

experiencing future accidents. (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 accident 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 Mr. Parker's past 3-year record, we note that he has had no accidents or traffic violations in the last 3 years. He achieved this record of safety while driving with his vision impairment, demonstrating the likelihood that he has adapted his driving skills to accommodate his condition. As his ample driving history with his vision deficiency is a good predictor of future performance, the FMCSA concludes his ability to drive safely can be projected into the future.

We believe Mr. Parker's intrastate driving experience and history provide an adequate basis for predicting his ability to drive safely in interstate commerce with his vision impairment. While not providing the variety of driving conditions and varying climate and geographic conditions of interstate driving, intrastate driving does involve operating on the interstate system and 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 are more compact than on highways. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions.

Mr. Parker has operated CMVs safely under those conditions for much longer than 3 years. The FMCSA finds that exempting Mr. Parker from the vision standard 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 will grant the exemption for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to Mr. Parker.

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on Mr. Parker 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 Mr. Parker be physically examined 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 he is otherwise physically qualified under 49 CFR 391.41; (2) that Mr. Parker 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 Mr. Parker provide a copy of the annual medical certification to his employer for retention in his driver's qualification file, or keep a copy in his driver's qualification file if he is self-employed. He must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

#### Discussion of Comments

The FMCSA received seven comments in this proceeding. The comments were considered and are discussed below.

Of the seven comments, three were in favor of Mr. Parker receiving both exemptions. All three supporting commenters knew Mr. Parker on a personal level and expressed their feelings that Mr. Parker had worked hard and was a good and safe driver.

The other four comments were opposed to Mr. Parker receiving exemptions. One individual wrote that it is not responsible to consider each disability separately without considering them in total to determine an individual driver's ability to safely operate a CMV and that physical qualifications are necessary since the creation of a commercial driving simulator that would evaluate both normal and emergency driving of all types is not realistic.

The FMCSA has determined that Mr. Parker's request for exemptions to the qualification standards will be handled as separate applications for exemptions under existing procedures at 49 CFR part 381, or the SPE program (49 CFR 391.49), as appropriate.

A Driver Trainer/Accident Investigator for a school district wrote in favor of a denial of the exemption request based on the need to strictly enforce regulations for safety on the roads.

The FMCSA's first obligation is to keep our roadways safe. Our safety regulations have a single goal—to

reduce the number of CMV crashes and fatalities on the Nation's highways. Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from a regulation, however, only 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."

A medical examiner wrote that more information about the extent of the impairment of the right arm and why Mr. Parker does not wear prosthetics, and a skills performance examination are necessary to make a determination.

The FMCSA has since received information from a psychiatrist regarding the impairment of Mr. Parker's right arm. In a letter dated November 8, 2002, the psychiatrist notes: "that based on my examination today, Jerry has no impairment of the right upper extremity."

Advocates for Highway and Auto Safety (AHAS) expresses opposition to granting an exemption to Mr. Parker because: (1) There is no research on which to base a determination that an applicant with multiple impairments meets the statutory requirement for an exemption; (2) the FMCSA has no basis for granting an exemption for loss of limb to an individual who does not wear a prosthesis and (3) there is no basis for separately considering the two impairments.

AHAS opposes the granting of exemptions to a single applicant from multiple medical and physical requirements in the FMCSRs because there is no foundation in fact or medical research on which a safety determination can be made. AHAS also states that the FMCSA has presented no analysis and has not cited any research to support the granting of exemptions in this circumstance. They point out that in denying the applicant's earlier request for an exemption in 1996, the FMCSA's predecessor agency stated that it lacked evidence to determine if an individual with these impairments could safely operate a CMV. AHAS stated that FMCSA has presented no evidence to contradict the 1996 analysis.

AHAS further states that the requirement for a driver to be capable of demonstrating precision prehension and power grasp prehension in each upper limb is based on medical information. They claim that, in line with this requirement, a driver with an upper limb amputation or impairment must wear a properly fitted and appropriate prosthesis to safely operate a CMV. AHAS then states that there is no record in this notice presenting evidence to refute the prosthesis requirement.