

Dated: December 11, 2013.

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*Director, Registration Division, Office of
Pesticide Programs.*

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 381

[Docket No. FMCSA-2013-0097]

Physical Qualification of Drivers; Standards; Changes to Vision Exemption Program Criteria

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

ACTION: Proposed change to criteria;
request for comments.

SUMMARY: FMCSA proposes changes to the eligibility requirements for the Agency's Vision Exemption Program. Obtaining an exemption enables an individual to operate commercial motor vehicles (CMVs) in interstate commerce without satisfying all of the prescribed vision standards. The Agency has determined that these proposed changes in the eligibility criteria and conditions for the Vision Exemption Program will continue to ensure a level of safety that is equivalent to, or greater than, the level of safety maintained under the existing criteria.

DATES: Send your comments on or before January 17, 2014.

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2013-0097 by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online 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., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 202-493-2251.

To avoid duplication, please use only one of these four methods.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information, see the Public Participation

heading below, as well as the Request for Information and Comments heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets, or go to the street address listed above.

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 the U.S. Department of Transportation's (DOT) Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit <http://www.gpo.gov/fdsys/pkg/FR-2008-01-17/pdf/E8-785.pdf>.

Public participation: The Federal eRulemaking Portal is generally available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the "help" section of the Federal eRulemaking Portal Web site. If you would like us to notify you 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.

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Papp, (202) 366-4001, fmcamedical@dot.gov, U.S. Department of Transportation, FMCSA, 1200 New Jersey Avenue SE., Room W64-224, Washington, DC 20590-0001. Business hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

A. FMCSA's Vision Standard

FMCSA's primary mission is to reduce crashes, injuries, and fatalities involving large trucks and buses. Under the provisions of 49 U.S.C. 31136(a) and 31502(b), FMCSA is authorized to establish minimum qualification standards for drivers of CMVs operating in interstate commerce. To ensure the

medical fitness of CMV drivers for duty, the Agency established a number of physical qualifications for drivers under 49 CFR 391.41(b). Adequate visual function is necessary for safe driving. The current vision standard pertains to acuity (the ability to see at a distance), field of vision (the ability to see peripherally), and the ability to detect and distinguish colors. Specifically, 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV in interstate commerce if that person has:

- (1) 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;
- (2) distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses;
- (3) field of vision of at least 70° in the horizontal meridian in each eye; and
- (4) the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

B. FMCSA's Vision Exemption Program and Criteria

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may exempt a CMV driver from application of the vision standards 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 current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 401 (June 9, 1998). Applications are now handled in accordance with 49 CFR part 381 subpart C. Qualifying individuals may apply for an exemption for up to two years from specified provisions of the Federal Motor Carrier Safety Regulations, including physical qualification standards specified under § 391.41(b) (see 49 CFR 381.300(c)). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of 49 CFR 391.41(b)(10).

Current Criteria and Conditions

A. Current Criteria for Considering Exemptions From the Vision Standards

The criteria currently considered when reviewing an application for an exemption have been in place since the program began in 1998. They are consistent with criteria used in the preceding Vision Waiver Program. In

July 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet ("Qualification of Drivers; Vision Waivers," 57 FR 31458, July 16, 1992). In 1998, FMCSA subsequently adopted those criteria and conditions, with revisions, for consideration in the current Vision Exemption Program.

The Agency developed an example or template that drivers could use to apply for a vision exemption. The template outlines all information and documents the applicant should include to be considered for an exemption and the criteria for approval. FMCSA has docketed a copy of the template for reference, along with two additional instructional letters for applicants residing in Florida or Indiana.¹ These current application materials are available on FMCSA's Web site at: <http://www.fmcsa.dot.gov/rules-regulations/topics/medical/exemptions.htm>.

Exemptions from the vision standards in 49 CFR 391.41(b)(10) are considered only for those individuals with visual deficiencies who:

- (1) hold a valid license;
- (2) are at least 21 years old; and
- (3) have 3 years of intrastate CMV driving experience immediately preceding the date of the application, driving at least 10 hours per week in intrastate commerce with the visual deficiency;
- (4) have had a driving record for the same period listed above that contains the following:
 - (a) no suspensions or revocations of a driver's license for the operation of any motor vehicle (including a personal vehicle);
 - (b) no involvement in an accident where the driver's actions were a contributing factor or the driver received a citation for a moving traffic violation;

¹ Applicants from Florida and Indiana are required to submit a full driving record. This is because Florida and Indiana have different content in their motor vehicle reports. Florida does not include citations or accidents on motor vehicle reports that were withheld (adjudication withheld) because of attendance at court or traffic school. Therefore, the applicant must provide a current official copy of his/her complete driving record from the state of Florida, covering their entire record. Indiana does not include accidents on motor vehicle reports unless the driver did not have insurance at the time of the accident or the accident resulted in a suspension of driving privileges. Therefore, the applicant must request that a search be done to verify whether he or she has been involved in any accidents during the 3-year driving period from the Indiana State Police.

