

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

[Docket No. FMCSA–2003–14794]

**Notice of Proposed Revision to Guidance for the Use of Binding Arbitration Under the Administrative Dispute Resolution Act of 1996****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Notice of Proposed Revision to Guidance.

**SUMMARY:** On March 4, 2004, the Federal Motor Carrier Safety Administration (FMCSA) published its Guidance for the use of binding arbitration in Agency civil penalty forfeiture proceedings in which the only issues remaining to be resolved are the amount of the civil penalty owed and the length of time in which to pay it. The Guidance provides that FMCSA use a form of arbitration known as “Night Baseball,” under which each party gives to the Arbitrator its proposal for the civil penalty in a sealed envelope. After the Arbitrator makes a written determination as to what he or she believes the civil penalty should be, the envelopes are opened. The Arbitrator then selects the proposed civil penalty that is closer to his or her determination. FMCSA is proposing to revise the Guidance to eliminate the “Night Baseball” format, and to replace it with a format in which the Arbitrator determines the final civil penalty and the amount of time in which to pay it.

**DATES:** You may submit comments in response to this Notice. Send your comments on or before April 20, 2011.

**ADDRESSES:** You may submit comments identified by docket number FMCSA–2003–14794 using any one of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>.

- *Fax:* 202–493–2251.

- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:**

Steven B. Farbman, Adjudications Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 385–2351. Office hours are from 8:30 a.m. until 5 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****I. Public Participation and Request for Comments**

FMCSA encourages you to participate in this Notice of Proposed Revision to Guidance by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you provide.

**A. Submitting Comments**

If you submit a comment, please include the docket number for this proposal (FMCSA–2003–14794) and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and click on the “submit a comment” box, which will then become highlighted in blue. In the “Document Type” drop down menu, select “Notices,” insert “FMCSA–2003–14794” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Submit a Comment” in the “Actions” column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may alter our proposed course of action based on the comments.

**B. Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble, go to <http://www.regulations.gov> and click on the “read comments” box in the upper right hand side of the screen. Then, in the “Keyword” box insert “FMCSA–2003–14794” and click “Search.” Next, click the “Open Docket Folder” in the “Actions” column.

Finally, in the “Title” column, click on the document you would like 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 Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

**C. 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 DOT’s Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316).

**II. Background**

On March 4, 2004, FMCSA published in the **Federal Register** (69 FR 10288) its Guidance for the use of binding arbitration as an alternative dispute resolution technique in Agency civil penalty forfeiture proceedings in which the only issues remaining to be resolved are the amount of the civil penalty owed and the length of time in which to pay it. Under the Guidance’s “Night Baseball” format, each party presents to the Arbitrator evidence supporting the penalty it considers appropriate for the case as a whole without stating what that amount is. Following the hearing, each party provides the Arbitrator and the opposing party with a sealed envelope containing the amount of the total proposed civil penalty for the case and, if necessary, a proposed payment plan. Before opening the envelopes, the Arbitrator determines in writing the total civil penalty and, if necessary, a payment plan. The Arbitrator then opens the envelopes and selects the proposed civil penalty and payment plan that is closer to his or her determination.

FMCSA is proposing to eliminate the “Night Baseball” format from the Guidance. Several years of experience with this format have revealed that final civil penalties are rarely identical to the Arbitrator’s determination, and occasionally not close at all. For example, in one case, the final civil penalty was \$1,001 even though the Arbitrator determined that the civil penalty should be \$2,700. That is because the \$1,001 penalty proposed by the respondent was closer to the Arbitrator’s determination than the claimant’s proposal of \$4,500. In

another case, the claimant proposed a \$34,090 civil penalty while the respondent proposed a \$6,630 civil penalty. Because the Arbitrator's decision was \$28,000, the higher proposal was chosen. The format has, in fact, incentivized strategy over substance and merit—the very result it was designed to avoid. In addition, the “Night Baseball” format requires parties to persuade the Arbitrator to accept the wisdom of their positions without being able to reveal the actual civil penalty they propose. This is difficult to do, and the process prevents the Arbitrator from receiving all of the information that might be helpful in reaching a determination.

FMCSA believes that the fairest civil penalty will be the amount determined by the Arbitrator following a full hearing. This will allow the parties to try to persuade the Arbitrator why a certain proposed civil penalty will be just. The Arbitrator will then decide, on the merits, the civil penalty and, if necessary, the amount of time in which to pay it. The remainder of the 2004 Guidance would continue unchanged.

Issued on: March 14, 2011.

Anne S. Ferro,  
Administrator.

[FR Doc. 2011-6468 Filed 3-18-11; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-1998-4334; FMCSA-2000-7006; FMCSA-2000-7918; FMCSA-2000-8398; FMCSA-2002-13411; FMCSA-2005-20027]

#### Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 8 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective April 5, 2011. Comments must be received on or before April 20, 2011.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA-1998-4334; FMCSA-2000-7006; FMCSA-2000-7918; FMCSA-2000-8398; FMCSA-2002-13411; FMCSA-2005-2002, using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1-202-493-2251.

*Instructions:* Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

*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 Federal Docket Management System (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>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical

Programs, (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. Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, 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.

##### Exemption Decision

This notice addresses 8 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 9 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Richard D. Carlson, David J. Collier, Robert P. Conrad, Sr., Donald P. Dodson, Jr., Stephanie D. Klang, Mark J. Koscinski, James A. Stoudt, Ralph A. Thompson.

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination 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 provides 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 retains 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