

Consequently, the FMCSA cannot accept the results of that test.

The FMCSRs provide a standard set of requirements for all CMV drivers who wish to, or who do operate in interstate commerce. The medical standard in 49 CFR 391.41(b)(1), or the alternative physical qualification standards for the loss of limbs found in 49 CFR 391.49, are based upon identified critical driving tasks associated with specific types of amputation or limb-impairments as outlined by the Krusen Center for Research and Engineering of the Moss Rehabilitation Hospital in Philadelphia, Pennsylvania. These standards were incorporated into the agency's regulations in 1985, and require a properly fitted and appropriate prosthesis, the demonstration of proficient use of the prosthesis, and the requirement of the use of the device while driving. Under existing Federal regulations, States may enforce safety regulations governing intrastate operations that vary from the Federal Motor Carrier Safety Regulations. The Motor Carrier Safety Assistance Program (49 CFR part 350) includes tolerance guidelines governing State oversight of intrastate commerce. Consistent with these requirements, the State of Ohio has adopted intrastate regulations governing commercial driver vision qualifications. Here, the FMCSA must assure all other States, in which Mr. Parker might operate, that he is fully qualified under the Federal regulations. We are unable to reach that conclusion at this time, but we stand ready to immediately proceed with the SPE evaluation process when Mr. Parker obtains a prosthesis and can demonstrate the adequate use of that device in accordance with the alternative physical qualification standards.

Vision and Driving Experience of the Applicant

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 at 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)).

Beginning in 1992, the Federal Highway Administration (FHWA) has undertaken studies to determine if this vision standard should be amended. The final report from our most recent vision medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket, FHWA-98-4334.) The panel's conclusion supported the FMCSA's (and previously the FHWA's) view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also 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.

Mr. Parker falls into this category. He is unable to meet the vision standard in his right eye because of a congenital eye condition known as Coats disease. However, he has corrected vision of 20/20 in his left eye and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. The doctor's opinion is supported by the applicant's possession of valid commercial driver's license (CDL) to operate CMVs in intrastate commerce. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. Mr. Parker satisfied the testing standards for his State of residence. By meeting State licensing requirements, Mr. Parker demonstrated his ability to operate a commercial vehicle in intrastate, with his limited vision, to the satisfaction of his home State.

Possessing a valid CDL, Mr. Parker has been authorized to drive a CMV in intrastate commerce, even though his vision disqualifies him from driving in interstate commerce. He has driven CMVs with his limited vision for 17 years. In the past 3 years, he has had no accidents or convictions for traffic violations in a CMV.

Mr. Parker's qualifications, experience, and medical condition were stated and discussed in detail in the August 22, 2002, notice (67 FR 54525).

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if, by granting the exemption, it is likely that the level of safety will be equivalent to, or greater

than, the level that would be achieved absent the issuance of such exemption. Although the FMCSA is granting Mr. Parker a vision exemption, this does not allow Mr. Parker to drive in interstate commerce. This is because he does not meet the medical standard in 49 CFR 391.41(b)(1), or the alternative physical qualification standards for the loss of limbs at 49 CFR 391.49.

To evaluate the effect of the exemption on safety, the FMCSA considered not only the medical report about the applicant's vision, but also his driving record and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 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 accidents and traffic violations. Copies of the studies have been added to the docket. (FHWA-98-3637)

We believe we can properly apply the principle to monocular drivers, because data from the vision waiver 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 with good driving records in the waiver program demonstrated their ability to drive safely 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 accident 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 accident proneness from accident 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