

Regulations (FMCSRs). The FMCSA is deferring its decision regarding Mr. Parker's qualification under the Federal alternative physical qualification standards for loss of limbs until he obtains a prosthetic device, becomes proficient in using the device, and completes the Skill Performance Evaluation (SPE) certification process. Although Mr. Parker is exempted from the vision requirements, he may not operate a commercial vehicle in interstate commerce until he meets the physical qualification standard for the loss of limbs, and this agency issues a SPE certificate.

DATES: February 25, 2003.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemption in this notice, you may contact Ms. Sandra Zywockarte, Office of Bus and Truck Standards and Operations, (202) 366-2987, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: You may see all the comments online through the Document Management System (DMS) at: <http://dmses.dot.gov>.

Background

On August 22, 2002, the FMCSA published a notice of applications (67 FR 54525) requesting comments on Mr. Parker's request for an exemption from the Federal standards for vision at 49 CFR 391.41(b)(10) and for the loss of limbs at 49 CFR 391.41(b)(1). Mr. Parker does not meet the vision requirements because of severe vision loss in his right eye. He does not meet the physical qualification requirements for the loss of limbs as he is missing his left arm and is unable to demonstrate power grasp prehension and precision prehension with each upper limb separately. To operate in interstate commerce, Mr. Parker must be granted an exemption from the vision requirements and must be granted a skill performance evaluation (SPE) certificate.

Mr. Parker applied for a waiver from the vision requirements in 1996 under criteria established under the agency's former Vision Waiver Program. The criteria included a provision that vision waiver applicants must be otherwise medically qualified under all other physical qualification requirements at 49 CFR 391.41. When the agency discovered that Mr. Parker's left arm had been amputated at the shoulder, it denied his application for a vision waiver because the agency determined that there was insufficient evidence to

determine if someone with both a vision impairment and amputation could safely operate a CMV.

Mr. Parker filed a petition for review with the United States Court of Appeals for the Sixth Circuit. The Sixth Circuit reversed the agency's denial, and remanded the case to the agency with instructions to create a functional capacity test consistent with FMCSA's findings that an individual's driving record is indicative of future performance which will evaluate Mr. Parker's driving skills based upon his individual capabilities (*Jerry W. Parker v. United States Department of Transportation*, 207 F. 3d 359 (6th Cir. 2000)). Mr. Parker's request for regulatory relief is discussed in detail in the August 22, 2002, notice (67 FR 54525).

In response to the Court's decision, the FMCSA has determined that Mr. Parker's request for a vision exemption will be considered on its own merits as outlined within the vision exemption program and the regulations found in 49 CFR part 381. Additionally, the FMCSA will evaluate Mr. Parker's amputation under the alternative physical qualification standards for the loss of limbs found in 49 CFR 391.41(b)(1) and 391.49. In other words, each impairment that would preclude Mr. Parker from complying with the physical qualification standards would be considered and evaluated separately under the agency's process for granting or denying the vision exemption application or SPE certificate.

Under 49 U.S.C. 31315 and 31136(e), the 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, the FMCSA has evaluated Mr. Parker's application for a vision exemption on its merits and made a determination to grant the exemption. The comment period closed on September 23, 2002. Seven comments were received, and their contents were carefully considered by the FMCSA in reaching the final decision to grant the exemption.

Although FMCSA is granting Mr. Parker a vision exemption, this does not allow Mr. Parker to drive in interstate commerce until he meets the alternative physical qualification standards for the loss of limbs and the use of a prosthetic device as outlined within 49 CFR 391.41(b)(1) and 391.49 (SPE certificate).

Deferring Decision on Mr. Parker Qualifying Under §§ 391.41(b)(1) and 391.49

With today's decision to grant a vision exemption, Mr. Parker is "otherwise" qualified to drive a commercial motor vehicle, when he meets the alternate physical qualification procedures under the SPE certification program. FMCSA is deferring making a decision regarding Mr. Parker's qualification under the Federal standards for loss of limbs until he obtains a prosthetic device, becomes proficient in using the device, and completes the SPE.

FMCSA has a SPE certification process that allows limb-amputee and limb-impairment CMV drivers to demonstrate, on an individual basis, their ability to operate safely the specific vehicle they intend to drive. Drivers must be able to demonstrate power grasp prehension (the ability to hold, clutch, clasp, or seize the steering wheel firmly) and precision prehension (the ability to effectively turn switches on and off and control other vehicle equipment while performing routine and emergency driver operations) with each upper limb separately (§ 391.49(d)(3)(i)(B)). Over the years, FMCSA has granted more than 2,000 SPE certificates to CMV drivers certifying their capability to operate legally and safely over the nation's highways.

Based on the information provided by Mr. Parker, he does not use a prosthetic device. Mr. Parker is missing his left arm and is unable to demonstrate power grasp prehension and precision prehension with each arm as required under the FMCSRs. Mr. Parker will need to obtain and wear a prosthetic or orthotic device, which enables him to demonstrate power grasp and precision prehension, and become proficient in using the device before we are able to proceed with the SPE certification process. Once Mr. Parker obtains a prosthetic device and can demonstrate power grasp prehension and precision prehension, FMCSA will provide him the opportunity to demonstrate, on an individual basis, his ability to operate safely the specific vehicle he intends to drive. This evaluation will include driving and non-driving safety related activities conducted by an Agency qualified SPE examiner.

Mr. Parker submitted to a road test conducted by a retired State Trooper. This individual is not certified under FMCSA's SPE program to administer an SPE evaluation, and that road test was not administered in accordance with the regulations found at 49 CFR 391.49.