



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 391

[Docket No. FMCSA-2019-0049]

RIN 2126-AC21

Qualifications of Drivers; Vision Standard

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

ACTION: Notice of proposed rulemaking.

SUMMARY: FMCSA proposes to amend its regulations to permit individuals who cannot meet either the current distant visual acuity or field of vision standard, or both, in one eye to be physically qualified to operate a commercial motor vehicle (CMV) in interstate commerce. Currently, such individuals are prohibited from driving CMVs in interstate commerce unless they obtain an exemption from FMCSA. The Agency proposes an alternative vision standard for physical qualification that, if adopted, would replace the current vision exemption program as a basis for establishing the physical qualification determination for these individuals.

DATES: You must submit comments on this notice of proposed rulemaking (NPRM) to FMCSA on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments on the collection of information must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this NPRM identified by docket number FMCSA-2019-0049 using any one of the following methods:

- Federal eRulemaking Portal: www.regulations.gov.
- Fax: (202) 493-2251.

- Mail: Docket Operations, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue S.E., Washington, D.C. 20590-0001.
- Hand delivery: Docket Operations, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue S.E., Washington, D.C. 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” heading under the **SUPPLEMENTARY INFORMATION** section below for instructions regarding submitting comments, including collection of information comments for the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB).

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rule, contact Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, 1200 New Jersey Avenue S.E., Washington, D.C. 20590-0001, by telephone at (202) 366-4001, or by email at fmcsamedical@dot.gov. If you have questions about viewing or submitting material to the docket, call DOT Docket Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION: This NPRM is organized as follows.

- I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS
 - A. Submitting Comments
 - B. Viewing Comments and Documents
 - C. Privacy Act
 - D. Waiver of Advance Notice of Proposed Rulemaking
 - E. Comments on the Collection of Information
- II. ABBREVIATIONS, ACRONYMS, AND SYMBOLS
- III. EXECUTIVE SUMMARY
 - A. Purpose of the Amendments
 - B. Summary of the Major Provisions
 - C. Benefits and Costs
- IV. LEGAL BASIS FOR THE RULEMAKING
- V. BACKGROUND
 - A. Current Vision Standard

- B. Vision Waiver Study Program and Grandfathered Drivers
- C. Federal Vision Exemption Program – 1998 to the Present
- VI. ASSESSMENTS OF THE VISION STANDARDS, WAIVERS, AND EXEMPTIONS
- VII. RATIONALE FOR PROPOSED QUALIFICATION STANDARD
 - A. Individuals Adapt to and Compensate for Vision Loss
 - B. MEs Would Make the Qualification Determination
 - C. Review of an Individual’s Safety Performance Would Continue
- VIII. DISCUSSION OF PROPOSED RULE
 - A. Proposed Physical Qualification Process
 - B. Road Test in Accordance with 49 CFR 391.31
 - C. Elimination of Vision Exemption Program and Grandfather Provisions
 - D. Change to the Medical Examination Process in 49 CFR 391.43(b)(1)
 - E. Benefits of the Proposal to Drivers
- IX. SECTION-BY-SECTION ANALYSIS
 - A. Regulatory Provisions
 - B. Guidance Statements and Interpretations
- X. INTERNATIONAL IMPACTS
- XI. REGULATORY ANALYSES
 - A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulations
 - B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)
 - C. Congressional Review Act
 - D. Regulatory Flexibility Act (Small Entities)
 - E. Assistance for Small Entities
 - F. Unfunded Mandates Reform Act of 1995
 - G. Paperwork Reduction Act (Collection of Information)
 - H. E.O. 13132 (Federalism)
 - I. Privacy
 - J. E.O. 13175 (Indian Tribal Governments)
 - K. National Environmental Policy Act of 1969

I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS

FMCSA encourages you to participate in this rulemaking by submitting comments and related materials. Where possible, please provide scientific, peer-reviewed articles to support your comments.

A. Submitting Comments

If you submit comments, please include the docket number for this rulemaking (FMCSA-2019-0049), indicate the heading of the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you

include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov, type the docket number (FMCSA-2019-0049) in the “Keyword” box and click “Search.” When the new screen appears, click the “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party, and click “Submit.”

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket for this rulemaking. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, FMCSA, 1200 New Jersey Avenue S.E., Washington, D.C. 20590. Any comments FMCSA receives that are not specifically designated as CBI will be placed in the public docket for this rulemaking.

FMCSA will consider all comments and material received during the comment period and may make changes based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

B. Viewing Comments and Documents

To view comments and any document mentioned in this preamble as being available in the docket, go to www.regulations.gov, insert the docket number (FMCSA-2019-0049) in the “Keyword” box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document listed to review. If you do not have access to the internet, you may view the docket online by visiting Docket Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue S.E., Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice DOT/ALL 14 – Federal Docket Management System (FDMS), which can be reviewed at <https://www.transportation.gov/privacy>.

D. Waiver of Advance Notice of Proposed Rulemaking

Under 49 U.S.C. 31136(g)(1), FMCSA is required to publish an advance notice of proposed rulemaking or conduct a negotiated rulemaking if a proposed rule is likely to lead to the promulgation of a major rule.¹ As this proposed rule is not likely to result in

¹ A “major rule” means any rule that the Administrator of OIRA at OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on

the promulgation of a major rule, the Agency is not required to issue an advance notice of proposed rulemaking or to proceed with a negotiated rulemaking.

E. Comments on the Collection of Information

Written comments and recommendations for the proposed information collections discussed in this NPRM should be sent to FMCSA within 60 days of publication using any of the methods described in “Public Participation and Request for Comments” above.

II. ABBREVIATIONS, ACRONYMS, AND SYMBOLS

ATA	American Trucking Associations, Inc.
CBI	Confidential Business Information
CDL	Commercial Driver’s License
CFR	Code of Federal Regulations
CMV	Commercial Motor Vehicle
DOT	U.S. Department of Transportation
E.O.	Executive Order
FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FMCSRs	Federal Motor Carrier Safety Regulations
FR	Federal Register
GES	General Estimates System
ICR	Information Collection Request
Id.	Idem—the same author or work
MCMIS	Motor Carrier Management Information System
ME	Medical Examiner
MEC	Medical Examiner’s Certificate, Form MCSA-7876
MRB	Medical Review Board
NAICS	North American Industry Classification System
National Registry	National Registry of Certified Medical Examiners
NPRM	Notice of Proposed Rulemaking
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
RFA	Regulatory Flexibility Act
SBA	Small Business Administration
Secretary	Secretary of Transportation
§	Section
TEA–21	Transportation Equity Act for the 21st Century
U.S.C.	United States Code

competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

III. EXECUTIVE SUMMARY

A. Purpose of the Amendments

FMCSA proposes to amend its regulations to permit an individual who cannot meet either the current distant visual acuity or field of vision standard, or both, in one eye to be physically qualified to operate a CMV in interstate commerce under specified conditions. The individual would need to meet the proposed alternative vision standard and FMCSA's other physical qualification standards. In addition, with limited exceptions, individuals physically qualified under the alternative standard for the first time would complete a road test before operating a CMV in interstate commerce. The proposed action would eliminate the need for the current Federal vision exemption program, as well as the grandfather provision in 49 CFR 391.64 for drivers operating under the previously administered vision waiver study program. Medical professionals would evaluate and make medical qualification determinations instead of FMCSA, as in the current exemption program. Motor carriers would administer the road tests. The proposed alternative vision standard would enhance employment opportunities while remaining consistent with FMCSA's safety mission.

B. Summary of the Major Provisions

The proposed alternative vision standard is based on recommendations from FMCSA's Medical Review Board (MRB). The proposed physical qualification process is analogous to the regulatory framework FMCSA adopted in § 391.46 for individuals with insulin-treated diabetes mellitus (see 83 FR 47486, September 19, 2018). Prior to that rulemaking, such individuals were prohibited from driving CMVs in interstate commerce unless they obtained an exemption from FMCSA. Like the approach in the rule for insulin-treated diabetes mellitus, after the public comment period for this NPRM closes, FMCSA will ask the MRB to review all comments from medical professionals and associations. If after that review the MRB makes material changes to its prior

recommendations, FMCSA will publish a *Federal Register* notice announcing the availability of the new MRB recommendations and request public comment specific to those recommendations.

The proposed rule provides an alternative vision standard for individuals who cannot meet either the current FMCSA distant visual acuity or field of vision standard, or both, in one eye and, if adopted, would replace the current vision exemption program as a basis for determining the physical qualification of such individuals to operate a CMV. The proposed action would ensure that these individuals are physically qualified to operate a CMV safely. In addition, the proposed process would create a clear and consistent framework to assist certified medical examiners (ME) with making a physical qualification determination that is equally as effective as a program based entirely on granting exemptions under 49 U.S.C. 31315(b).

Just as in the alternative standard for insulin-treated diabetes mellitus, the alternative vision standard would involve a two-step process for physical qualification. First, an individual seeking physical qualification would obtain a vision evaluation from an ophthalmologist or optometrist who would record the findings and provide specific medical opinions on the proposed Vision Evaluation Report, Form MCSA-5871, which incorporates the recommendations of the MRB. Next, an ME would perform an examination and determine whether the individual meets the proposed vision standard, as well as FMCSA's other physical qualification standards. If the ME determines that the individual meets the physical qualification standards, the ME could issue a Medical Examiner's Certificate (MEC), Form MCSA-5876, for a maximum of 12 months. This approach of MEs making the physical qualification determination, instead of FMCSA as in the current exemption program, is consistent with Congress's directive in 49 U.S.C. 31149(d) to have trained and certified MEs determine the individual's physical qualification to operate a CMV.

In making the physical qualification determination, the ME would consider the information in the Vision Evaluation Report, Form MCSA-5871, and utilize independent medical judgment to apply four standards. The proposal would provide that, to be physically qualified under the alternative vision standard, the individual must: (1) have in the better eye distant visual acuity of at least 20/40 (Snellen), with or without corrective lenses, and field of vision of at least 70 degrees in the horizontal meridian; (2) be able to recognize the colors of traffic signals and devices showing standard red, green, and amber; (3) have a stable vision deficiency; and (4) have had sufficient time to adapt to and compensate for the change in vision.

It is well recognized in the literature that individuals with vision loss in one eye can and do develop compensatory viewing behavior to mitigate the vision loss. Therefore, if an individual meets the proposed vision standard, the Agency expects there will be no adverse impact on safety due to the individual's vision. That is, once an individual's vision is stable and the individual has adapted to and compensated for the change in vision, the loss in vision is not likely to play a significant role in whether the individual can drive a CMV safely.

Instead of requiring 3 years of intrastate driving experience with the vision deficiency as in the current exemption program, individuals physically qualified under the proposed alternative vision standard for the first time would complete a road test before operating in interstate commerce. Individuals would be excepted from the road test requirement if they have 3 years of intrastate or excepted interstate CMV driving experience with the vision deficiency, hold a valid Federal vision exemption, or are medically certified under § 391.64(b). These individuals have already demonstrated they can operate a CMV safely with the vision deficiency. Motor carriers would conduct the road test in accordance with the road test already required by § 391.31. FMCSA finds that a road test would be an appropriate indicator of an individual's ability to operate a

CMV safely with the vision deficiency. Thus, the Agency expects there will be no adverse impact on safety from eliminating the 3-year intrastate driving experience criterion.

The proposed standard takes a performance-based approach. The standard emphasizes that the individual has developed the skills to adapt to and compensate for the vision loss once it has been deemed stable by a medical professional, and that the individual has demonstrated the skills to operate a CMV safely. The ME would ensure the driver is physically qualified to operate a CMV in accordance with the physical qualification standards. With limited exceptions, motor carriers would conduct a road test for individuals to ensure they possess the skills needed to operate a CMV safely with the vision deficiency.

The Federal Highway Administration (FHWA), the predecessor agency to FMCSA, and FMCSA have continuously monitored the impact of the vision waiver study² and the exemption programs to ensure they cause no adverse impact on safety. The proposed alternative vision standard would adopt the major vision criteria of the existing Federal vision exemption program, which were also used in the preceding Federal vision waiver study program since the early 1990s, and would modify other criteria from the exemption program. Based on nearly 30 years of experience with these programs, individuals who meet the proposed alternative vision standard will be at least as safe as the general population of CMV drivers. This experience has shown that individuals with vision loss in one eye are not limited by their lack of binocularity with respect to driving once they have adapted to and compensated for the change in vision.

² FHWA conducted the vision waiver study program from July 1992 through March 31, 1996. Drivers who participated in the program and held valid waivers from the vision standard at the program's end could continue to operate in interstate commerce under grandfather provisions in 49 CFR 391.64. The vision waiver study program and grandfather provisions are discussed in section V.B. below.

If the proposed action is adopted, the 2,566 vision exemption holders³ would no longer require an exemption. Accordingly, these drivers would be relieved of the time and paperwork burden associated with applying for or renewing an exemption.⁴ The proposed rule could increase employment opportunities because potential applicants who do not have 3 years of intrastate driving experience may meet the alternative vision standard and be able to operate a CMV in interstate commerce. In addition, previously qualified interstate CMV drivers who are no longer able to meet either the distant visual acuity or field of vision standard, or both, in one eye would be able to return to operating in interstate commerce sooner.

FMCSA proposes that the approximately 1,900 individuals physically qualified under the grandfather provisions in § 391.64(b) would have 1 year after the effective date of any final rule to comply with the rule. During that transition year, grandfathered individuals could elect to seek physical qualification through the final rule or § 391.64. This transition year would provide time to learn the new process for individuals whose MEC, Form MCSA-5876, expires near the time any final rule becomes effective. However, 1 year after the effective date of the final rule all MECs, Form MCSA-5876, issued under § 391.64(b) would become void.

Similarly, the 2,566 vision exemption holders would have 1 year after the effective date of any final rule to comply with the rule, at which time all exemptions issued under 49 U.S.C. 31315(b) would become void. Drivers who hold a vision exemption would be notified by letter with details of the transition to the new standard.

³ FMCSA data as of July 2, 2019.

⁴ As discussed below in the Paperwork Reduction Act section XI.G. with respect to the information collection titled “Medical Qualification Requirements,” FMCSA attributes 2,236 annual burden hours at a cost of \$69,136 for drivers to request and maintain a vision exemption. The proposed rule would eliminate this entire burden.

C. Benefits and Costs

FMCSA estimates that the proposed rule would reduce barriers to entry for current and future CMV drivers. The 2,566 drivers holding vision exemptions would no longer have to apply for an exemption, and potential driver applicants who do not have 3 years of intrastate driving experience may meet the alternative vision standard and be able to operate a CMV in interstate commerce. A one-time road test would be less burdensome on drivers than obtaining 3 years of intrastate driving experience and addresses the consideration that some drivers live in States that do not issue vision waivers. The proposed rule would result in incremental cost savings of approximately \$1.6 million annually by eliminating the need for the Federal vision exemption program. This estimate includes the additional annual impact of approximately \$47,000 for the road test. The Agency does not anticipate any negative impacts on safety.

The proposed rulemaking, if finalized, would result in reduced costs and, therefore, would be a deregulatory action under Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs. The present value of the cost savings, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, would be \$14.9 million. On an annualized basis, these cost savings would be \$1 million.

IV. LEGAL BASIS FOR THE RULEMAKING

FMCSA has authority under 49 U.S.C. 31136(a) and 31502(b)—delegated to the Agency by 49 CFR 1.87(f) and (i), respectively—to establish minimum qualifications, including physical qualifications, for individuals operating CMVs in interstate commerce. Section 31136(a)(3) requires specifically that the Agency's safety regulations ensure that the physical condition of CMV drivers is adequate to enable them to operate their vehicles safely and that certified MEs trained in physical and medical examination standards perform the physical examinations required of such drivers.

In addition to the statutory requirements specific to the physical qualifications of CMV drivers, section 31136(a) requires the Secretary of Transportation (Secretary) to issue regulations on CMV safety, including regulations to ensure that CMVs “are maintained, equipped, loaded, and operated safely” (section 31136(a)(1)). The remaining statutory factors and requirements in section 31136(a), to the extent they are relevant, are also satisfied here. The proposed rule would not impose any “responsibilities...on operators of [CMVs that would] impair their ability to operate the vehicles safely” (section 31136(a)(2)), or “have a deleterious effect on the physical condition” of CMV drivers (section 31136(a)(4)). FMCSA also does not anticipate that drivers would be coerced to operate a vehicle because of this rulemaking (section 31136(a)(5)).

Additionally, in 2005, Congress authorized the creation of the MRB, composed of experts in a variety of medical specialties relevant to the driver fitness requirements, to provide medical advice and recommendations on physical qualification standards (49 U.S.C. 31149(a)). The position of Chief Medical Examiner was authorized at the same time (49 U.S.C. 31149(b)). Under section 31149(c)(1), the Agency, with the advice of the MRB and Chief Medical Examiner, is directed to establish, review, and revise medical standards for CMV drivers that will ensure their physical condition is adequate to enable them to operate the vehicles safely (see also 49 U.S.C. 31149(d)).

