702	engine on. rolling retest. sample accepted. BrAC (alcohol absent, <i>e.g.</i> , 0.010).
	1850	engine off.

**Example 5. Start attempted using filtered sample. Retry**

4/15/07 .....	2016	start attempt. low temp. warning given.
	2205	start attempt. sample accepted. BrAC (alcohol absent, 0.000). unlock. ignition keyed. starter active.
	2206	engine on.
	2352	engine off.

**Example 6. Calibration Check**

4/28/07 .....	0900	start attempt. sample accepted. BrAC (alcohol absent, 0.000 or 0.008). unlock. ignition keyed. starter active.
	0903	engine on.
	0926	rolling retest. sample accepted. BrAC (alcohol absent, 0.000 or 0.008).
	1032	engine on.
	1045	Calibration check.

Issued on: October 1, 2010.

**Jeff Michael,**

*Associate Administrator for the Office of  
Research and Program Development,  
National Highway Traffic Safety  
Administration.*

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**BILLING CODE 4910-59-P**

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

[Docket No. FMCSA-2010-0161]

**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 17 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. 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 are effective October 6, 2010. The exemptions expire on October 8, 2012.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (202)-366-4001, [fmcamedical@dot.gov](mailto:fmcamedical@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. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****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> at any time 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. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we 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 may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

### Background

On July 12, 2010, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (75 FR 39725). That notice listed 17 applicants' case histories. The 17 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 17 applications on their merits and made a determination to grant exemptions to each of them.

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

FMCSA 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 17 exemption applicants listed in this notice are in this category.

They are unable to meet the vision standard in one eye for various reasons, including amblyopia, loss of vision, macular choroidal neovascularization, macular scarring, optic nerve atrophy, optic nerve damage, prosthesis, retinal detachment, retinal scarring, retinopathy and a ruptured globe. In most cases, their eye conditions were recently developed. 5 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 4 to 34 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. 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 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 17 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 for careers ranging from 3 to 35 years. In the past 3 years, none of the drivers were involved in crashes or convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the July 12, 2010 notice (75 FR 39725).

### Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, 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, 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, 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.

We believe we 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 17 applicants, none of the applicants were involved in crashes or convicted of 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 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. 31136(e) and 31315 to the 17 applicants listed in the notice of July 12, 2010 (75 FR 39725).

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 17 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

FMCSA received no comments in this proceeding.

#### Conclusion

Based upon its evaluation of the 17 exemption applications, FMCSA exempts, Ramon Adame, Calvin D. Bills, Joel W. Bryant, Jonathan Carriaga, Michael R. Clark, James D. Drabek, Jr., Curtis E. Firari, Percy L. Gaston, Ronald M. Green, Richard Iocolano, Daniel W. Johnson, Albert E. Joiner, Richard L. Kelley, Charles E. Queen, Matias P. Quintanilla, Richard T. Traigle and Eugene E. Wright, 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. 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 September 29, 2010.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

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**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 35418]

#### **Jackson & Lansing Railroad Company—Trackage Rights Exemption—Norfolk Southern Railway Company**

Pursuant to a written Assignment of Trackage Rights and Other Joint Facility Agreements (Trackage Agreement) dated September 16, 2010, Norfolk Southern Railway Company (NSR) has agreed to grant non-exclusive overhead and local trackage rights to Jackson & Lansing Railroad Company (JAIL) over approximately 1.06 miles of NSR's Lansing Secondary<sup>1</sup> between milepost LZ 36.8 in Lansing, Mich., and milepost LZ 37.86 in North Lansing, Mich.<sup>2</sup>

This transaction is related to the concurrently filed notice of exemption in Docket No. FD 35411, *Jackson & Lansing Railroad Company—Lease and Operation Exemption—Norfolk Southern Railway Company*, wherein JAIL seeks to lease and operate 44.5 miles of rail property owned by NSR, consisting of 36.9 miles of the Lansing Secondary, 5.1 miles of the Lansing Manufacturers Railroad, 1.8 miles of the Lansing Industrial Track, and 0.7 miles of the Lansing Industrial Track. JAIL also will acquire 2.96 miles of incidental trackage rights over NSR's Michigan Main Line for interchange purposes with NSR at NSR's Jackson Yard. This transaction also is related to the concurrently filed notice of exemption in Docket No. FD 35410, *Adrian & Blissfield Rail Road Company—Continuance in Control*

<sup>1</sup> By Lease Agreement dated April 21, 1995, Consolidated Rail Corporation (Conrail) leased this trackage to CSX Transportation, Inc. (CSXT). By Trackage Rights Agreement (TRA) of the same date, CSXT granted local and bridge trackage rights back to Conrail. Upon acquisition of the Lansing Secondary from Conrail in 1998, NSR succeeded to Conrail's rights under both the Lease Agreement and the TRA. Now, pursuant to the Trackage Agreement, NSR, with CSXT's consent, assigns its rights under the TRA to JAIL.

<sup>2</sup> A redacted, executed trackage rights agreement between NSR and JAIL and an executed Trackage Agreement, along with CSXT's consent of the assignment, were filed with the notice of exemption. The unredacted version, as required by 49 C.F.R. § 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.