(c) no convictions for a serious traffic violation, as defined in 49 CFR 383.51(c);

(d) no more than one serious traffic violation, as defined in 49 CFR 383.51, driving a CMV during the 3-year period that disqualified or should have disqualified the driver in accordance with the driver disqualification provisions of 49 CFR 383.51; and

(e) no more than two convictions for any other moving traffic violations in a CMV;

(5) provide a signed statement that reads, "I acknowledge that I must be otherwise qualified under 49 CFR 391.41(b)(1)-(13) or hold another valid medical exemption before I can legally operate a commercial motor vehicle in interstate commerce.";

(6) have visual acuity of at least 20/40 (Snellen), corrected or uncorrected, in the better eye;

(7) have field of vision in each eye, including central and peripheral fields, of at least 70° utilizing a testing modality which tests to at least 120° in the horizontal [Formal perimetry is required. The doctor must submit the formal perimetry for each eye and interpret the results in degrees of field of vision.];

(8) have the ability to recognize the colors of traffic control signals and devices showing red, green, and amber; and

(9) have been examined by an ophthalmologist or optometrist who signs a statement on letterhead in which the ophthalmologist or optometrist:

- (a) identifies the visual condition;
- (b) defines the nature of the vision deficiency, including how long the person has had the deficiency;
- (c) states the date of the examination;
- (d) certifies that the visual deficiency has been stable for the 3-year period preceding the date of application; and
- (e) provides an opinion that the person can perform the driving tasks required to operate a CMV.

B. Current Conditions for Holding an Exemption to the Vision Standards

FMCSA is aware that vision conditions can deteriorate over time and affect the driver's ability to operate a CMV safely. The following conditions for holding an exemption from the vision standards under 49 CFR 391.41(b)(10) are imposed on exempted CMV drivers and include all of the following:

- (1) The exempted driver must be examined every year by
 - (a) an ophthalmologist or optometrist who attests to the fact that the driver's vision continues to measure a visual acuity of at least 20/40 (Snellen) and a

field of vision in the horizontal meridian of at least 70°, both in the better eye; and

(b) a medical examiner who attests to the fact that the driver is otherwise qualified under 49 CFR 391.41;

(2) the driver must provide a copy of the ophthalmologist or optometrist report to his or her medical examiner at the time of the annual medical examination;

(3) the driver must keep a copy of the annual medical certification in his or her qualification file as long as the driver is self-employed or provide a copy to the driver's employer for retention in the driver's qualification file and retain a copy of the exemption certificate on his or her person while driving for presentation to an authorized Federal, State, or local enforcement official; and

(4) the driver must report any changes in personal information (i.e., address, telephone number, employment status) to FMCSA immediately, as well as changes in the type of vehicle driven. He or she may be required at any time during the authorized exemption period to provide information to the Agency regarding driving experience and performance as it relates to citations, accidents or crashes, suspensions or revocations, and medical status. Each driver will be subject to periodic monitoring by FMCSA of his or her driving performance while operating a CMV.

Proposed Criteria Changes

A. Criterion for Length of Driving Experience With a Stable Vision Condition

FMCSA proposes to change the current 3-year driving experience criterion to one of two options discussed below. The Agency requests comments as to whether it should continue to require driving experience but decrease the period from 3 years to 1 year of operating with the vision deficiency, or eliminate the driving experience criterion. The basis for this change is derived from the Medical Exemption Program Study by Cambridge Systematics, Inc. (October 13, 2006), which found the following:

- The collision rates of visually impaired drivers in the Vision Program were not higher than non-impaired drivers in the control subset over the previous three years;
- Compensatory viewing behavior is developed in order to mitigate visual loss; and
- Monocular commercial drivers did not have significant differences in the performance of tasks involving safe

driving and the location of the monocular eye is not significant.