Finally, prior to prescribing any regulations, FMCSA must consider their “costs and benefits” (49 U.S.C. 31136(c)(2)(A) and 31502(d)). Those factors are discussed in the Regulatory Analyses section of this NPRM.

V. BACKGROUND

A. Current Vision Standard

FMCSA’s mission is to reduce crashes, injuries, and fatalities involving large trucks and buses. As discussed above, FMCSA is authorized by statute to establish minimum physical qualification standards for drivers of CMVs operating in interstate

commerce. To ensure the physical qualification of CMV drivers, the Agency has established several standards. As vision plays an important role in the driving task, one of the standards provides vision requirements (see 49 CFR 391.41(b)(10)).

FHWA adopted the current vision standard in 1970 (35 FR 6458, 6463, April 22, 1970). Under this standard, an individual is physically qualified to drive a CMV if the individual 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 degrees 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)). This standard has not changed since it became effective on January 1, 1971.

FMCSA's physical qualification standards cover 13 areas that relate directly to the driving function. With respect to most of the standards, an individual's qualification to drive is determined by an ME who is knowledgeable about the on-the-job functions performed by a commercial driver and whether the driver has a condition that would interfere with the operation of a CMV. In the case of three standards, including vision, the standard is absolute and provides no discretion to the ME. Thus, any individual who does not meet the vision standard in its entirety cannot be physically qualified to drive a CMV in interstate commerce.

B. Vision Waiver Study Program and Grandfathered Drivers

On March 25, 1992, FHWA published notice of its intent to accept applications from CMV drivers for temporary waivers of certain requirements contained in the vision standard, pursuant to the waiver provision of former 49 U.S.C. 31136(e) (57 FR 10295). To avoid any adverse impact on highway safety, FHWA outlined specific criteria that applicants had to meet to receive the vision waiver. The waiver program's goal was to

provide objective data to be considered in a future rulemaking that would explore the feasibility of relaxing the absolute vision standard in favor of a more individualized standard. To do so, FHWA invited CMV drivers who met the vision standard to participate in a study comparing a group of experienced drivers who did not meet the vision standard with a control group of drivers who did meet the standard. Subsequently, on June 3, 1992, FHWA modified some of the program's conditions, clarified some of its details, and requested comments on the proposed vision waiver study program (57 FR 23370, June 3, 1992).

In July 1992, FHWA announced its decision to issue waivers of the vision requirements and published the final criteria for the vision waiver study program (57 FR 31458, July 16, 1992). FHWA concluded that the program met the statutory requirements for granting waivers because the program was in the public interest and included conditions that allowed FHWA to find that such waivers were consistent with the safe operation of CMVs.⁵ FHWA reiterated that the vision waiver study program would provide the empirical data necessary to evaluate the relationships between specific vision deficiencies and the operation of CMVs.

Under the vision waiver study program, FHWA issued waivers to drivers following an individual determination of each driver's capability to operate a CMV safely. The determination included a review of each individual's vital statistics, experience operating CMVs, anticipated post-waiver operations, and status of driving privilege as recorded on the licensing State's motor vehicle record for the past 3 years. The determination also included a review of an opinion by an ophthalmologist or

⁵ Section 206(f) of the Motor Carrier Safety Act of 1984 provides that any Federal Motor Carrier Safety Regulation (FMCSR) can be waived if "such waiver is not contrary to the public interest and is consistent with the safe operation of [CMVs]." Pub. L. 98-554, 98 Stat. 2832, 2835, (October 30, 1984), originally codified at 49 U.S.C. App. 2505 and then at former 49 U.S.C. 31136(e).

optometrist attesting to the visual acuity of each driver, that the visual acuity had not worsened since the last vision examination, and that the driver was able to perform the driving tasks required to operate a CMV. The waiver study program required visual acuity of at least 20/40 (Snellen), corrected or uncorrected, in the better eye, as well as satisfaction of the other applicable vision standard requirements (i.e., field of vision of at least 70 degrees in the horizontal meridian in the better eye and the ability to recognize red, green, and amber colors).

Drivers eligible for vision waivers had to have driving records that surpassed those of their peers who met the vision requirements. FHWA aimed to eliminate unsafe drivers by requiring applicants to have 3 years of intrastate CMV driving experience with the vision deficiency and a record that showed:

- (1) No suspensions or revocations of his or her driver's license for operating violations in any motor vehicle;
- (2) No involvement in a reportable accident in a CMV in which the applicant was cited for a moving traffic violation;
- (3) No convictions for a disqualifying offense, as described in 49 CFR 383.51 (e.g., driving a CMV while under the influence of alcohol or a controlled substance, leaving the scene of an accident involving a CMV, or the commission of a felony involving the use of a CMV), or more than one serious traffic violation, as that term was defined in § 383.5 at the applicable time⁶ (e.g., excessive speeding, reckless driving, improper or erratic lane changes, following the vehicle ahead too closely, or a violation arising in connection with a fatality, all while driving a CMV); and
- (4) No more than two convictions for any other moving traffic violations while driving a CMV.

FHWA accepted 2,686 drivers into the vision waiver study program.⁷ Once granted a waiver, a driver had to report or submit certain information to FHWA during the term of the waiver. Each driver was required to:

⁶ Section 383.5 was amended to remove the definition of a "serious traffic violation" effective July 8, 2011 (76 FR 26854, 26878, May 9, 2011). Section 383.51(c) contains a list of serious traffic violations and the periods for which an individual is disqualified from operating a CMV.

⁷ Sheridan J, and DuLaney A., *Qualification of Drivers – Vision, Diabetes, Hearing and Epilepsy. Final Report*, McLean, VA: Conwal, Inc.; May 30, 1997, p. 7, which is available at <https://ntrl.ntis.gov/NTRL/dashboard/searchResults/titleDetail/PB98142649.xhtml> (last accessed

- (1) Report any citation for a moving violation involving the operation of a CMV;
- (2) Report the disposition of such citation;
- (3) Report any accident involvement while operating a CMV;
- (4) Submit documentation of an annual evaluation by an ophthalmologist or optometrist; and
- (5) Submit monthly driving reports that included the number of miles driving a CMV during the preceding month (with daylight and nighttime hours reported separately) and the number of days a CMV was not operated during the preceding month.

FHWA periodically verified the waived drivers' reported accidents and citations through State motor vehicle records and the waived drivers' medical reports.

On August 2, 1994, the United States Court of Appeals for the District of Columbia Circuit found that FHWA's determination that the vision waiver study program would not adversely affect the safe operation of CMVs lacked empirical support in the record (*Advocates for Highway and Auto Safety v. FHWA*, 28 F.3d 1288, 1294 (D.C. Cir. 1994)). Accordingly, the court found that FHWA failed to meet the exacting statutory requirements to grant a waiver. Consequently, the court concluded that FHWA's adoption of the waiver program was contrary to law and vacated and remanded the decision to FHWA.

On November 17, 1994, FHWA published notice of its final determination to continue the vision waiver study program through March 31, 1996, and announced a change in the research plan (59 FR 59386). FHWA determined that issuing waivers to the drivers through the conclusion of the program was consistent with the public interest and the safe operation of CMVs. FHWA based its decision, in part, on data collected on the group of waived drivers indicating that they had performed and continued to perform more safely than drivers in the general population of commercial drivers. As discussed above, drivers were required to have a 3-year safe driving history in intrastate commerce

to participate in the program. A statistical analysis of the driving performance of individuals participating in the program from July 1992 to July 1994 revealed the total accident rate of drivers in the waived group was 1.636 per million vehicle miles traveled compared to the higher national accident rate of 2.531 per million vehicle miles traveled (59 FR 59389).⁸

On March 26, 1996, FHWA issued a rule to allow those drivers participating in the vision waiver study program and holding valid waivers from the vision standard to continue to operate in interstate commerce after March 31, 1996 (61 FR 13338). FHWA amended 49 CFR part 391 by adding a new provision at § 391.64 to grant grandfather rights to these drivers, subject to certain conditions. FHWA required a physical qualification examination for the grandfathered drivers every year, rather than every 2 years as required of most other drivers, as an extra precaution to ensure the continued safe operation of these drivers. Under § 391.64(b), the grandfathered drivers, like all other interstate drivers, must be otherwise physically qualified under § 391.41(b) (including a field of vision of at least 70 degrees in the horizontal meridian in the better eye and the ability to recognize red, green, and amber colors). In addition, the grandfathered vision drivers must obtain an annual vision examination by an ophthalmologist or optometrist indicating that they have been examined and that the distant visual acuity in the better eye continues to measure at least 20/40 (Snellen). This information must be submitted to the certifying ME at the time of the individual's annual physical qualification examination. Currently, FMCSA checks the driving records of grandfathered drivers to determine if they continue to operate CMVs safely.

⁸ FHWA stated that during the same period there were 6 fatal accidents in which waived drivers were involved, and one more occurred after June 30, 1994. A review of the police accident reports, however, revealed that none of the waived drivers was found to be at fault by the reporting police officer (59 FR 59389).

C. Federal Vision Exemption Program – 1998 to the Present

FHWA established the current Federal vision exemption program on December 8, 1998 (63 FR 67600) following the enactment of amendments to the statutes governing exemptions made by section 4007 of the Transportation Equity Act for the 21st Century (TEA–21).⁹ With the enactment of TEA–21, FHWA was authorized to grant an exemption to relieve an individual from compliance in whole or in part with certain regulations if FHWA determined that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the regulation to which the exemption would apply (49 U.S.C. 31315(b)(1)).

FMCSA processes exemption letters of application in accordance with 49 CFR part 381, subpart C. Qualifying individuals may apply for an exemption from specified provisions of the FMCSRs, including physical qualification standards specified under § 391.41(b) (see 49 CFR 381.300(c)(3)). Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption for up to a 5-year period and may renew an exemption at the end of the 5-year period. However, FMCSA grants vision exemptions for up to a 2-year period to align with the maximum duration of a driver’s physical qualification certification. The Agency considers vision exemptions on a case-by-case basis upon application by CMV drivers who do not meet either the distant visual acuity or field of vision standard, or both, of § 391.41(b)(10) in one eye. The Agency does not grant exemptions for color blindness.

The criteria currently considered when reviewing an application for a Federal vision exemption have been in place since the program began in 1998. The vision criteria are consistent with criteria used in the preceding Federal vision waiver study program that began in July 1992.

⁹ Pub. L. 105–178, 112 Stat. 107, 401, June 9, 1998.

As part of the current vision exemption program, there is a template that CMV drivers can use to prepare a letter of application for a Federal vision exemption. In addition to the template, there are two instructional letters for applicants residing in Florida or Indiana that provide the unique State processes for requesting a copy of a motor vehicle record.¹⁰

The template outlines the information and documents drivers should include to be considered for an exemption. In general, drivers should submit information relating to vital statistics, experience driving a CMV (number of years driving, types of vehicles driven, miles driven per year), and present employment (contact information, types of vehicles, items transported, driving hours). Drivers also should submit documentation to support the application, such as a copy of the driver's license to operate a CMV; an official copy of the driving record issued by a State; copies of any citations, crash reports, or court records; a signed statement on letterhead from present or past employers (or a notarized statement if letterhead is not available); and a signed statement on letterhead by an ophthalmologist or optometrist.

Applicants are not permitted to operate a CMV in interstate commerce during the time in which an application for a new exemption is pending. The Agency encourages drivers to begin the renewal process well in advance of an exemption's expiration. In addition, the Agency provides such drivers with a deadline by which their renewal package must be complete. Drivers who miss the deadline risk having their exemptions expire, resulting in a lapse of their permission to operate a CMV in interstate commerce.

¹⁰ Copies of these documents are in the docket for this rulemaking and available on FMCSA's website at <https://www.fmcsa.dot.gov/medical/driver-medical-requirements/driver-exemption-programs> (last accessed October 1, 2019).

Under the current program, FMCSA considers exemptions from either the distant visual acuity or field of vision standard, or both, in one eye only for those individuals who:

- (1) Hold a valid license (an intrastate commercial driver's license (CDL) or a non-CDL license to operate a CMV);
- (2) Are at least 21 years old;
- (3) Have 3 years of legal CMV driving experience, driving at least 10 hours per week in intrastate commerce with the vision deficiency, immediately preceding the date of the application;
- (4) Have had a driving record for the 3-year period immediately preceding the date of application that contains:
 - (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 a crash for which the driver contributed or received a citation for a moving traffic violation;
 - (c) No convictions for a disqualifying offense, as defined in § 383.51(b);
 - (d) No more than one serious traffic violation, as defined in § 383.51(c), driving a CMV that disqualified or should have disqualified the driver in accordance with the driver disqualification provisions of § 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) 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, including central and peripheral fields, of at least 70 degrees in the horizontal meridian in the better eye utilizing a testing modality that tests to at least 120 degrees 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 vision.);
- (8) Can recognize the colors of traffic control signals and devices showing red, green, and amber; and
- (9) Have been examined in the last 3 months by an ophthalmologist or optometrist who:
 - (a) Identifies the vision deficiency;
 - (b) Defines the nature of the vision deficiency, including how long the driver has had the deficiency;
 - (c) States the date of the examination;
 - (d) Certifies that the vision deficiency is stable; and

- (e) Provides an opinion that the driver has sufficient vision to perform the driving tasks required to operate a CMV.

FMCSA is required to publish a notice in the *Federal Register* explaining that a medical exemption request has been submitted to the Agency for consideration. The notice provides the driver's name, age, and class of license with issuing State, as well as the specific cause and duration of the driver's vision deficiency and current distant visual acuity in at least the better eye. The notice identifies the provisions from which the individual seeks exemption and the effective period, and provides an opportunity for public comment. After the 30-day comment period, FMCSA must publish a notice in the *Federal Register* of its decision to approve or deny the request and all the terms and conditions of any exemption granted.

The Agency imposes the following requirements on drivers who are granted an exemption from the vision standards in § 391.41(b)(10):

- (1) The exempted driver must be examined every year by:
 - (a) An ophthalmologist or optometrist who attests that the driver's vision continues to meet the standards of 49 CFR 391.41(b)(10) in the better eye (i.e., that the individual has distant visual acuity of at least 20/40 (Snellen), field of vision of at least 70 degrees in the horizontal meridian, and can recognize red, green, and amber colors); and
 - (b) An ME who determines that the driver is otherwise qualified under § 391.41 and provides an MEC, Form MCSA-5876, that includes a statement that the driver is medically qualified when accompanied by a Federal vision exemption.
- (2) The driver must provide a copy of the ophthalmologist or optometrist report to the ME at the time of the driver's annual physical qualification examination.
- (3) The driver must keep a copy of the annual MEC, Form MCSA-5876, in his or her qualification file if the driver is self-employed or provide a copy to the driver's employer for retention in the driver's qualification file.
- (4) The driver must possess a copy of the exemption and MEC, Form MCSA-5876, when driving, for presentation to any legally authorized Federal, State, or local enforcement official.
- (5) The driver must obtain and display the appropriate driver's license from his or her State of domicile and comply with any restrictions

placed thereon regarding use of eyeglasses, mirrors, or other visual aids.

- (6) 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.

At any time during the authorized exemption period, the Agency may require the exempted CMV driver to provide information regarding driving experience and performance as it relates to citations, crashes, license suspensions or revocations, and medical status (78 FR 76590, 76591, December 18, 2013).

FMCSA monitors each driver's performance operating a CMV on a quarterly basis. FMCSA may revoke an exemption immediately if (1) the driver 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 the exemption was granted; or (3) continuation of the exemption is determined by FMCSA to be inconsistent with the goals and objectives of the FMCSRs (49 CFR 381.330(b)).

On December 18, 2013, FMCSA proposed changes to the eligibility requirements for the exemption program, including changes to the driving experience, convictions and violations, and driver statement criteria (78 FR 76590). After receiving comments that both supported and opposed the proposed changes, the Agency elected not to revise the exemption program criteria at that time. As suggested by some comments, the development of a fuller record in a rulemaking proceeding will assist the Agency in making an appropriate determination about modifying the vision standard instead of modifying the exemption criteria.

FMCSA's October 2017 annual report to Congress on waivers, exemptions, and pilot programs noted that the vision exemption program received 1,147 applications and

granted 479 exemptions in Federal fiscal year 2016.¹¹ The September 2018 annual report to Congress noted that the vision exemption program received 793 applications and granted 286 exemptions in Federal fiscal year 2017.¹²

As of July 2, 2019, there were 2,566 drivers with active exemptions issued pursuant to the Federal vision exemption program. From January 2016 through July 2019, the most prevalent reasons for denial of exemption requests were insufficient intrastate driving experience (i.e., less than 3 years of experience) and not meeting the vision standard in the better eye.

