

outside the selected corridor will be determined in consultation with resource agencies in Tier Two.

Interested parties may consult the ROD and FEIS for further information on each of the decisions described above.

The Tier One actions by the Federal agencies, and the laws under which such actions were taken, are described in the FEIS approved January 17, 2013, the ROD approved January 17, 2013, and in other documents in the FHWA project records. The scope and purpose of the Tier One FEIS are described in Section 1.0 of the FEIS. The FEIS, ROD, and other documents in the FHWA project file are available by contacting the FHWA or the Illinois or Indiana Departments of Transportation at the addresses provided above. The FEIS and ROD also are available online at <http://illianacorridor.org/>.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to:

1. *General*: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351] Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air*: Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land*: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303 and 23 U.S.C. 138].

4. *Wildlife*: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources*: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].

6. *Water Resources*: Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287].

7. *Executive Orders*: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

**Authority**: 23 U.S.C. 139(l)(1).

Issued on: January 29, 2013.

**J. Michael Bowen**,

*Acting Division Administrator, Springfield, Illinois.*

[FR Doc. 2013–02715 Filed 2–8–13; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0337]

#### 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 18 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. 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 February 11, 2013. The exemptions expire on February 11, 2015.

**FOR FURTHER INFORMATION CONTACT**: Elaine M. Papp, 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. 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 acknowledgement 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 Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit <http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf>.

#### Background

On November 26, 2012, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (77 FR 70534). That notice listed 18 applicants' case histories. The 18 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 18 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 requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to

accommodate their vision limitation and demonstrated their ability to drive safely. The 18 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, refractive amblyopia, cataracts, no light perception, retinal detachment, open angle glaucoma, macular scar, aphakia, branch retinal artery occlusion, medullated nerve fibers, and complete loss of vision. In most cases, their eye conditions were not recently developed. Thirteen of the applicants were either born with their vision impairments or have had them since childhood.

The five individuals that sustained their vision conditions as adults have had it for a period of 4 to 27 years.

Although each applicant has one eye which does not meet the vision requirement 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 requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 18 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 44 years. In the past 3 years, none of the drivers were involved in crashes but three were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the November 26, 2012 notice (77 FR 70534).

#### **Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement 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 the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, 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 18 applicants, none of the drivers were involved in crashes but three were 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 requirement 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 18 applicants

listed in the notice of November 26, 2012 (77 FR 70534).

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 18 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 requirement 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 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 18 exemption applications, FMCSA exempts Joseph Colecchi (PA), William A. Donovan (WA), Douglas Eamens (NY), Brian Knust (IL), Scott A. Lambertson (MN), James W. Long (AR), Dean L. Price (WA), Roberto Ramos (TX), Johnie Reed (VA), Charles Roudebush (NJ), Mario G. Sanseverino (OK), Samuel Soles (MI), Joseph Stenberg (MT), Karl H. Strangfeld (UT), Grover C. Taylor (VA), Jimmy Van Meter (AR), Keith Washington (IL), and Donald L. Weston (PA) 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: January 30, 2013.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2012-0111; Notice 1]

#### Michelin North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Receipt of Petition.

**SUMMARY:** Michelin North America, Inc. (Michelin),<sup>1</sup> has determined that certain BF Goodrich brand tires manufactured between June 12, 2011 and April 21, 2012, do not fully comply with paragraph S5.5(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Michelin has filed an appropriate report dated July 16, 2012, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR Part 556), Michelin submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Michelin's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

**Vehicles Involved:** Affected are approximately 1,300 g-Force Sport Comp2, size 205/45ZR17 88W, BF Goodrich brand tires manufactured between June 12, 2011 and April 21, 2012.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of

inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the subject 1,300<sup>2</sup> tires that Michelin no longer controlled at the time it determined that the noncompliance existed.

**Noncompliance:** Michelin explains that the noncompliance is that, due to a mold labeling error, the subject tires sidewall markings on the opposite side of the full DOT TIN are lacking the designation "Extra Load" and thus do not conform to the requirements of 49 CFR 571.139 paragraph S5.5(b).

**Rule Text:** Paragraph S5.5 of FMVSS No. 139 requires in pertinent part:

S5.5 Tire markings. Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one side-wall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width that falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inches \* \* \*

(b) The tire size designation as listed in the documents and publications specified in S4.1.1 of this standard \* \* \*

#### Summary of Michelin's Analysis and Arguments

Michelin believes that while the noncompliant tires lack the marking "Extra Load" on the sidewall opposite of the full DOT TIN as required by FMVSS No. 139, it is inconsequential as it relates to motor vehicle safety for the following reasons:

1. The subject tires meet or exceed all applicable FMVSS performance standards.

<sup>2</sup> Michelin's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt Michelin as an equipment manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for the 1,300 affected tires. However, a decision on this petition will not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Michelin notified them that the subject noncompliance existed.

<sup>1</sup> Michelin North America, Inc. is a manufacturer of replacement equipment and is registered under the laws of the state of New York.