Option One: Driving With a Stable Vision Condition for at Least 1 Year While Operating a CMV in Intrastate Commerce

This change would allow FMCSA to continue evaluating the CMV driver's safety record against his or her intrastate CMV driving experience and is consistent with the Agency's rationale for implementing the experience criterion. Though this option would reduce the length of driving experience with vision deficiency by two years, it would provide a timeframe that facilitates the verification of accurate and safe driving and medical records.

However, not all CMV drivers are operating in States that allow intrastate driving with a visual deficiency. Thus, unless the driver experience criterion were removed entirely, it would continue to be an obstacle for those CMV drivers who may actually be safe but cannot accumulate the necessary one year of experience because of State driver qualification policies. FMCSA would continue to use the driver's entire motor vehicle record as opposed to only the CMV record as a way to evaluate safety performance.

Option Two: The Driving Experience Criterion Would Be Removed

Removing the driving experience requirement would be consistent with the principles of FMCSA's Diabetes Exemption Program. FMCSA would continue to consider the driver's entire motor vehicle record but would not require a specific amount of driving experience.

FMCSA would ask for an examination by the ophthalmologist or optometrist to be reported within the last 3 months from the date of application. FMCSA believes that this would avoid the risk of recent deterioration.

B. Driving and Crash Record

The current criterion discussed above states that a driver must have no convictions for a serious traffic violation, as defined in 49 CFR 383.51(c). The Agency proposes to change this to include all provisions of 49 CFR 383.51 (b) and (c).

The current criteria, discussed above, recommend denial of an exemption for

any driver who was involved in a crash, whether the crash occurred while driving a CMV, a personal automobile or a motorcycle, where the driver's actions were a contributing factor or the driver received a citation for a moving traffic violation in a CMV. In this context, FMCSA proposes using the following definition of "accident" from 49 CFR 390.5 as being synonymous with "crash":

1. An occurrence involving a CMV operating on a highway in interstate or intrastate commerce which results in:

- (i) A fatality;
- (ii) Bodily injury to a person who, as a result of the injury, receives immediate medical treatment away from the scene of the accident; or
- (iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

In addition, during the period the CMV driver's application or renewal is pending, the driver and the employer would be required to report immediately to FMCSA any arrests, citations, or convictions for any disqualifying offense or other moving violation, or if the driver were involved in a crash. Convictions occurring during the processing of an exemption application would be considered in the CMV driver's overall driving record. Since all CMV driver applications and histories are unique, FMCSA would continue to conduct reviews on an individual basis.

C. Otherwise Qualified Physical Qualification Determination

FMCSA proposes to change the current signed driver's statement criterion. The existing application requests the applicant to provide a signed statement that reads, "I acknowledge that I must be otherwise qualified under 49 CFR 391.41(b)(1)-(13) or hold another valid medical exemption before I can legally operate a commercial motor vehicle in interstate commerce." It does not require a completed Medical Examination Report or an accompanying completed Medical Examiner's Certificate.

Rather than rely on a driver's statement, FMCSA proposes that the

driver undergo an examination by a medical examiner and receive a Medical Examiner's Certificate declaring that the driver is physically qualified to drive if the medical certificate is accompanied by a Federal Vision Exemption. This change would be consistent with the FMCSA Diabetes Exemption Program and the current Medical Examiner's Certificate. The Medical Examiner's Certificate has a check box for the Medical Examiner to indicate that the certificate must be accompanied by an exemption or waiver.

Currently, medical examiners terminate the examination process when the driver is unable to pass the visual acuity portion of the examination. This practice leads to additional cost for the driver, repeated trips to the medical examiner, and uncertainty of the driver's actual physical qualifications. If, after undergoing the process for the Vision Exemption, the driver returns to the medical examiner and is denied a Medical Examiner's Certificate due to a different medical condition, he or she would have expended unnecessary resources. Requiring an appropriately completed Medical Examiner's Certificate would ensure that the driver is otherwise physically qualified to drive and allow both the driver and the Agency to avoid expending resources unnecessarily.

Request for Information and Comments

One of the Agency's purposes for publishing this notice is to acquire feedback to ensure we have all of the information necessary to make a sound decision when making changes to the Vision Exemption Program criteria. Therefore, FMCSA invites interested persons to comment on any and all aspects of these proposed changes by submitting data, views, arguments, or recommendations concerning any proposed changes to the Federal Vision Exemption Program application approval criteria. See the **ADDRESSES** heading above for information on submitting comments.

Issued on: December 2, 2013.

Anne S. Ferro,
Administrator.

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