VI. ASSESSMENTS OF THE VISION STANDARDS, WAIVERS, AND EXEMPTIONS

FHWA and FMCSA have a long history of examining the relationship between the vision standards in § 391.41(b)(10) and the performance of CMV drivers. Since the early 1990s, FHWA and FMCSA have continuously monitored the impact of the vision waiver study and vision exemption programs to ensure they cause no adverse impact on safety. The basis for this rulemaking is the safety performance of the drivers in these programs, which is at least as good as that of the general population of CMV drivers.

Consistent with statutory requirements, the Agency consults with the MRB and Chief Medical Examiner to establish, review, and revise physical qualification standards for CMV drivers. FMCSA also engages these medical professionals to assist with medical and scientific reports and analyses prepared for the Agency. The reports and analyses undertaken since 1990 to gather information and evaluate the vision standards, the waiver study program, and exemption program, as well as MRB recommendations

¹¹ FMCSA. Waivers, Exemptions, and Pilot Programs Annual Report to Congress Fiscal Year 2016, October 2017, p. 3, available at <https://www.fmcsa.dot.gov/mission/policy/reports-congress> (last accessed July 15, 2019) and in the docket.

¹² FMCSA: Waivers, Exemptions, and Pilot Programs Annual Report to Congress Fiscal Year 2017, September 2018, p. 3, available at <https://www.fmcsa.dot.gov/mission/policy/reports-congress> (last accessed July 15, 2019) and in the docket.

pertaining to vision, are summarized below and are available in the docket for this rulemaking.

In November 1991, FHWA received a report titled “Visual Disorders and Commercial Drivers” prepared by the Ketron Division of the Bionetics Corporation.¹³ The primary objective of this project was to reassess the adequacy of the Federal vision standards for CMV drivers. In that regard, the report concluded that a review of the most recent scientific research that investigated the vision performance of passenger and commercial drivers “revealed no conclusive evidence to support definitive changes to the current standard.”¹⁴ The report found the studies “were able to demonstrate only weak relationships between measures of vision and correlates of driver safety.”¹⁵ Only a few studies examined the relationship between the driving performance record of CMV drivers and their vision performance.¹⁶

The project considered the need to exclude drivers with substantial vision loss only in one eye. Ketron convened a focused workshop discussion consisting of a panel of doctors, ophthalmologists, optometrists, professors in academic ophthalmology departments, and traffic and safety professionals in private industry. “Most panelists agreed that the available research results linking driver safety to lowered acuity in one eye were sufficient to change the current standard to allow monocular drivers or drivers with vision that is substantially worse in one eye.”¹⁷ However, the panelists did not reach a consensus.

¹³ Decina L, Breton M, and Staphlin L., *Visual Disorders and Commercial Drivers* (Report No. DTFH61-90-C-00093), Malvern, PA: Ketron Division of the Bionetics Corp., Washington, D.C.: FHWA, Office of Motor Carriers (FHWA-MC-92-003), November 1991, available at <https://ntrl.ntis.gov/NTRL/dashboard/searchResults/titleDetail/PB92143015.xhtml> (last accessed August 20, 2019). Note that this report is cited as “Ketron” in this rulemaking.

¹⁴ Id. at Technical Report Documentation Page (Abstract); see also p. 15.

¹⁵ Id. at iv.

¹⁶ Id. at 15.

¹⁷ Id. at 34.

The Ketron report noted the difficulties associated with determining minimum vision criteria. It stated that “[n]umerous studies have shown that visual deficits are rarely the primary cause of major accidents. Typically, many factors are found to contribute.”¹⁸ It continued that individuals involved in accidents have already been screened for visual deficits, which reduces the number of visually poor drivers on the road. Accordingly, tests of primary visual capability cannot reasonably be expected to correlate highly with measures of driver safety or to provide unambiguous cutoff points for screening out unsafe drivers.

In June 1992, FHWA stated that the Ketron project illuminated the lack of empirical data on the link between vision disorders and CMV safety (57 FR 23370, June 3, 1992). FHWA proposed the vision waiver study program to obtain the empirical data that the Ketron project did not provide. Accordingly, FHWA began the vision waiver study program in July 1992 that concluded in March 1996.

In May 1997, Conwal, Inc. presented FHWA with the final report titled “Qualification of Drivers – Vision, Diabetes, Hearing and Epilepsy”¹⁹ that described the findings of the vision waiver study program. The program’s goal was to determine the associated risk, based on accident involvement, of allowing CMV drivers who did not meet the vision standard to drive under a granted waiver in interstate commerce. FHWA determined that the findings showed the waiver group did not represent a threat to public safety.

The original design of the vision waiver study program was an observational, nonrandomized study with a prospective cohort structure. However, the *Advocates for*

¹⁸ Id. at iv; see also p. 13.

¹⁹ Sheridan J, and DuLaney A., *Qualifications of Drivers – Vision, Diabetes, Hearing and Epilepsy*, Final Report, McLean, VA: Conwal, Inc., May 30, 1997, available at <https://ntrl.ntis.gov/NTRL/dashboard/searchResults/titleDetail/PB98142649.xhtml> (last accessed August 23, 2019).

*Highway and Auto Safety v. FHWA*²⁰ lawsuit prevented the implementation of the study, and the study was converted to a monitoring program to ensure that the public was not exposed to excessive risk.²¹

Monitoring focused on comparing the accident rates of the waived drivers to rates of a reference group that represented the prevailing safety level for drivers of large trucks (10,000 pounds or larger) in the United States. FHWA selected the General Estimates System (GES) as the best measure of the prevailing national norm relative to large truck accidents.²² A series of seven monitoring reports was completed during the vision waiver study program to report periodically on the number of accidents occurring in the group of drivers who were issued waivers.²³

The seventh monitoring report in the series was completed in February 1996 and reported driving behavior for the drivers who were still in the program as of November 1995. From August 1992 to November 1995, 510 total accidents (i.e., not limited to accidents where fault was assigned to the waived driver) were reported in this group.²⁴

To effectively monitor the waiver program, FHWA established a framework to notify FHWA if the waiver group proved to be unsafe. The framework involved the use of a decision strategy that identified when the waiver group's accident rate was

²⁰ 28 F.3d 1288, 1294 (D.C. Cir. 1994) (see section V.B. above for additional information relating to this lawsuit).

²¹ FHWA originally conceived a study that would determine the associated level of risk of allowing CMV drivers who did not meet the physical qualification standards relating to vision, diabetes, epilepsy, and hearing to operate interstate. These conditions were chosen because the related standards were absolute at the time, providing no discretion to the ME. Because of the lawsuit, FHWA did not initiate the hearing and epilepsy waiver study programs.

²² The GES is a national survey of police accident reports in the United States conducted by the National Highway Traffic Safety Administration.

²³ The seven monitoring reports are included in Appendix 12 of the May 1997 final report titled "Qualification of Drivers – Vision, Diabetes, Hearing and Epilepsy" by Conwal, Inc.

²⁴ FHWA, Office of Motor Carriers. *The Seventh Monitoring Report on the Drivers of Commercial Motor Vehicles Who Receive Vision Waivers*, Washington, D.C.: U.S. Department of Transportation, February 29, 1996, p. 1.

sufficiently larger than the national accident rate that there could be a threat to public safety. More specifically, the 90 percent confidence interval associated with the waiver group's accident rate was compared to the national rate. The national rate was treated as a constant because it was given frequently as an official rate without a confidence interval. The decision was made to notify FHWA when the lower 90 percent confidence bound associated with the accident rate of the waiver group was larger than the national rate. That strategy was seen as conservative in that it limited the waiver group's accident exposure.²⁵

Based on analysis of the data collected from August 1992 to November 1995, Table 1 provides a comparison of the accident rate in the waiver group to the national rate. Relative to the 90 percent confidence interval calculated for the waiver group's rate, the data show the lower bound was not larger than the national rate. In fact, the waiver group's overall accident rate was lower than the national rate. Thus, FHWA determined that the waiver group did not represent a threat to public safety.²⁶

Table 1 also presents comparisons between the waiver group and national accident rates relative to accident severity. FHWA routinely investigated serious accidents and violations involving members of the waiver group. "In the case of these accidents, the drivers were not found to be at fault nor were any of the accidents related to a vision deficiency."²⁷ In none of the severity categories did the lower 90 percent confidence bounds of the relevant waiver group rates exceed the respective national rates.

Table 1. Comparison of Accident Rates Experienced by Commercial Motor Vehicle Operators with Vision Waivers to National Accident Rates in Relation to Total Accidents and Accident Severity.

²⁵ Id. at 2.

²⁶ Id. at 2-3.

²⁷ Id. at 3, note.

	Waiver Group Accident Rate¹ (No. of accidents)	90% Confidence Interval (Lower and Upper)		National Accident Rate² (No. of accidents)	
Total Accidents³	1.706 (510)	1.582	1.830	2.605	(444,000)
	Accident Severity				
Property Damage Only	1.284 (384)	1.177	1.392	2.048	(349,000)
Injury Involved	.408 (122)	.347	.469	.534	(95,000)
Fatality Involved	.013 (4)	.002	.024	.026	(4,615)
<p>1 Rate is calculated based on 299 million vehicle miles traveled by the waiver group between July 1992 and November 1995.</p> <p>2 National accident estimates are for large trucks given by the GES 1994, National Highway Traffic Safety Administration. Rate calculated based on 170,415 million vehicle miles traveled in 1994.</p> <p>3. Total accidents experienced by the waiver group between July 1992 and November 1995.</p> <p>Source: FHWA. Office of Motor Carriers. The Seventh Monitoring Report on the Drivers of Commercial Motor Vehicles Who Receive Vision Waivers. Washington, D.C.: U.S. Department of Transportation; February 29, 1996, Table 1.</p>					

A September 1999 FHWA Tech Brief titled “Qualifications of Drivers — Vision and Diabetes”²⁸ summarizes the May 1997 report discussed above. The Tech Brief notes that the report’s risk analysis was performed to support the grandfathering of drivers to permanent waiver status after the vision waiver study program was closed; therefore, the generalizability of the results was limited.

In October 1998, FHWA received a report titled “Visual Requirements and Commercial Drivers” prepared by a panel of medical experts associated with Beth Israel Deaconess Medical Center and Harvard Medical School.²⁹ The report stated that the data obtained from the vision waiver study program was “extremely compelling. The waiver group accident rate was consistently below the national accident rate (cumulative comparison) and for drivers still in the program in August 1995, the waiver group

²⁸ FHWA, Office of Motor Carrier Research and Standards, *Qualifications of Drivers — Vision and Diabetes*, Tech Brief (FHWA-MCRT-99-017), Washington, D.C.: U.S. Department of Transportation, September 1999, available at <https://rosap.nhtl.bts.gov/view/dot/14291> (last accessed July 15, 2019).

²⁹ Berson F, Kuperwaser M, Aiello L, and Rosenberg J., *Visual Requirements and Commercial Drivers*, Final Report, Boston, MA: Beth Israel Deaconess Medical Center and Harvard Medical School, October 16, 1998, available at <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/visionfinalreport10-16-98.pdf> (last accessed July 15, 2019).

accident rate consistently decreased to well below the national accident rate, exceeding the latter only during the first 6 months of the program.”³⁰ The report continued that the program resulted in a useful database that clearly supported a new ongoing waiver program, and provided sufficient rationale for a follow-up study that might modify the current vision requirements for commercial drivers.

In October 2006, FMCSA received a report titled “Medical Exemption Program Study” prepared by Cambridge Systematics, Inc.³¹ This project provided process and outcome information regarding the vision exemption program. The main conclusion of this project was that the vision exemption program did not appear to impact safety negatively on the nation’s highways.³² Additionally, the project found the overall vision exemption program to be effective.

Drivers in the vision exemption program had 20 percent fewer reported collisions than a control set of drivers. Participation in the exemption program was shown to have a 94.4 percent confidence interval of reducing the number of reported collisions attributable to the driver.³³ While most of the analysis compared the exemption program drivers to the entire set of control drivers, one analysis compared a subset of the control drivers who had no reported collisions during the 3 years ending on the “control date” of December 31, 2003, to the exemption program drivers. The analysis showed “little difference in reported collision rate between the program and control sets.”³⁴ Thus, when controlling for previous collision rates over a 3-year period, the collision rates for

³⁰ Id. at 12 (original bolding deleted).

³¹ Cambridge Systematics, Inc., *Medical Exemption Program Study: Preliminary Report of Findings*, Final Report, Chevy Chase, MD: Cambridge Systematics, Inc., October 13, 2006, available at <https://rosap.nhtl.bts.gov/view/dot/16459> (last accessed July 16, 2019).

³² Id. at 7-1.

³³ Id. at 7-1.

³⁴ Id. at 6-14

visually impaired “safe” drivers were not found to be higher than the non-impaired “safe” drivers.³⁵

Cambridge Systematics summarized the findings from the various studies in the scientific literature into a set of key points, and stated that “[a]lmost all of the studies examined in the area of vision deficiencies illustrate similar challenges in the design, implementation, and patterns of their findings.”³⁶ The challenges were summarized as confounding factors, outcome definitions, and impairment definitions. Confounding effect is observed when a factor that is not controlled statistically or by the study design obscures the effect of treatment. Examples of such factors impacting the field of vision and driving were age, driving exposure, and compensating behavior. With respect to compensating behavior, Cambridge Systematics stated that “[i]t is well recognized that visually impaired drivers develop effective compensatory strategies to accommodate their impairments. Therefore, relying on medical test scores and ignoring actual driving performance can easily obscure the treatment effect under study.”³⁷ Traffic safety outcomes may be defined in terms of crashes, violations, crash or violation rates per miles driven, performance in on-road tests and driving simulations, and self-reported incidence involvement rates and other habits. However, because “the relationship between these outcomes is not clearly established, making comparisons across different studies becomes tenuous.”³⁸ Inconsistencies in impairment definitions and measuring can result from incorrect reports of the presence or absence of an eye condition and the different thresholds used to designate subjects as impaired or unimpaired. With respect to monocular drivers being granted commercial licenses, Cambridge Systematics pointed out “[t]he term ‘monocular’ is typically used quite broadly in the research literature on

³⁵ Id. 7-2.

³⁶ Id. at 4-22.

³⁷ Id. at 4-22.

³⁸ Id. at 4-22.

this topic and denotes drivers who have a total absence of function in one eye and additionally those who have visual function in one eye below the minimum level for commercial licensing.”³⁹

In June 2008, FMCSA received the final evidence report titled “Vision and Commercial Motor Vehicle Driver Safety” prepared by the Manila Consulting Group, Inc. and the ECRI Institute.⁴⁰ The evidence report addressed several key questions developed by FMCSA pertaining to vision and CMV driver safety by summarizing the best evidence that was available in the literature. The key question relevant to this proposal was an inquiry to determine whether monocular vision is associated with an increased crash risk. Due to methodological limitations and inconsistency among the findings of different studies, the authors concluded that the evidence was insufficient to determine whether individuals with monocular vision were at increased risk of a crash.⁴¹

The authors identified three studies that provided crash data for drivers with monocular vision in general driver populations. “Because of a number of methodological flaws, [the authors’] confidence in the findings of all three of the studies [was] low. While two studies found no evidence to support the contention that individuals with monocular vision are at an increased risk for a motor vehicle crash, the third study did find an association between monocular vision and increased crash risk. Given the low quality of the included studies and the fact that the findings of these studies were inconsistent, [the authors did] not draw an evidence-based conclusion.”⁴² The authors

³⁹ Id. at 4-12.

⁴⁰ Tregear S, Reed M, Tiller M, and Reston J., *Vision and Commercial Motor Vehicle Driver Safety*, Volume 1: Evidence Report, McLean, VA: Manila Consulting Group, Inc. and Plymouth Meeting, PA: The ECRI Institute, June 6, 2008, available at <https://rosap.ntl.bts.gov/view/dot/16502> (last accessed July 16, 2019).

⁴¹ Id. at 2-3.

⁴² Id. at 3.

stated, however, that “the possibility that individuals with monocular vision have an increased crash risk cannot be ruled out.”⁴³

In March 2008, a medical expert panel made recommendations, titled “Vision and Commercial Motor Vehicle Driver Safety,” associated with the evidence report for the MRB to consider.⁴⁴ With respect to monocular vision, the panel agreed that the current evidence was insufficient to justify a change in the vision standard. The panel noted that the evidence report did not rule out the possibility of increased crash risk for monocular drivers. Nonetheless, the panel stated “that the Exemption Program should be continued and a protocol established to obtain the data necessary for a future recommendation.”⁴⁵

During an April 2008 meeting, the MRB made recommendations to the Agency pertaining to driver vision requirements based on presentations and discussions of the 2008 draft evidence report, the related medical expert panel recommendations, and public comment. With respect to monocular vision, the MRB recommended that “[t]he current standard which precludes individuals with monocular vision from driving a CMV for the purposes of interstate commerce should not be changed at this time.”⁴⁶

In September 2015, the MRB provided recommendations to the Agency in response to MRB Task 15-2, which requested that the MRB recommend criteria and

⁴³ Id. at 3.

⁴⁴ Berson F, Owsley C, and Peli E., *Vision and Commercial Motor Vehicle Driver Safety*, Expert Panel Recommendations, March 14, 2008, available at <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/MEP-Recommendations-Vision-v2-prot.pdf> (last accessed July 16, 2019). The expert panel reviewed a draft of the “Vision and Commercial Motor Vehicle Driver Safety” evidence report. While the expert panel agreed with the findings of the draft evidence report, the panel disagreed with the reasoning for including and excluding several studies. The research team considered the panel’s criticism and agreed to amend the report before it was finalized. The revised executive summary for the 2008 evidence report is Appendix A of the expert panel recommendations report and is included in the final June 2008 evidence report discussed above.

⁴⁵ Id. at 4.

⁴⁶ FMCSA Medical Review Board, Meeting Summary, April 7, 2008, p. 15, available at https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/April_7_MRB_Meeting_Minutes_71708_Final_Updated10108.pdf (last accessed July 16, 2019).

identify factors the Agency should consider in deciding about a future rulemaking regarding vision criteria. The MRB provided the following recommendations:⁴⁷

- I. If FMCSA considers removing the current Visual Exemption program, the MRB recommends the following changes to the vision standard regulations:
 - A. Provide a form/questionnaire to the eye specialist (ophthalmologist or optometrist) that includes all information required by the current Visual Exemption program. Form should be given to the Certified Medical Examiner (CME).
 - B. Length of certification with vision exemption: MRB recommends 1 year but FMCSA should seek comment from eye specialist (ophthalmologist or optometrist) associations on recommended frequency of examination.
- II. FMCSA should seek comment from the eye specialist (ophthalmologist or optometrist) associations regarding:
 - A. Whether there is additional information that would be useful to collect.
 - B. What is the minimum amount of time they would feel comfortable allowing someone to drive who has sudden change from binocular vision? (Current Visual Exemption Program requires a safe driving record with such an eye condition for 3 years.)
 - C. Co-condition/disease process.
 - D. Recommendations on field of vision criteria (e.g., not supposed to be 70° as stated in the current vision standard).

The proposed alternative vision standard incorporates the MRB's 2015 recommendations.

In November 2016, FMCSA published an Analysis Brief⁴⁸ that reviewed the safety performance of drivers in the vision exemption program. The study's purpose was to compare the crash rates of CMV drivers enrolled in the vision exemption program with drivers not enrolled in the program. The Agency assessed drivers in terms of their crash rates and inspection violation rates. FMCSA assessed the safety performance of drivers in the program for 5 years from 2011 through 2015.

⁴⁷ FMCSA Medical Review Board, MRB Task 15-02 Report, September 1, 2015, available at <https://www.fmcsa.dot.gov/final-mrb-task-15-02-report> (last accessed July 16, 2019).

⁴⁸ FMCSA, *Safety Performance of Drivers with Medical Exemptions: How safe are drivers in a medical exemption program compared to those who are not?*, Analysis Brief (FMCSA RRA-16-019b), Washington, D.C.: U.S. Department of Transportation, November 2016, available at <https://rosap.ntl.bts.gov/view/dot/31521> (last accessed July 16, 2019).

Table 2 compares the crash rate for drivers in the vision exemption program to the national crash rate. The data show that the crash rate for drivers in the vision exemption program is lower than the national crash rate.⁴⁹

Table 2. Crash rates for vision exemption program drivers compared to national crash rates, crashes per driver per year, 2011-2015.

Number of Exemption Drivers	Number of Exemption Driver Crashes	Vision Exemption Crash Rate (Crashes per Driver per Year)	National Average Annual Number of Drivers	National Average Annual Number of Crashes	National Crash Rate (Crashes per Driver per Year)
1,117	144	0.02578	4,599,623	143,289	0.03115

The Agency also compared drivers enrolled in the exemption program to a control group that was established using the Driver Information Resource, which captures drivers' driving histories. Drivers were chosen at random and added to the control group in proportion to the age and carrier size of the corresponding exemption program group until the control group contained three times as many drivers as the respective exemption program group. To determine whether any differences in crash rates were statistically significant, FMCSA conducted statistical testing at the 95 percent confidence level.

Table 3 shows the results.⁵⁰

Table 3. Comparison of vision exemption program group and control group crash and violation rates.

Crash or Violation Rates	Number of Exemption Program Group Drivers	Exemption Program Group Crash or Violation Rate	Control Group Crash or Violation Rate	Statistically Significant Difference
Crash Rates	680	0.03853	0.02819	Yes
Violation Rates	680	1.9721	2.4911	Yes
Out-of-Service Violation Rates	680	0.22353	0.29870	Yes

⁴⁹ Id. at 5, Table 5.

⁵⁰ See id. at 5-6, Tables 6-8.

The crash rate for the vision exemption program group was statistically different from its control group, being slightly higher at 0.03853 crashes per driver per year than the control group rate of 0.02819. “This equates to about one more crash per year for every 100 drivers in the vision exemption program than for similar drivers not in the vision exemption program.”⁵¹ The driver violation rate and driver out-of-service violation rate were lower than the control group, with the difference being statistically significant. FMCSA concluded in 2016 that further studies should be done using larger sample sizes to confirm or challenge the results from this study.

There are several limitations regarding the Analysis Brief’s findings. For example, the crash information did not consider whether the CMV driver was at fault in any given crash. It is not possible to know whether visual function caused or contributed to the crash. It also is not possible to determine whether including only those drivers who were in the vision exemption program for the full 5-year period impacted the results, if at all. The control group was selected based on age of the driver and the size of the employing motor carrier, rather than individual visual function criteria.

The Agency finds that the increased crash rate for the vision exemption program group as compared to its control group demonstrated in the Analysis Brief is not cause for concern. The findings of the Analysis Brief represent a limited period and are subject to the additional limitations discussed previously. FMCSA monitors the performance of individual drivers in the vision exemption program continuously. FMCSA does not have evidence to suggest drivers in the exemption program are less safe than the general population of CMV drivers.

Every year the Agency reports to Congress regarding the vision exemptions granted and any impact on safety. The Agency has consistently informed Congress that

⁵¹ Id. at 5.

FMCSA has observed no adverse impacts on CMV safety due to the vision exemption program.⁵²

During its June 2018 meeting, the MRB discussed the MRB Task 15-2 report and was presented draft findings of a study performed by the University of Alabama at Birmingham examining the FMCSA vision standard for CMV drivers. The MRB made no changes to its previous recommendations in MRB Task 15-2.

During its July 2019 meeting, FMCSA updated the MRB on the University of Alabama study. The MRB discussed the draft findings of the study and the vision exemption program. The MRB did not change its MRB Task 15-2 recommendations. The MRB continued the status quo by recommending that FMCSA maintain the current vision standard and continue the vision exemption program. In addition, the MRB recommended that FMCSA investigate shortening the 3-year intrastate driving experience criterion. The MRB also voted to review the vision exemption program at a future meeting when more information is available.⁵³

In November 2019, FMCSA published the University of Alabama at Birmingham report titled “Examining the FMCSA Vision Standard for Commercial Motor Vehicle Drivers” (Ball et al., 2019).⁵⁴ One of the study’s overall objectives was to determine the safety efficacy of FMCSA’s current vision standards. The research team procured a dataset from a third-party provider that included all vision-related data obtained during an

⁵² FMCSA, *Waivers, Exemptions, and Pilot Programs Annual Reports to Congress Fiscal Years 1999-2013*, February 2016, p. 25; Fiscal Year 2014, April 2017, p. 9; Fiscal Year 2015, May 2017, p. 15; Fiscal Year 2016, October 2017, p. 11; and Fiscal Year 2017, September 2018, p. 10. These reports are available at <https://www.fmcsa.dot.gov/mission/policy/reports-congress> (last accessed July 15, 2019).

⁵³ FMCSA Medical Review Board, Meeting Minutes, July 15-16, 2019, p. 3, available at <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2020-08/MRB-meeting-minutes-july-2019-508c.pdf> (last accessed September 2, 2020).

⁵⁴ Ball K, Heaton K, McGwin G, Owsley C, and Stavrinou D., *Examining the FMCSA Vision Standard for Commercial Motor Vehicle Drivers* (Report No. FMCSA-RRR-19-011.), Washington, D.C.: FMCSA, 2019, available at <https://rosap.nhtl.gov/view/dot/42735> (last accessed December 09, 2019).

FMCSA physical qualification examination on nearly 190,000 CMV drivers. The research team merged the data with crash records obtained from the Motor Carrier Management Information System (MCMIS). From the examination dataset, the results of vision function testing, including visual acuity, horizontal field of vision,⁵⁵ color recognition, and monocular vision, were compared for drivers who met the vision standard versus drivers who did not meet the vision standard. Evidence from the literature review, consultation with experts, and analysis of CMV driver vision and crash data supported the measurement of visual acuity and horizontal field of vision using the current cut-points.⁵⁶

As relevant to this proposal, Ball, *et al.* (2019) found that the literature regarding how monocularity impacts driving performance is mixed.⁵⁷ Some studies suggest that monocularity is not related to CMV performance decrements in specific skills such as visual search, lane placement, clearance judgment, gap judgment, hazard detection, and information recognition.⁵⁸ The literature also is mixed with respect to how monocularity impacts motor vehicle collision rates, with several studies finding elevated collision rates or more severe collisions for monocular drivers,^{59,60,61} and another study showing that

⁵⁵ The study uses the term “field of view,” which is synonymous with the FMCSR term “field of vision.” To avoid confusion, the term is replaced in this discussion of the study with “field of vision.”

⁵⁶ FMCSA notes that the study found no evidence that CMV drivers with monocular vision were at increased risk of collision. The Agency is not relying on that finding to support this rulemaking due to limitations set forth in the study relating to the study’s design and dataset.

⁵⁷ *Id.* at 5.

⁵⁸ McKnight AJ, Shinar D, and Hilburn B., “The visual and driving performance of monocular and binocular heavy-duty truck drivers,” *Accident Analysis & Prevention* 23(4), pp. 225-237 (1991). This study was performed under contract to FHWA.

⁵⁹ Dionne G, Desjardins D, Laberge-Nadeau C, and Maag U., “Medical conditions, risk exposure, and truck drivers’ accidents: an analysis with count data regression models,” *Accident Analysis & Prevention* 27(3), pp. 295-305 (1995).

⁶⁰ Laberge-Nadeau C, Dionne G, Maag U, Desjardins D, Vanasse C, and Ékoé J-M., “Medical conditions and the severity of commercial motor vehicle drivers’ road accidents,” *Accident Analysis & Prevention* 28(1), pp. 43-51 (1996).

⁶¹ Maag U, Vanasse C, Dionne G, and Laberge-Nadeau C., “Taxi drivers’ accidents: how binocular vision problems are related to their rate and severity in terms of the number of victims,” *Accident Analysis & Prevention* 29(2), pp. 217-224 (1997).

commercial monocular drivers did not have a higher collision rate than drivers with normal vision in both eyes. In that study (discussed above), FHWA evaluated commercial vehicle drivers who received waivers of the CMV driver vision requirements.⁶² Results indicated that the waiver group's crash rates were not higher than the national reference group, nor were their crashes more severe. Ball, *et al.* (2019) noted, however, that “one limitation of this analysis is that it is unknown whether the reference group was similar to the waiver group on other factors (e.g., age, other visual function measures) that may be related to crash risk.”⁶³

The report continues that findings across studies in the literature are inconsistent with respect to the safety of monocular drivers, which is not surprising given that the definition of monocularity across the studies is not consistent. The definition of “monocular” is variable and can range from the total absence of vision in one eye, to vision in one eye that involves a lack of binocular visual function, such as depth perception, or is below some standard.

FMCSA Conclusions

The foregoing reports and analyses do not call into question the existence of the vision exemption program. As early as 1991, most of the panelists convened by Ketron agreed there was sufficient evidence relating to lowered acuity to change the vision standard to allow monocular drivers or drivers with vision substantially worse in one eye. The 1997 Conwal report showed the vision waiver study program group's overall accident rate was lower than the national rate and FHWA determined the waiver group

⁶² FHWA, Office of Motor Carriers, *The Seventh Monitoring Report on the Drivers of Commercial Motor Vehicles Who Receive Vision Waivers*, Washington, D.C.: U.S. Department of Transportation, February 29, 1996.

⁶³ Ball K, Heaton K, McGwin G, Owsley C, and Stavrinou D., *Examining the FMCSA Vision Standard for Commercial Motor Vehicle Drivers* (Report No. FMCSA-RRR-19-011), Washington, D.C.: FMCSA 2019, p. 5, available at <https://rosap.nhtl.bts.gov/view/dot/42735> (last accessed December 09, 2019).

did not represent an increased risk to public safety. In 1998, a panel of medical experts stated the data from the vision waiver study program was “extremely compelling” and clearly supported a new waiver program.

In 2006, Cambridge Systematics’ review of the vision exemption program concluded the program did not appear to impact safety negatively. The 2008 evidence report found the three studies that provided crash data for drivers with monocular vision in general driver populations were insufficient to determine whether individuals with monocular vision were at increased risk of a crash. Because the report did not provide any conclusions, neither the medical expert panel nor the MRB recommended changing the vision standard. The 2008 medical expert panel recommended that the exemption program continue. The MRB has never recommended that the exemption program end and has continued its 2015 recommendations for FMCSA to consider if it changes the vision standard.

The reports and analyses discussed above do not establish strong relationships between specific measures of vision and correlates of driver safety. They do, however, point out the numerous difficulties associated with obtaining empirical data to determine minimum vision criteria and the methodological flaws associated with many studies evaluating vision criteria and crash risk. Most of the available data come from drivers in general and not CMV drivers specifically. Usually, crash information does not indicate whether the driver was at fault in any given crash. In addition, it is rarely possible to determine whether visual function was the cause of a crash.

Data on the relationship between monocular vision and crash involvement is sparse, conflicting with respect to crash risk, and not definitive. Moreover, the Agency must exercise caution when interpreting the data because of the different definitions of “monocular vision” in the literature.

After full consideration of the foregoing reports and analyses, FMCSA finds the experience with the vision waiver study and exemption programs is most relevant in establishing an alternative vision standard. These programs have allowed FMCSA to evaluate the vision criteria used in the programs since 1992 in the context of actual CMV driving experience. Considering the long period over which the programs have operated, FMCSA has sufficient information to reach generalized conclusions.

FHWA and FMCSA monitored the safety performance of drivers in the vision waiver study and the current exemption programs continuously. Based on the experience with the vision waiver study and exemption programs, FMCSA has determined that the safety performance of individuals in these programs is at least as good as that of the general population of CMV drivers. Indeed, the Agency has continued to grant vision exemptions because experience has shown that individuals with vision loss in one eye are not limited by their lack of binocularity with respect to driving once they have adapted to and compensated for the change in vision.

The Agency's ability to draw on its experience from the vision waiver study and exemption programs to develop modifications of the existing standard is consistent with one of the purposes of the authority provided by the enactment of TEA-21 that established a new process for granting regulatory exemptions in 49 U.S.C. 31315. TEA-21 gave the Agency "broader discretion to grant waivers and exemptions from motor carrier and driver safety regulations which are necessary to develop performance based regulations and evaluate the effectiveness of existing regulations." H. Report 105-550 at 489 (1998).

Accordingly, the Agency proposes to adopt most of the existing vision exemption program criteria and modify other of the criteria as a vision standard to be applied in lieu of the vision exemption program. Therefore, the alternative vision standard would require individuals, to be physically qualified, to have in the better eye distant visual acuity of at

least 20/40 (Snellen) (with or without corrective lenses) and field of vision of at least 70 degrees in the horizontal meridian; the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber; stability of the vision deficiency; and sufficient time to adapt to and compensate for the change in vision. Instead of requiring 3 years of intrastate driving experience with the vision deficiency, with limited exceptions, individuals physically qualified under the proposed alternative vision standard for the first time would complete a road test before operating in interstate commerce. FMCSA expects that individuals who satisfy these criteria would not create an increased risk of injury to themselves or others due to their vision.

VII. RATIONALE FOR PROPOSED QUALIFICATION STANDARD

The Agency proposes to adopt most of the existing vision exemption program criteria and to modify other program criteria as an alternative vision standard. The proposed standard takes a performance-based approach. The standard emphasizes that the individual has developed the skills to adapt to and compensate for the vision loss once it has been deemed stable by a medical professional, and that the individual has demonstrated the skills to operate a CMV safely. The ME would ensure the individual is physically qualified to operate a CMV in accordance with the physical qualification standards. Motor carriers would maintain the responsibility for reviewing the individual's safety performance and, with limited exceptions, would conduct a road test for individuals.

A. Individuals Adapt to and Compensate for Vision Loss

As stated above, it is well recognized that individuals with vision loss in one eye can and do develop compensatory viewing behavior to mitigate the vision loss. Therefore, if an individual meets the proposed vision standard, the Agency expects there will be no adverse impact on safety due to the individual's vision. That is, once an individual's vision is stable and the individual has adapted to and compensated for the

change in vision, the loss in vision is not likely to play a significant role in whether the individual can drive a CMV safely.

Instead of requiring 3 years of intrastate driving experience with the vision deficiency as in the current exemption program, FMCSA proposes that individuals physically qualified under the proposed alternative vision standard for the first time satisfactorily complete a road test before operating in interstate commerce. Individuals would be excepted from the road test requirement if they have 3 years of intrastate or excepted interstate CMV driving experience with the vision deficiency, hold a valid Federal vision exemption, or are medically certified under § 391.64(b). These individuals have already demonstrated they can operate a CMV safely with the vision deficiency.

The requirement for 3 years of intrastate driving experience with the vision deficiency has been equated to sufficient time for the driver to adapt to and compensate for the change in vision. FHWA stated the 3-year safe driving history with the vision deficiency requirement was based on studies “indicating that past experience can be used to predict future performance, especially when combined with other predictive factors such as geographic location, mileage driven, and conviction history” (59 FR 50887, 50888, October 6, 1994). FHWA continued that it relied on opinions from the medical community that individuals with a vision deficiency are often able to compensate for their impairment over time. “Because of the discrepancy as to how much time is necessary to allow an individual to compensate for an impairment (which generally ranged from several months to a full year), [FHWA’s] choice of three years provided added assurance that drivers would have had sufficient time to develop compensatory behavior. It was also the longest period for which driver histories were uniformly available from State motor vehicle departments” (59 FR 50888-89).

Although it was considered appropriate for FHWA to proceed conservatively and to ensure adequate time for individuals to adapt to and compensate for vision changes

when beginning the waiver study program, it appears that the primary factor in selecting the 3 years of intrastate driving experience criterion was that it coincided with the typical period of motor vehicle driving histories. Three years of experience driving with the vision deficiency exceeded by several months to a full year, according to opinions of the medical community, the period necessary to compensate for the vision loss. Eliminating the driving experience criterion would not allow potentially hazardous drivers to participate in interstate commerce because medical professionals would ensure drivers have had the time to adapt to and compensate for the vision change. The driving experience criterion has the limitation that many drivers are not able to obtain intrastate driving experience because not all States issue vision waivers. For these reasons, FMCSA is not proposing to continue the exemption program's requirement for 3 years of intrastate driving experience with the vision deficiency in the alternative vision standard. Nonetheless, it is reasonable to ensure an individual possesses the skills needed to operate a CMV safely with the vision deficiency.

As an alternative to the 3 years of intrastate driving experience criterion, FMCSA proposes, with limited exceptions, that individuals physically qualified under the alternative vision standard for the first time satisfactorily complete a road test before operating in interstate commerce. The road test would be conducted in accordance with the road test already required by § 391.31. When FHWA adopted the road test in § 391.31, it stated that the interests of CMV safety would be promoted by ensuring drivers have demonstrated their skill by completing the road test (35 FR 6458, 6450 (April 22, 1970)). FMCSA finds that a road test would be an appropriate indicator of an individual's ability to operate a CMV safely with the vision deficiency. Thus, the Agency expects there will be no adverse impact on safety from eliminating the intrastate driving experience criterion.

The proposed alternative vision standard also would not continue the 3-year safe driving history criterion. Selecting only drivers with a history of safe driving to participate in the vision waiver study program allowed FHWA to focus on the impact of vision on driving. After nearly 30 years with the vision waiver study and exemption programs, experience has shown that individuals with vision loss in one eye are not limited by their lack of binocularity with respect to driving once they have adapted to and compensated for the change in vision. Accordingly, the 3-year safe driving history criterion has served its purpose and is no longer necessary.

FMCSA declines to propose specific periods for which an individual's vision deficiency must be stable and for what constitutes sufficient time to adapt to and compensate for the change in vision. The causes of vision loss are many and varied. Vision loss may be present at birth, the result of trauma, due to medical treatment intervention, or the result of a progressive eye condition or disease. The cause of the vision loss is a primary factor in how long it takes for an individual to adapt to and compensate for the change in vision. In general, those who experience sudden loss of vision in one eye require more time to adapt to and compensate for the change than those who lose their vision gradually. For example, Coday, *et al.* (2002) found the time for patients to adapt to sudden vision loss was 8.8 months and to adapt to gradual vision loss was 3.6 months.⁶⁴

Therefore, the Agency proposes that medical decisions regarding whether an individual's vision deficiency is stable and whether the individual has adapted to and compensated for the change in vision be made by medical professionals. These medical

⁶⁴ Coday MP, Warner MA, Jahrlin KV, and Rubin PA, "Acquired Monocular Vision: Functional Consequences from the Patient's Perspective," *Ophthalmic Plastic and Reconstructive Surgery*, 18(1), pp. 56-63 (2002), available at <https://www.ncbi.nlm.nih.gov/pubmed/11910326> (last accessed March 24, 2020).

decisions should be based on an individualized assessment by a medical professional rather than a regulation.⁶⁵

B. MEs Would Make the Qualification Determination

The proposed alternative vision standard would place the case-by-case physical qualification determination with the ME who examines the individual, which is consistent with FMCSA's rule to adopt an alternative physical qualification standard for individuals with insulin-treated diabetes mellitus (see 83 FR 47486, September 19, 2018). Thus, licensed healthcare professionals listed on the Agency's National Registry of Certified Medical Examiners (National Registry) would consider the information in the Vision Evaluation Report, Form MCSA-5871, and determine whether an individual meets the proposed vision standard. This approach of MEs making the physical qualification determination, instead of FMCSA, is consistent with Congress's directive in 49 U.S.C. 31149(d) to have trained and certified MEs assess the individual's health status. In addition, the proposed process would create a clear and consistent framework to assist MEs with making a physical qualification determination that is equally as effective as a program based entirely on granting exemptions under 49 U.S.C. 31315(b).

C. Review of an Individual's Safety Performance Would Continue

FMCSA is not proposing to change the current regulations that require motor carriers to review an individual's safety performance. FMCSA has regulatory requirements in place to ensure that motor carriers review the safety performance of all

⁶⁵ On December 18, 2013, FMCSA proposed changes to the eligibility requirements for the exemption program. As relevant here, FMCSA proposed to reduce the length of driving experience to 1 year of intrastate driving experience with the stable visual deficiency or to remove the driving experience criterion altogether (78 FR 76590, 76592). The American Optometric Association supported removing the requirement for a specific amount of driving experience, in part, because an examination by an ophthalmologist or optometrist within the prior 3 months from the date of application would help to assess whether the driver had experienced recent vision deterioration. This comment is available in docket number FMCSA-2013-0097 at <https://www.regulations.gov/document?D=FMCSA-2013-0097-0004> (last accessed March 13, 2020).

their drivers. For example, motor carriers are required to review both the motor vehicle records and the safety performance history, which must include accident information, from previous employers for the prior 3 years when hiring a driver (49 CFR 391.23(a) and (d)). Also, motor carriers are required to review the motor vehicle records for all drivers annually (49 CFR 391.25). In addition, the road test would demonstrate whether individuals are able to operate a CMV safely with the vision deficiency.

As previously stated, the 3-year safe driving history criterion has served its purpose and is no longer necessary. Accordingly, the safety performance of individuals who can satisfy the proposed alternative vision standard should be evaluated in the same manner as other drivers.

VIII. DISCUSSION OF PROPOSED RULE

FMCSA elects to respond to the MRB's request to investigate shortening the 3-year intrastate driving experience criterion and to provide more information about the vision exemption program by publishing this NPRM and proposing a rule that includes the MRB's 2015 recommendations. This approach provides the MRB with background on the exemption program, summaries of prior reports and analyses, a specific proposal and its rationale to consider, and public comment on the proposal.⁶⁶ As noted above, the Agency will follow a rulemaking process like the one used when FMCSA adopted the alternative physical qualification standard for insulin-treated diabetes mellitus. After the public comment period closes, FMCSA will ask the MRB to review all comments to the

⁶⁶ FMCSA notes that proceeding with an NPRM is also responsive to stakeholder comment. For example, in the rulemaking to change the physical qualification standard relating to insulin-treated diabetes mellitus, the American Trucking Associations, Inc. ("ATA") commented that it was pleased that FMCSA was using the rulemaking process to adjust that standard. Additionally, ATA "implore[d] FMCSA to also conduct rulemaking on its other 'absolute' medical standards for which it is currently issuing exemptions en masse including the vision and hearing standards." ATA continued that "[e]xemptions from these medical standards only create confusion in the industry as to what constitutes a medically safe driver and what does not. It also creates an unnecessary, but easily solvable, predicament for motor carriers." This comment is available in docket number FMCSA-2005-23151 at <https://www.regulations.gov/document?D=FMCSA-2005-23151-0960> (last access March 13, 2020).

NPRM from medical professionals and associations. If after that review the MRB makes material changes to its prior recommendations in MRB Task 15-2, FMCSA will publish a *Federal Register* notice announcing the availability of the new MRB recommendations and request public comment specific to those recommendations.

FMCSA proposes to establish an alternative physical qualification standard for individuals who cannot satisfy either the distant visual acuity or field of vision standard, or both, in § 391.41(b)(10) in one eye. If adopted, the alternative vision standard would replace the current vision exemption program as a basis for determining the physical qualification of these individuals to operate a CMV. It also would eliminate the need for the grandfather provisions under § 391.64(b). The proposed alternative vision standard would enhance employment opportunities and reduce the paperwork burden for drivers, while remaining consistent with FMCSA's safety mission.

Specifically, the Agency proposes to adopt most of the existing vision exemption program criteria and modify other of the criteria as a vision standard to be applied in lieu of the vision exemption program. The alternative vision standard would require individuals, to be physically qualified, to have in the better eye distant visual acuity of at least 20/40 (Snellen) (with or without corrective lenses) and field of vision of at least 70 degrees in the horizontal meridian; the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber; stability of the vision deficiency; and sufficient time to adapt to and compensate for the change in vision. With limited exceptions, FMCSA also would require individuals physically qualified under the proposed alternative vision standard for the first time to complete a road test administered by the motor carrier satisfactorily before operating in interstate commerce.

A. Proposed Physical Qualification Process

FMCSA proposes a two-step process for physical qualification. The process would be analogous to what the Agency adopted in § 391.46 for individuals with insulin-

treated diabetes mellitus (see 83 FR 47486, September 19, 2018). First, an individual seeking physical qualification would obtain a vision evaluation from an ophthalmologist or optometrist who would record the findings and provide specific medical opinions on the proposed Vision Evaluation Report, Form MCSA-5871, which incorporates the recommendations of the MRB. Next, at a physical qualification examination, an ME would consider the information provided on the vision report and exercise independent medical judgment to determine whether the individual meets the proposed vision standard, as well as FMCSA's other physical qualification standards. If the ME determines that the individual meets the physical qualification standards to operate a CMV safely, the ME could issue an MEC, Form MCSA-5876, for a maximum of 12 months.

FMCSA is not proposing changes to the current vision standard found in § 391.41(b)(10). The current standard would be redesignated as paragraph (b)(10)(i). An alternative vision standard would be added in paragraph (b)(10)(ii) to allow an individual who cannot satisfy either the distant visual acuity or field of vision standard, or both, in one eye to be physically qualified if the individual satisfies the requirements of proposed § 391.44.

Proposed § 391.44 would set forth the provisions of the alternative vision standard. It would provide that an individual who cannot satisfy either the current distant visual acuity or field of vision standard, or both, in one eye is physically qualified to operate a CMV in interstate commerce if the individual (1) meets FMCSA's other physical qualification standards in § 391.41 (or has an exemption or skill performance evaluation certificate, if required), and (2) has the vision evaluation and medical examination required by § 391.44.

Individuals would be evaluated by a licensed ophthalmologist or optometrist no more than 45 days before each annual or more frequent examination by an ME. Even

individuals who have a non-functional eye or have lost an eye would be required to undergo vision evaluations at least annually. Because of the potential for vision changes in the remaining eye, it is important to monitor that eye's compliance with the vision standard.

During the vision evaluation, the ophthalmologist or optometrist would complete the proposed Vision Evaluation Report, Form MCSA-5871. The report's instructions to the ophthalmologist or optometrist state that completion of the report does not imply that the ophthalmologist or optometrist is making a decision to qualify the individual to drive a CMV. The instructions state further that any determination as to whether the individual is physically qualified to drive a CMV will be made by an ME.

The Agency is aware that the definition of "monocular vision" varies; therefore, the proposed Vision Evaluation Report, Form MCSA-5871, includes FMCSA's definition of the term. The report defines monocular vision as (1) in the better eye, distant visual acuity of at least 20/40 (with or without corrective lenses) and field of vision of at least 70 degrees in the horizontal meridian, and (2) in the worse eye, either a distant visual acuity of less than 20/40 (with or without corrective lenses) or field of vision of less than 70 degrees in the horizontal meridian, or both. FMCSA's monocular vision definition has been applied consistently for nearly 30 years.

The proposed Vision Evaluation Report, Form MCSA-5871, includes instructions to the individual regarding the timeframe for providing the report to the ME. The individual would be required to begin the physical qualification examination no later than 45 calendar days after the ophthalmologist or optometrist signs and dates the report, after which time the Vision Evaluation Report is no longer valid. This timeframe would ensure the ME is receiving the results of a recent vision evaluation.

The Vision Evaluation Report, Form MCSA-5871, collects the individual's name, date of birth, driver's license number, and State of issuance. In addition, the report collects the following information:

- (1) Whether the individual completing the report is an ophthalmologist or an optometrist;
- (2) The date of the vision evaluation;
- (3) The distant visual acuity in each eye (corrected and uncorrected), and, if corrected, the type of correction;
- (4) The field of vision, including central and peripheral fields in each eye, utilizing a testing modality that tests to at least 120 degrees in the horizontal. A formal perimetry test interpreted in degrees is required and must be attached to the report;
- (5) Whether the individual can recognize red, green, and amber colors;
- (6) The date of the last comprehensive eye examination;
- (7) Whether the individual has monocular vision as defined by FMCSA;
- (8) The cause of the monocular vision;
- (9) When the monocular vision began;
- (10) The current treatment for the monocular vision;
- (11) A medical opinion regarding whether the vision deficiency is stable;
- (12) A medical opinion regarding whether sufficient time has passed to allow the individual to adapt to and compensate for the change in vision; and
- (13) Information regarding progressive eye conditions and diseases, including the date of diagnosis, severity, current treatment, whether the condition is stable, and a medical opinion regarding whether a vision evaluation is required more often than annually, and if so, how often.

The report requires the individual completing the report to attest that the individual is an ophthalmologist or optometrist and that the information provided is true and correct to the best of the individual's knowledge. The report includes the date, printed name and medical credential of the ophthalmologist or optometrist, signature, professional license number and issuing State, phone number, and email and street addresses. The report would be available on FMCSA's website.

The draft Vision Evaluation Report, Form MCSA-5871, is available in the docket for this rulemaking. The Agency seeks public comment on the substance and form of the report, as well as the four questions posed in section XI.G. below, relating to the information collection titled "Medical Qualification Requirements," regarding FMCSA's

request for OMB approval of the report and related information collection under the Paperwork Reduction Act.

Under the proposed regulation, the individual examined, ophthalmologist, or optometrist could provide the signed report to an ME. An ME would have to receive a completed report for each examination of an individual needing evaluation under § 391.44. A report would be considered complete when a response is provided to all data fields and the ophthalmologist or optometrist signs, dates, and provides his or her full name, office address, and telephone number on the report. The report would be treated as part of the Medical Examination Report Form, MCSA-5875, and would be retained by the ME for at least 3 years from the date of the examination as required by 49 CFR 391.43(i).

Under the alternative vision standard, an individual would be medically examined and certified by an ME at least annually as physically qualified to operate a CMV. The ME would determine whether the individual meets the physical qualification standards in § 391.41. In making that determination, the ME would consider the information in the Vision Evaluation Report, Form MCSA-5871, and utilize independent medical judgment to apply the following four standards proposed in § 391.44:

- (1) The individual would not be physically qualified to operate a CMV if in the better eye the distant visual acuity is not at least 20/40 (Snellen), with or without corrective lenses, and the field of vision is not at least 70 degrees in the horizontal meridian.
- (2) The individual would not be physically qualified to operate a CMV if the individual is not able to recognize the colors of traffic signals and devices showing standard red, green, and amber.
- (3) The individual would not be physically qualified to operate a CMV if the individual's vision deficiency is not stable.
- (4) The individual would not be physically qualified to operate a CMV if there has not been sufficient time to allow the individual to adapt to and compensate for the change in vision.

The ME would consider the data and medical opinions provided by the ophthalmologist or optometrist to assist in making a qualification determination. The

Vision Evaluation Report, Form MCSA-5871, should include sufficient information for the ME to determine whether the opinions expressed by the ophthalmologist or optometrist appear informed and appropriate.

Consistent with current practice for any medical condition, if the ME determines that additional information is necessary to make the qualification determination, the ME could confer with the ophthalmologist or optometrist for additional information concerning the individual's related vision medical history and status, make requests for other appropriate referrals, or request medical records from the individual's treating provider, all with appropriate consent. Because the ME is knowledgeable about the physical requirements to operate a CMV and the physical qualification regulations, the ME would continue to determine whether an individual meets FMCSA's physical qualification standards.

In addition to adding the alternative vision standard in § 391.44, the proposed rule would add a paragraph in § 391.45 that would require individuals physically qualified under proposed § 391.44 to be medically examined and certified at least annually. As with any individual, an ME would have discretion to certify an individual for less than the maximum year if medical conditions warrant.

B. Road Test in Accordance with 49 CFR 391.31

With limited exceptions, FMCSA proposes that individuals physically qualified under the alternative vision standard for the first time must successfully complete a road test before operating a CMV in interstate commerce. The road test would demonstrate individuals are able to operate a CMV safely with the vision deficiency. Once an individual is physically qualified under § 391.44 for the first time and receives an MEC, Form MCSA-5876, the individual would consult § 391.44(d) to determine whether a road test may be required. The ME issuing the MEC, Form MCSA-5876, would have no role with respect to the road test.

Paragraph (d)(1) would provide the general rule that, subject to limited exceptions, an individual physically qualified under § 391.44 for the first time could not drive a CMV until the individual has successfully completed a subsequent road test and has been issued a certificate of driver's road test in accordance with § 391.31. Such an individual would be required to inform the motor carrier responsible for completing the road test under § 391.31(b) when the individual is required by § 391.44(d) to have a road test. Motor carriers would conduct the road test and issue a certificate of driver's road test in accordance with § 391.31(b) through (g). Motor carriers are currently required to conduct a road test under § 391.31 when they hire a new driver, subject primarily to exceptions in § 391.33. Therefore, many motor carriers and drivers are already familiar with the road test and related documentation requirements.

Section 391.31(b) provides the road test must be given by the motor carrier employing the individual or a person designated by the motor carrier. If the individual is also a motor carrier (e.g., an owner-operator), the road test must be given by a person other than the individual. The road test must be given by a person competent to evaluate and determine whether the individual taking the test demonstrated that the individual is capable of operating the CMV, and associated equipment, the motor carrier intends to assign to the individual for operation.

The road test also must be of sufficient duration to enable the person giving it to evaluate the skill of the individual taking it at handling the CMV, and associated equipment, the motor carrier intends to assign to the individual (49 CFR 391.31(c)). At a minimum, the road test must include:

- (1) The pre-trip inspection required by § 392.7;
- (2) Coupling and uncoupling of combination units (if the equipment the individual may drive includes combination units);
- (3) Placing the CMV in operation;
- (4) Use of the CMV's controls and emergency equipment;
- (5) Operating the CMV in traffic and while passing other motor vehicles;
- (6) Turning the CMV;
- (7) Braking and slowing the CMV by means other than braking; and

(8) Backing and parking the CMV.

The motor carrier provides a road test form on which the person giving the road test rates the individual taking it at each operation that is a part of the test. The person giving the test signs the form once it is complete (49 CFR 391.31(d)). If the road test is successfully completed, the person giving it completes a certificate of driver's road test in substantially the form prescribed in § 391.31(f) (49 CFR 391.31(e)). A copy of the certificate of driver's road test is given to the individual tested (49 CFR 391.31(g)). The motor carrier retains in the individual's driver qualification file the original of the signed road test form and the original, or a copy, of the certificate of driver's road test (49 CFR 391.31(g)(1) and (2)).

The Agency seeks public comment on the information collection associated with the § 391.31 road test, particularly as required by proposed § 391.44 and the exception to the road test for intrastate and excepted interstate drivers discussed below. The information collection titled "391.31 Road Test Requirement" is described in section XI.G. below regarding FMCSA's request for OMB approval of the information collection under the Paperwork Reduction Act. Also, the draft supporting statement for the information collection is available in the docket for this rulemaking.

Paragraph (d)(2) would provide that the alternatives to a § 391.31 road test in § 391.33 do not apply to individuals required to have a road test by § 391.44(d). Accordingly, a motor carrier could not accept certain CDLs or a copy of a certificate of driver's road test issued within the preceding 3 years as an alternative to the required road test. However, after an individual required to have a road test by § 391.44(d) successfully completes a road test and is issued a certificate of driver's road test in accordance with § 391.31 once, the provisions of § 391.33 would apply to the individual as they would normally operate. FMCSA notes that motor carriers always have the option to require any individual to take a road test as a condition of employment (see 49 CFR 391.33(c)).

Paragraphs (3), (4), and (5) of § 391.44(d) would provide exceptions to the general requirement for a road test. These individuals would be excepted because they have already demonstrated they can operate a CMV safely with the vision deficiency. Accordingly, a road test would not be necessary.

Paragraph (3) would except an individual from the road test requirement if the motor carrier determines the individual possessed a valid CDL or non-CDL to operate, and did operate, a CMV in either intrastate commerce or in interstate commerce excepted by § 390.3T(f) or § 391.2 from the requirements of 49 CFR part 391, subpart E, with the vision deficiency for the 3-year period immediately preceding the date of physical qualification under § 391.44 for the first time. To qualify for the exception, the individual would certify in writing to the motor carrier the date the vision deficiency began. The motor carrier would review employment information to determine whether the individual operated a CMV for the required 3 years with the vision deficiency. Many motor carriers would use employment information obtained when investigating the individual's safety performance history from previous employers for the prior 3 years when hiring a driver, as required by § 391.23(a)(2) and (d).

If the motor carrier determines the individual operated a CMV in intrastate or excepted interstate commerce with the vision deficiency for the required 3 years, the motor carrier would prepare a written statement to that effect with the finding that the individual is not required by § 391.44(d) to complete a road test. A copy of the written statement would be provided to the individual. The motor carrier would retain the original of the written statement and the original, or a copy, of the individual's certification regarding the date the vision deficiency began in the driver qualification file. Section 391.51, which provides what documents must be included in a driver qualification file, would be amended to include the written statement and certification.

Paragraphs (4) and (5) of § 391.44(d), respectively, would except individuals holding a valid Federal vision exemption or medically certified under § 391.64(b) on the effective date of any final rule from the requirement to have a road test. Such individuals would not be required to inform the motor carrier that they are excepted from the requirement in § 391.44(d)(1) to have a road test.

The development of this proposed rule provided FMCSA with the opportunity to review § 391.31 in the context of current privacy considerations. Section 391.31(e) provides that, if the road test is successfully completed, the motor carrier must complete a certificate of driver's road test "substantially" in the form prescribed in paragraph (f). Paragraph (f) provides a Certification of Road Test that lists, in part, the driver's social security number, the driver's license number, and the State of issuance of the driver's license. Because the road test is completed when hiring a driver, the motor carrier already would have collected this information on other employment documents. The motor carrier also would have verified the identity of the driver and that the driver has a driver's license. Accordingly, FMCSA proposes to remove this information from the list in paragraph (f) because it is unnecessary and duplicative.

C. Elimination of Vision Exemption Program and Grandfather Provisions

The proposed rule would eliminate the need for the current vision exemption program and the grandfather provisions of § 391.64(b). As discussed above in the background section of this NPRM, drivers who participated in the Agency's vision waiver study program and were holding valid waivers from the vision standard on March 31, 1996 could continue to operate in interstate commerce under the grandfather provisions of § 391.64(b). If the proposed rule is adopted, the Agency believes the grandfathering provisions would be redundant. Therefore, FMCSA proposes that the approximately 1,900 individuals physically qualified under § 391.64(b) would have 1 year after the effective date of any final rule to comply with the rule. During that

transition year, grandfathered individuals could elect to seek physical qualification through the final rule or § 391.64. This transition year would provide time to learn the new process for individuals whose MEC, Form MCSA-5876, expires near the time any final rule becomes effective. However, 1 year after the effective date of the final rule all MECs, Form MCSA-5876, issued under § 391.64(b) would become void.

FMCSA anticipates that individuals physically qualified under § 391.64(b) would not be adversely affected by the proposed action. Grandfathered drivers are already required to obtain annual vision evaluations performed by an ophthalmologist or optometrist before their physical qualification examinations and the proposed rule includes similar qualification criteria. However, FMCSA seeks public comment regarding whether the proposed alternative vision standard would adversely affect any driver who is operating currently under § 391.64(b).

Similarly, the 2,566 vision exemption holders would have 1 year after the effective date of any final rule to comply with the rule, at which time all exemptions issued under 49 U.S.C. 31315(b) would become void. Drivers who hold a vision exemption would be notified by letter with details of the transition to the new standard.

D. Change to the Medical Examination Process in 49 CFR 391.43(b)(1)

The Agency proposes to amend § 391.43(b)(1) by adding an ophthalmologist as a category of eye care professional who may perform the part of the physical qualification examination that involves visual acuity, field of vision, and the ability to recognize colors. Currently, the provision is limited to licensed optometrists. When § 391.43(a) was adopted in 1970, it provided that the medical examination must be performed by a doctor of medicine or osteopathy, which allowed an ophthalmologist to perform any part of the examination (35 FR 6458, 6463, April 22, 1970). An exception was provided in paragraph (b) to allow optometrists to perform the part of the medical examination that involves visual acuity, field of vision, and the ability to recognize colors. Section 391.43

has been amended several times since 1970 and now provides that the medical examination must be performed by an ME listed on the National Registry. The Agency did not amend § 391.43 at the time of the prior amendments to continue to allow ophthalmologists to perform the vision portion of the medical examination. Accordingly, the proposed rule would correct that oversight.

E. Benefits of the Proposal to Drivers

The physical qualification process proposed in § 391.44 would eliminate the need for individuals to obtain and renew an exemption. Drivers would no longer be required to create and assemble the substantial amount of information and documentation necessary to apply for or renew an exemption, or to respond to subsequent requests for information.⁶⁷ Publishing personal and medical information in the *Federal Register* and seeking public comment about drivers would be discontinued. Also, individuals would no longer be required to carry a copy of the vision exemption when on duty as required by § 391.41(a)(1)(ii) and (2)(iii) or provide a copy to their employers.

Eliminating the prohibition on certifying individuals who cannot meet either the current visual acuity or field of vision standard, or both, in one eye (without an exemption) would enable more qualified individuals to operate as interstate CMV drivers without compromising safety. The criterion that an individual should have 3 years of experience driving a CMV with the vision deficiency precludes many individuals from being eligible to obtain a Federal exemption. The only way for an individual to get the CMV driving experience is to obtain intrastate driving experience. To do that, the individual must obtain a State vision waiver to operate in intrastate commerce, but not all

⁶⁷ As discussed below in the Paperwork Reduction Act section XI.G. regarding the Medical Qualification Requirements information collection, FMCSA attributes 2,236 annual burden hours at a cost of \$69,136 for drivers to obtain and maintain a vision exemption. The proposed rule would eliminate this entire burden.

States issue vision waivers.⁶⁸ The road test alternative addresses this limitation and is much less burdensome than obtaining 3 years of intrastate driving experience. Thus, the proposed rule would provide an opportunity to operate as an interstate CMV driver regardless of the driver's State of domicile. Individuals who live in a State that issues vision waivers also would be able to begin a career as an interstate CMV driver more quickly and may have more employment opportunities.

Previously qualified interstate CMV drivers who are no longer able to meet either the distant visual acuity or field of vision standard, or both, in one eye would be able to return to operating interstate sooner. Currently, such individuals would have to obtain 3 years of intrastate CMV driving experience, assuming they lived in a State that offers vision waivers, once their vision is stable and they have had time to adapt to and accommodated for the change in their vision before they would be eligible to obtain a Federal exemption and return to interstate driving.

IX. SECTION-BY-SECTION ANALYSIS

This section includes a summary of the proposed changes to 49 CFR part 391. The regulatory changes proposed will be discussed first in numerical order, followed by a discussion of proposed changes to Agency guidance.

A. Regulatory Provisions

Section 391.31 Road Test

In § 391.31, paragraph (f) would be amended by removing the entries for the driver's social security number, the driver's license number, and the State of issuance of

⁶⁸ The fact that some States have vision waiver programs for intrastate CMV drivers provides additional evidence that individuals who cannot meet either FMCSA's distant visual acuity or field of vision standard, or both, in one eye are driving safely in intrastate commerce. When FMCSA proposed changes to the eligibility requirements for the exemption program in December 2013, an individual commented that he did not understand why FMCSA requires driving experience when his State issues a waiver without driving experience. The comment is available in docket number FMCSA-2013-0097 at <https://www.regulations.gov/document?D=FMCSA-2013-0097-0003>.

the driver's license from the Certification of Road Test. A new paragraph (h) would be added that provides OMB reviewed the information collection requirements in § 391.31 and assigned an OMB control number.

Section 391.41 Physical Qualifications for Drivers

In § 391.41(b)(10), the current vision standard would be renumbered as paragraph (b)(10)(i) without any textual changes. An alternative standard would be added in paragraph (b)(10)(ii) that would allow an individual who cannot satisfy either the current distant visual acuity or field of vision standard, or both, in one eye to be physically qualified under proposed § 391.44.

Section 391.43 Medical Examination; Certificate of Physical Examination

In § 391.43(b)(1), an ophthalmologist would be added as a category of eye care professional who may perform the part of the physical qualification examination that involves visual acuity, field of vision, and the ability to recognize colors. Textual changes also would be made to improve readability.

Section 391.44 Physical Qualification Standards for an Individual Who Cannot Satisfy Either the Distant Visual Acuity or Field of Vision Standard, or Both, in One Eye

A new § 391.44 would be added.

Paragraph (a) would apply so an individual who cannot satisfy either the current distant visual acuity or field of vision standard, or both, in one eye can be physically qualified to operate a CMV in interstate commerce. Such an individual would be physically qualified if the individual meets the other physical qualification standards in § 391.41(b) (or has an exemption or skill performance evaluation certificate, if required), and has the vision evaluation and medical examination required by paragraphs (b) and (c), respectively.

Paragraph (b) would require the individual to have a vision evaluation completed by a licensed ophthalmologist or optometrist before each physical qualification

examination. The ophthalmologist or optometrist would complete the proposed Vision Evaluation Report, Form MCSA-5871, during the individual's evaluation, including signing and dating the report and providing business contact information.

Paragraph (c) would set forth the requirements for the ME's examination, including that the examination must begin no later than 45 days after the ophthalmologist or optometrist signs and dates the Vision Evaluation Report, Form MCSA-5871. The ME would have to receive a completed report for each examination of an individual needing evaluation under § 391.44. The report would be treated and retained as part of the Medical Examination Report Form, MCSA-5875. The ME would make a physical qualification determination by considering the information in the Vision Evaluation Report, Form MCSA-5871, and using independent medical judgment in applying four standards. The standards would provide that the individual must (1) have in the better eye distant visual acuity of at least 20/40 (Snellen), with or without corrective lenses, and field of vision of at least 70 degrees in the horizontal meridian; (2) be able to recognize the colors of traffic signals and devices showing standard red, green, and amber; (3) have a stable vision deficiency; and (4) have had sufficient time to adapt to and compensate for changes in vision.

Paragraph (d) would provide an individual physically qualified under § 391.44(d) for the first time could not drive a CMV until the individual has successfully completed a road test subsequent to physical qualification and has been issued a certificate of driver's road test in accordance with § 391.31. A motor carrier could not accept in place of a road test required by § 391.44(d) the alternatives provided in § 391.33. Individuals would be excepted from the road test requirement if they had a valid license and operated in intrastate or excepted interstate commerce with the vision deficiency for the 3-year period immediately preceding the date of physical qualification under § 391.44 for the first time,

or held a valid Federal vision exemption or were medically certified under § 391.64(b) on the effective date of any final rule.

Section 391.45 Persons Who Must be Medically Examined and Certified

Section 391.45 would be amended by renumbering existing paragraphs (f) and (g) as paragraphs (g) and (h), respectively. A new paragraph (f) would be added to require any driver certified under proposed § 391.44 to be recertified at least every 12 months. Conforming changes would be made in paragraph (b) to reflect the addition of a new paragraph to this section.

Section 391.51 General Requirements for Driver Qualification Files

Conforming changes would be made to § 391.51. Paragraph (b)(3) would be amended to include in the driver qualification file the original of the written statement from the motor carrier required by § 391.44(d)(3)(ii)(A), as well as the original, or a copy, of the certification from the driver required by § 391.44(d)(3)(i).

Section 391.64 Grandfathering for Certain Drivers Who Participated in the Vision Waiver Study Program

FMCSA would revise the title of § 391.64 to reflect that the regulation is now applicable only to drivers who participated in the vision waiver study program. Language would be inserted at the beginning of existing paragraph (b) to provide that any final rule resulting from this NPRM would not apply to individuals certified pursuant to § 391.64(b) until 1 year after the effective date of the rule. During that year, individuals certified under the grandfather provisions could choose to be certified under § 391.64(b) or the final rule. A new paragraph (b)(4) would be added to remove and void all of paragraph (b) 1 year after the effective date of the final rule; thus, eliminating certification under § 391.64(b). Paragraph (b)(4) would provide that any MEC, Form MCSA-5876, issued under the provisions of § 391.64(b) would become void 1 year after the effective date of the final rule. In addition, instructions would be provided to remove

and reserve § 391.64 1 year after the effective date of the final rule. Cross references to § 391.64 in existing regulations would be eliminated in future rulemakings.

B. Guidance Statements and Interpretations

This rulemaking proposes to amend a regulation that has associated guidance statements or interpretations. Such guidance statements do not have the force and effect of law and are not meant to bind the public in any way. They are intended only to provide clarity to the public regarding existing requirements under the law or FMCSA policies. Guidance statements will not be relied on by FMCSA as a separate basis for affirmative enforcement action or other administrative penalty. Conformity with guidance statements is voluntary, and nonconformity will not affect rights and obligations under existing statutes or regulations. Rather, guidance is strictly advisory and intended to provide information that helps to support the application of the standards in the regulations or to serve as a reference. A guidance statement does not alter the meaning of a regulation.

Appendix A to Part 391—Medical Advisory Criteria

Appendix A to Part 391 is published at the end of part 391 in the CFR. The appendix contains guidelines in the form of Medical Advisory Criteria to help MEs assess a driver's physical qualification to operate a CMV under the standards set forth in § 391.41(b). FMCSA proposes to remove section II. J., *Vision*: § 391.41(b)(10), of Appendix A to Part 391 in its entirety.

Interpretations for § 391.41

Interpretations for specific regulations are available through the Guidance Portal on FMCSA's website. FMCSA proposes to revise the guidance to Question 3 of the interpretations for § 391.41.⁶⁹ FMCSA would conform the language to the number of medical conditions that would not be subject to an ME's judgment (i.e., two), and remove

⁶⁹ See <https://www.fmcsa.dot.gov/medical/driver-medical-requirements/what-are-physical-qualification-requirements-operating-cmv> (last accessed August 20, 2020).

“vision” from the list of conditions for which an ME has no discretion. The interpretative guidance for Question 3 would thus read as follows:

Question 3: What are the physical qualification requirements for operating a CMV in interstate commerce?

Guidance: The physical qualification regulations for drivers in interstate commerce are found at § 391.41. Instructions to medical examiners performing physical examinations of these drivers are found at § 391.43.

The qualification standards cover 13 areas, which directly relate to the driving function. All but two of the standards require a judgment by the medical examiner. A person’s qualification to drive is determined by a medical examiner who is knowledgeable about the driver’s functions and whether a particular condition would interfere with the driver’s ability to operate a CMV safely. In the case of hearing and epilepsy, the current standards are absolute, providing no discretion to the medical examiner. However, drivers who do not meet the current requirements may apply for an exemption as provided by 49 CFR part 381.

X. INTERNATIONAL IMPACTS

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations. Pursuant to the terms of the 1998 medical reciprocity agreement with Canada, the United States would notify Canada if an alternative vision standard is adopted and propose the countries review their applicable vision standards to determine whether they remain equivalent.

XI. REGULATORY ANALYSES

A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulations

FMCSA performed an analysis of the impacts of the proposed rule and determined it is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, October 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), Improving Regulation and Regulatory Review. Accordingly, OMB has not reviewed it under that Order. It is also not significant within the meaning of DOT regulations (49 CFR 5.13(a)). The Agency has determined that the proposed rule would result in cost savings.

A preliminary Regulatory Impact Assessment follows:

Baseline for the Analysis

The current physical qualification standard to drive a CMV requires 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 degrees in the horizontal meridian of 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)). This standard has been in effect since 1971.

Drivers who do not meet either the distant visual acuity or field of vision standard, or both, in one eye may apply to FMCSA for an exemption from the standard to operate CMVs in interstate commerce (49 CFR part 381, subpart C). To do so, the driver must submit a letter of application and supporting documents to enable FMCSA to

evaluate the safety impact of the exemption.⁷⁰ Among the documentation is a signed statement by an ophthalmologist or optometrist showing evaluation of the driver within the last 3 months and which:

- Identifies and defines the nature of the vision deficiency, including how long the individual has had the deficiency;
- States the date of examination;
- Certifies that the vision deficiency is stable;
- Identifies the visual acuity of each eye, corrected and uncorrected;
- Identifies the field of vision of each eye, including central and peripheral fields, utilizing a testing modality that tests to at least 120 degrees in the horizontal;
- Identifies whether the individual can recognize the colors of traffic control signals and devices showing red, green, and amber; and
- Certifies that in his or her medical opinion, the individual has sufficient vision to perform the driving tasks required to operate a commercial vehicle.

FMCSA must publish notice of the request for an exemption and provide the public opportunity to comment. The notice granting the exemption must identify the individual who will receive the exemption, the provisions from which the individual will be exempt, the effective period, and all terms and conditions of the exemption. The Agency's terms and conditions must ensure that the exemption will likely achieve a level of safety that is equivalent to or greater than the level that would be achieved by complying with the regulations.

Currently, FMCSA grants exemptions to applicants who meet specific criteria, including stable vision and experience safely operating a CMV with the vision deficiency.⁷¹ If granted, the driver must meet certain conditions to maintain the

⁷⁰ A copy of the application template is available in the docket and at <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/regulations/medical/driver-medical-requirements/10451/vision-exemption-package-0918.pdf> (last accessed July 16, 2019).

⁷¹ Applicants should have 3 years of intrastate driving experience in a CMV; no suspensions or revocations of the applicant's license for operating violations in any motor vehicle; no involvement in a crash in which the applicant contributed or was cited for a moving traffic violation; no convictions for a disqualifying offense, as described in 49 CFR 383.51(b) (e.g., driving while under the influence of alcohol or a controlled substance, leaving the scene of an accident, or the commission of a felony involving the use of a vehicle); more than one serious traffic violation, as described in § 383.51(c) (e.g., excessive speeding, reckless driving, improper

exemption. The driver must receive an annual vision evaluation by an ophthalmologist or optometrist and an annual physical qualification examination by an ME. In addition, the Agency must monitor the implementation of each exemption and immediately revoke an exemption if the driver fails to comply with the terms and conditions; the exemption has resulted in a lower level of safety than was maintained before the exemption; or continuation of the exemption would not be consistent with the goals and objectives of the FMCSRs (49 CFR 381.330).

FMCSA monitors vision-exempted drivers on a quarterly basis. If any potentially disqualifying information is identified, FMCSA will request a copy of the violation or crash report from the driver. Should the violation be disqualifying, FMCSA will revoke the exemption immediately.

Currently, 2,566 drivers hold a vision exemption.⁷² Compared to all interstate CMV drivers operating in the United States in 2017 (3.7 million, including 3.2 million who hold CDLs),⁷³ these drivers represent less than 0.1 percent of the population.⁷⁴

There are approximately 1,900 active grandfathered drivers.⁷⁵ FMCSA checks the driving records of grandfathered drivers to determine if they continue to operate CMVs safely.

or erratic lane changes, following the vehicle ahead too closely, or a violation arising in connection with a fatality) while driving a CMV; and no more than two convictions for any other moving traffic violations while driving a CMV.

⁷² FMCSA data as of July 2, 2019.

⁷³ FMCSA 2018 Pocket Guide to Large Truck and Bus Statistics, available at <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/safety/data-and-statistics/413361/fmcsa-pocket-guide-2018-final-508-compliant-1.pdf> (last accessed July 16, 2019).

⁷⁴ Compared to all (interstate and intrastate) CMV drivers, 6.1 million, or CDL drivers, 4.2 million, the percentage is even lower.

⁷⁵ The provisions of 49 CFR 391.41(b)(10) do not apply to drivers who were in good standing on March 31, 1996, in a vision waiver study program; provided, they meet certain conditions (49 CFR 391.64(b)). This figure may not represent active drivers.

Since the inception of the vision exemption program, the predominant reason for denial of an exemption is less than 3 years of experience operating with the vision deficiency.

Impact of the Proposed Rule: Physical Qualification and Road Test

Physical Qualification

Should this proposal become a final rule, an individual who cannot meet either the distant visual acuity or field of vision standard, or both, in one eye could be physically qualified without applying for or receiving an exemption. The individual would still have to receive a vision evaluation by an ophthalmologist or optometrist. The ophthalmologist or optometrist would complete the Vision Evaluation Report, Form MCSA-5871, which in part:

- States the date of the vision evaluation;
- Identifies the distant visual acuity in both eyes, uncorrected and corrected;
- Identifies the field of vision, including central and peripheral fields, utilizing a testing modality that tests to at least 120 degrees in the horizontal;
- Identifies whether the individual can recognize the standard red, green, and amber traffic control signal colors;
- Identifies whether the individual has monocular vision as it is defined by FMCSA and if so, the cause and when it began;
- Identifies current treatment;
- Provides a medical opinion regarding whether the vision deficiency is stable;
- Provides a medical opinion regarding whether sufficient time has passed to allow the individual to adapt to and compensate for monocular vision;
- Identifies whether the individual has any progressive eye condition or disease and if so, the date of diagnosis, severity (mild, moderate, or severe), current treatment, and whether the condition is stable; and
- Provides a medical opinion regarding whether a vision evaluation is required more often than annually and if so, how often.

The individual examined, ophthalmologist, or optometrist would provide the signed report to an ME who would determine whether the individual is physically qualified to operate a CMV. Upon receipt of a completed and signed MEC, Form MCSA-5876, the individual would not incur any further delay in qualification.

Under the vision exemption program, the Agency determines whether to provide the exemption that enables the driver to obtain physical qualification. Under the proposed rule, the ME would make the physical qualification determination. The Agency lacks data to determine how the proposed change might affect qualification determinations. However, the outcomes of the ME qualification determinations may differ from those that would be made under the exemption program.

For those who obtain an MEC, Form MCSA-5876, the proposed action may represent a streamlined process compared to the requirements of the vision exemption program in that the driver would not need to compile and submit the letter of application and supporting documentation to FMCSA, or respond to any subsequent requests for information. However, it is possible that the ME could issue a certificate that is valid for a shorter time to monitor the condition. In such circumstances, under the vision exemption program, the applicant would likely not receive an exemption. For those who do not obtain an MEC, Form MCSA-5876, the result may or may not have been the same under the vision exemption program.

If the proposed rule becomes a final rule, it would result in the discontinuation of the Federal vision exemption program. Instead, the physical qualification determination of these individuals would be made by the ME, who is trained and qualified to make such determinations, considering the information received in the vision report from the ophthalmologist or optometrist.

Road Test

Instead of requiring 3 years of intrastate driving experience with the vision deficiency as in the current exemption program, FMCSA proposes that individuals physically qualified under the proposed alternative vision standard for the first time must complete a road test before operating in interstate commerce. As described in Section VII. Rationale for Proposed Qualification Standard, individuals would be excepted from

the road test requirement if they have 3 years of intrastate or excepted interstate CMV driving experience with the vision deficiency, hold a valid Federal vision exemption, or are medically certified under § 391.64(b). These individuals have already demonstrated they can operate a CMV safely with the vision deficiency. The road test would be conducted by motor carriers in accordance with the road test already required by § 391.31.

FMCSA finds that a road test would be an appropriate indicator of an individual's ability to operate a CMV safely with the vision deficiency. Thus, the Agency expects there will be no adverse impact on safety from eliminating the intrastate driving experience criterion. When FHWA adopted the road test in § 391.31, it stated that the interests of CMV safety would be promoted by ensuring drivers have demonstrated their skill by completing the road test (35 FR 6458, 6450 (April 22, 1970)).

The intrastate driving experience criterion has the limitation that some States do not have waiver programs through which drivers can obtain the driving experience necessary to comply with the criteria of the Federal vision exemption program. The removal of the 3-year experience criterion under the proposed rule could more readily allow these individuals to operate in interstate commerce. However, the current number of exemption holders, grandfathered drivers, and applicants denied exemptions represents less than 1 percent of all interstate CMV drivers.

The Agency anticipates the proposed action would be safety neutral. FMCSA notes that, although it would no longer directly monitor the safety performance of drivers, motor carriers would continue to monitor individuals' safety performance when hiring drivers and during the annual inquiry and review of the driving record required by §§ 391.23 and 391.25, respectively.

Costs

FMCSA estimates that the proposed rule would result in incremental cost savings of approximately \$1.6 million annually from the elimination of the Federal vision exemption program and contract expenditures (Table 4). As described in detail below, FMCSA also accounts for the annual cost of a road test at approximately \$47,000.

Table 4. Cost Savings: Federal Vision Exemption Program Contract and Road Test

Fiscal Year	Contract Cost	Road Test	Total
2020-2021	(\$1,531,633)	\$47,137	(\$1,484,496)
2021-2022	(\$1,577,268)	\$47,137	(\$1,530,131)
2022-2023	(\$1,624,586)	\$47,137	(\$1,577,449)
2023-2024	(\$1,673,324)	\$47,137	(\$1,626,187)

Note: For years 2022-2023 and 2023-2024, FMCSA estimated an average contract cost increase of 3 percent and extrapolated based on the percent increase of previous years.

The 2,566 current vision exemption holders would no longer have to apply for an exemption, and potential applicants who do not have 3 years of intrastate driving experience may meet the alternative vision standard and be able to operate a CMV in interstate commerce. As described in Section VIII. Discussion of Proposed Rule, this may lead to a reduction in burden, as drivers would no longer be required to create and assemble the substantial amount of information and documentation necessary to apply for or renew an exemption, or to respond to subsequent requests for information. However, the affected population is small (less than 1 percent of CMV drivers), and the relative advantages for these individuals are unlikely to affect market conditions in the truck and bus industries.

FMCSA estimates that the road test would result in a total annual cost impact of \$47,000 (Table 5). There would be approximately 1,085 drivers⁷⁶ requiring a road test

⁷⁶ FMCSA recognizes that using 1,085 as the driver population is a high estimation and overstates the burden associated with the proposed requirement in § 391.44 for a road test. Some of the individuals would already be required to obtain a road test under § 391.31, in the absence of the requirement in § 391.44(d). However, FMCSA lacks internal data to estimate how many individuals would already be required to obtain a § 391.31 road test. Therefore, FMCSA opted for a conservative approach of assuming all 1,085 individuals would require a road test.

under § 391.44 each year. This number is the average of new applications for the vision exemption program FMCSA received over years 2017 through 2019.⁷⁷ As described above, motor carriers would be responsible for administering the test to the drivers, which is estimated to take 0.55 hours (33 minutes). For the hourly wage rates, FMCSA used \$28 for the drivers (Table 6) and \$51 for the motor carrier’s compliance officer.⁷⁸

Table 5. Road Test Cost Calculations, 2019\$

Drivers/Motor Carriers	1,085
Test Hours	0.55
Driver Wage	\$27.88
Subtotal	\$16,634
Compliance Officer Wage	\$51.13
Subtotal	\$30,502
Sum	\$47,137

Table 6. Wage Rates for CMV Truck Drivers

Occupational Title	BLS SOC Code	North American Industry Classification System (NAICS) Occupational Designation	Total Employees	Median Hourly Base Wage	Fringe Benefits Rate	Median Hourly Base Wage + Fringe Benefits
Heavy and Tractor-Trailer Truck Drivers	53-3032	All Industry	1,856,130	\$21.76	45%	\$31.55
Light Truck or Delivery Service Driver	53-3033	All Industry	923,050	\$16.70	45%	\$24.22
Weighted Driver Wage						\$27.88

Source: BLS. May 2019 OES Database, National, All Industries, available at <http://www.bls.gov/oes/> (last accessed September 10, 2020).

Although the Agency acknowledges there may be motor carriers employing multiple drivers, FMCSA lacks data to estimate the exact number of motor carriers.

⁷⁷ In 2017 there were 1,151 applicants, in 2018 there were 1,073, and in 2019 there were 1,030 ((1,151 + 1,073 + 1,030) / 3 = 1,085).

⁷⁸ Bureau of Labor Statistics (2020). “Occupational Employment and Wages, May 2019, 13-1041 Compliance Officers,” available at <https://www.bls.gov/oes/current/oes131041.htm> (last accessed August 16, 2020).

Therefore, to ensure the inclusion of all affected motor carriers, FMCSA opted for a conservative approach of assuming a 1:1 ratio of drivers per motor carrier, making \$47,000 a likely overestimate. Additionally, there may be some drivers who are motor carriers, in which case the test must be given by a person other than themselves (49 CFR 391.31(b)). FMCSA treats the impacts on these drivers as equivalent to those of all affected drivers, and the Agency invites public comment from owner-operators to further inform this assumption. Using this approach, the Agency estimates a per entity impact of \$43.46.⁷⁹

Benefits

As described in Section VIII. Discussion of Proposed Rule, eliminating the prohibition on certifying individuals who cannot meet either the current visual acuity or field of vision standard, or both, in one eye (without an exemption) would enable more qualified individuals to operate as an interstate CMV driver without compromising safety. The proposed alternative vision standard would allow previously qualified interstate CMV drivers who are no longer able to meet either the distant visual acuity or field of vision standard, or both, in one eye to return to operating interstate sooner. Additional employment opportunities may also result from the removal of the 3-years of intrastate driving experience requirement, which is a criterion of the current exemption program. Drivers who do not have 3 years of intrastate driving experience may meet the alternative vision standard and be able to operate a CMV interstate. A one-time road test would also be less burdensome on drivers than obtaining 3 years of intrastate driving experience. It also addresses the consideration that many drivers live in States that do not issue vision waivers. The road test would provide more drivers the opportunity to operate a CMV.

⁷⁹ $(\$51.13 \times 0.55) + (\$27.88 \times 0.55) = \$43.46$

Regarding risk, the Agency anticipates no changes in risk resulting from the very small number of additional individuals affected by this proposed rule relative to those of the baseline. Therefore, FMCSA considers the proposed rule to be safety neutral.

B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

The Agency expects this proposed rule to have total costs less than zero, and, if finalized, to qualify as an E.O. 13771 deregulatory action. The present value of the cost savings of this proposed rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2021 (the year the proposed rule would go into effect and cost savings would first be realized), would be \$20.9 million. On an annualized basis, these cost savings would be \$1.5 million.

For E.O. 13771 accounting, the April 5, 2017, OMB guidance requires that agencies also calculate the costs and cost savings discounted to year 2016. In accordance with this requirement, the present value of the cost savings of this rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2016, would be \$14.9 million. On an annualized basis, the cost savings would be \$1 million.

C. Congressional Review Act

This proposed rule is not a major rule as defined under the Congressional Review Act (5 U.S.C. 801–808).

D. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,⁸⁰ requires Federal agencies to consider the impact of their regulatory actions on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses

⁸⁰ Pub. L. 104–121, 110 Stat. 857, March 29, 1996.

available for public comment. The term “small entities” means small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these entities. Section 605 of the RFA allows an Agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This rule would affect drivers and motor carriers. Drivers are not considered small entities because they do not meet the definition of a small entity in section 601 of the RFA. Specifically, drivers are considered neither a small business under section 601(3) of the RFA, nor are they considered a small organization under section 601(4) of the RFA.

The Small Business Administration (SBA) defines the size standards used to classify entities as small. SBA establishes separate standards for each industry, as defined by the North American Industry Classification System (NAICS).⁸¹ This rule could affect many different industry sectors in addition to the Transportation and Warehousing sector (NAICS sectors 48 and 49); for example, the Construction sector (NAICS sector 23), the Manufacturing sector (NAICS sectors 31, 32, and 33), and the Retail Trade sector (NAICS sectors 44 and 45). Industry groups within these sectors have size standards for qualifying as small based on the number of employees (e.g., 500 employees), or on the amount of annual revenue (e.g., \$27.5 million in revenue). To determine the NAICS industries potentially affected by this rule, FMCSA cross-referenced occupational employment statistics from the Bureau of Labor Statistics with NAICS industry codes.

⁸¹ “North American Industry Classification System” (2017), available at https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf (last accessed January 15, 2020).

The RFA does not define a threshold for determining whether a specific regulation results in a significant impact. However, the SBA, in guidance to government agencies, provides some objective measures of significance that the agencies can consider using.⁸² One measure that could be used to illustrate a significant impact is labor costs, specifically, if the cost of the regulation exceeds 1 percent of the average annual revenues of small entities in the sector. Given the proposed rule's average annual per-entity impact of \$43.46, a small entity would need to have average annual revenues of less than \$4,346 to experience an impact greater than 1 percent of average annual revenue, which is an average annual revenue that is smaller than would be required for a firm to support one employee. Therefore, I certify this rule would not have a significant impact on the entities affected.

E. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Ms. Christine Hydock, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement

⁸² SBA, Office of Advocacy, "A Guide for Government Agencies. How to Comply with the Regulatory Flexibility Act" (2017), available at <https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf> (last accessed January 16, 2020).

Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. To comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$168 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2019 levels) or more in any 1 year. Though this proposed rule would not result in such an expenditure, the Agency discusses the effects of this rule elsewhere in this preamble.

G. Paperwork Reduction Act (Collection of Information)

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) requires that an agency consider the impact of paperwork and other information collection burdens imposed on the public. An agency is prohibited from collecting or sponsoring an information collection, as well as imposing an information collection requirement, unless it displays a valid OMB control number (5 CFR 1320.8(b)(3)(vi)).

The proposed rule would impact an existing information collection request (ICR) titled “Medical Qualification Requirements,” OMB control number 2126-0006, and a new ICR titled “391.31 Road Test Requirement,” OMB control number 2126-TBD.⁸³ The ICRs will be discussed separately below, followed by a discussion of the net information collection and reporting burdens of the proposed rule.

⁸³ The OMB control number will be determined and assigned by OMB upon approval of the ICR.

1. Related Information Collection Requests

a. Medical Qualification Requirements ICR

This proposed rule would amend the existing approved Medical Qualification Requirements ICR, OMB control number 2126-0006, which expires on November 30, 2021. Specifically, FMCSA seeks approval for the revision of the ICR due to the Agency's development of this proposed rule, which includes the use of the proposed Vision Evaluation Report, Form MCSA-5871. In accordance with 44 U.S.C. 3507(d), FMCSA will submit the proposed information collection amendments to OIRA at OMB for its approval.

Title: Medical Qualification Requirements.

OMB Control Number: 2126-0006.

Type of Review: Revision of a currently-approved information collection.

Summary: FMCSA proposes to establish an alternative vision standard for individuals who cannot satisfy either the current distant visual acuity or field of vision standard, or both, in one eye. FMCSA proposes a two-step process for physical qualification of these individuals that, if adopted, would replace the current vision exemption program as a basis for determining the physical qualification of these individuals to operate a CMV. First, an individual seeking physical qualification would obtain a vision evaluation from an ophthalmologist or optometrist who would record the findings and provide specific medical opinions on the proposed Vision Evaluation Report, Form MCSA-5871. Next, at a physical qualification examination, an ME would consider the information provided on the Vision Evaluation Report, Form MCSA-5871, and determine whether the individual meets the proposed alternative vision standard and FMCSA's other physical qualification standards. If so, the ME could issue an MEC, Form MCSA-5876, for up to a maximum of 12 months. The proposed Vision Evaluation Report, Form MCSA-5871, supports safety

by ensuring that CMV drivers are physically qualified to operate trucks and buses on our nation's highways.

Because of the proposed action, a new information collection, IC-8 Qualifications of Drivers; Vision Standard, would be added to the existing ICR. FMCSA estimates that ophthalmologists and optometrists would complete 3,614 Vision Evaluation Reports, Form MCSA-5871, annually and that it would take them 8 minutes to complete a report. Thus, the estimated annual burden hours associated with the proposed information collection is 482 hours (3,614 forms x 8 minutes per form ÷ 60 minutes = 482 hours, rounded to the nearest whole hour). At an average hourly labor cost of \$82.40 for optometrists, the estimated salary cost associated with this information collection is \$39,717 (\$82.40 hourly labor costs x 482 hours = \$39,717, rounded to the nearest dollar). Additional information is provided in the draft supporting statement for the Medical Qualification Requirements ICR, which is available in the docket.

Estimated number of respondents: 3,614 ophthalmologists and optometrists.

Estimated responses: 3,614.

Frequency: At least annually.

Estimated burden hours: 482.

Estimated cost: \$39,717.

The proposed alternative vision standard would eliminate the need for the Federal vision exemption program and the related information collection (IC-3a). The current vision exemption program requires individuals to submit personal, health, and driving information during the application process. In addition, motor carriers must copy and file the vision exemption in the driver qualification file. FMCSA attributes 2,236 annual burden hours to obtain and maintain a vision exemption, and this proposed rule would eliminate this entire burden. However, it would add 482 burden hours for the information collection associated with completion of the Vision Evaluation Report, Form MCSA-

5871. Thus, the net effect of the proposed rule would be a reduction in burden hours of 1,754 (482 hours related to the vision report – 2,236 hours related to the current vision exemption program = -1,754). The net effect of the proposed rule with respect to cost would be a reduction of \$29,419 (\$39,717 related to the vision report – \$69,136 related to the current vision exemption program = -\$29,419).

The revised total annual estimated burden associated with the Medical Qualification Requirements ICR that reflects the addition of this proposed information collection and the completion of the Vision Evaluation Report, Form MCSA-5871; the elimination of the Federal vision exemption program; updated driver population, program statistics, National Registry statistics, and wage data; and regulatory changes is as follows.

Total estimated number of respondents: 5,586,232 CMV drivers, motor carriers, MEs, treating clinicians, ophthalmologists, and optometrists.

Total estimated responses: 27,202,863.

Total estimated burden hours: 2,251,571.

Total estimated cost: \$171,044,474.

b. Section 391.31 Road Test Requirement ICR

FMCSA proposes a new § 391.31 Road Test Requirement ICR. The ICR estimates the paperwork burden motor carriers incur to comply with the reporting and recordkeeping tasks required for the road test associated with 49 CFR 391.31. FMCSA has not previously accounted for the burden associated with § 391.31 road tests; accordingly, the ICR accounts for the burden. The ICR also would include the incremental burden for motor carriers associated with § 391.31 road tests due to FMCSA's development of this proposed rule. In accordance with 44 U.S.C. 3507(d), FMCSA will submit the new ICR to OIRA at OMB for its approval.

Title: 391.31 Road Test Requirement.

OMB Control Number: 2126-TBD.

Type of Review: Approval of a new information collection.

Summary: The road test provision in § 391.31 provides an individual must not drive a CMV until the individual has successfully completed a road test and has been issued a certificate of driver's road test. It was adopted by FHWA in 1970 (35 FR 6458, 6462, April 22, 1970). At that time, FHWA stated that the interests of CMV safety would be promoted by ensuring drivers have demonstrated their skill by completing a road test (35 FR 6459). The related requirement in § 391.51 that the motor carrier include information relating to the road test in the driver qualification file was also adopted in 1970 (35 FR 6465). The information documents the driver's ability to operate a CMV safely.

Sections 391.31 and 391.51 are based on the authority of the Motor Carrier Act of 1935⁸⁴ (1935 Act) and the Motor Carrier Safety Act of 1984⁸⁵ (1984 Act), both as amended. The 1935 Act, as codified at 49 U.S.C. 31502(b), authorizes the Secretary to prescribe requirements for the qualifications of employees of a motor carrier and the safety of operation and equipment of a motor carrier. The 1984 Act, as codified at 49 U.S.C. 31136, provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. Section 31136(a) requires the Secretary to issue regulations on CMV safety, including regulations to ensure that CMVs are operated safely. The Secretary has discretionary authority under 49 U.S.C. 31133(a)(8) to prescribe recordkeeping and reporting requirements. The Administrator of FMCSA is delegated authority under 49 CFR 1.87 to carry out the functions vested in the Secretary by 49 U.S.C. Chapters 311 and 315 as they relate to CMV operators, programs, and safety.

⁸⁴ Pub. L. 74-255, 49 Stat. 543, August 9, 1935.

⁸⁵ Pub. L. 98-554, 98 Stat. 2829, 2832, October 30, 1984.

Motor carriers must ensure each driver has the skill to operate a CMV safely. The information collected and maintained by motor carriers in each driver qualification file related to the road test substantiates the driver can operate a CMV safely and the motor carrier has fulfilled its regulatory requirements. It also aids Federal and State safety investigators in assessing the qualifications of drivers.

Public interest in highway safety dictates that employers hire drivers who can safely operate CMVs amidst the various physical and mental demands of truck driving. Section 391.31 requires a motor carrier to conduct a road test when the motor carrier hires a new driver. The motor carrier is required to rate the performance of the driver during the test on a road test form. If the road test is successfully completed, the motor carrier completes a certificate of driver's road test and provides a copy to the driver. Motor carriers may maintain the required road test form and certificate electronically or via paper copy. The motor carrier must retain the signed road test form and the signed certificate in the driver qualification file. Generally, driver qualification files must be maintained at the motor carrier's principal place of business. Neither the road test form nor the certificate is routinely submitted to FMCSA. A motor carrier would only make the information available when requested by an FMCSA or State safety investigator for an investigation or audit.

There are three reporting and recordkeeping tasks motor carriers perform regarding the road test required by § 391.31 when they hire a new driver. The three tasks are:

1. The motor carrier completes and signs the road test form while the driver performs a pre-trip inspection and the driving portion of the road test (49 CFR 391.31(d)).
2. If the driver successfully passes the road test, the motor carrier completes a certificate of driver's road test in substantially the form prescribed in §391.31(f) (49 CFR 391.31(e)) and gives the driver a copy (49 CFR 391.31(g)).

3. The motor carrier retains in the driver qualification file the original signed road test form and the original, or a copy, of the signed certificate of driver's road test (49 CFR 391.31(g)(1) and (2)).

To estimate the total burden hours, FMCSA multiplies the number of respondents by the hourly burden per response. FMCSA estimates a burden of 30 minutes for the motor carrier to complete the road test form while conducting the road test. Should the driver successfully pass the road test, FMCSA assumes it will take the motor carrier 2 minutes to complete the certification of driver's road test and an additional 1 minute to store documents in the driver qualification file.

To estimate burden costs, FMCSA assumes a compliance officer will be the person who will complete the road test form and associated certificate, and a file clerk will be the person who will store the documents. The median salary for a compliance officer is \$51.13 per hour. The median salary for a file clerk is \$25.63 per hour.

The ICR estimates the information-collection burden incurred by motor carriers associated with the § 391.31 road test in two circumstances. The first is when the road test is required by § 391.31 (IC-1); the second is when the road test is required as part of the alternative vision standard in proposed § 391.44 (IC-2).

IC-1 consists of the three reporting and recordkeeping tasks motor carriers perform regarding the road test required by § 391.31 when they hire a new driver. The respondent universe is the number of motor carriers required to complete a road test for drivers hired. To determine the number of drivers who will be hired and require a road test, FMCSA first determines the driver population subject to the road test requirement. Because § 391.33 allows motor carriers to accept a valid CDL instead of the § 391.31 road test, the driver population is non-CDL interstate and intrastate drivers. To find the driver populations in 2022, 2023, and 2024 (the 3 years projected to be reflected in the ICR), FMCSA adjusts the driver population by multiplying it by the growth rate for driver occupations typical in the light vehicle industry (i.e., 5 percent). Next, FMCSA

estimates the total number of job openings per year by multiplying the adjusted total driver population by the industry turnover rate (i.e., 79.2 percent). Because drivers may present a certificate of driver's road test for up 3 years from when it is completed under § 391.33, FMCSA estimates one-third of drivers will be required to have a road test each year of the ICR. The resulting number is the respondent universe, i.e., the number of motor carriers required to complete a road test for drivers hired.

For each of the three § 391.31 road test reporting and recordkeeping tasks motor carriers perform when they hire a new driver, FMCSA estimates the motor carrier burden hours by multiplying the number of respondents by the hourly burden for each task. Then FMCSA estimates the motor carrier cost by multiplying the burden hours by the median salary for the person performing the task. The total motor carrier burden hours and cost for the three tasks is reflected below in the total burden and cost amounts for the ICR.

IC-2 consists of the incremental burden associated with the requirement in this proposed rule that individuals physically qualified under the alternative vision standard in § 391.44 for the first time would be required to complete a road test in accordance with § 391.31. FMCSA uses the same three reporting and recordkeeping tasks, time estimates, labor costs, and overall methodology discussed above to calculate the annual burden hours and cost associated with the proposed rule. However, FMCSA estimates the respondent universe of 1,085 motor carriers by averaging the number of new requests for a Federal vision exemption in 2017, 2018, and 2019 $((1,151 + 1,073 + 1,030) / 3 = 1,085)$.

FMCSA recognizes that using 1,085 as the driver population is a high estimation and overstates the burden associated with the proposed requirement in § 391.44 for a road test. Some of the individuals would already be required to obtain a road test under § 391.31, in the absence of the requirement in § 391.44(d). However, FMCSA lacks internal data to estimate how many individuals would already be required to obtain a §

391.31 road test. Therefore, FMCSA opted for a conservative approach of assuming all 1,085 individuals would require a road test.

In addition, § 391.44(d)(3) would provide an exception to the road test requirement for some individuals. If the motor carrier determines an individual possessed a valid CDL or non-CDL license to operate, and did operate, a CMV in either intrastate commerce or in exempt interstate commerce with the vision deficiency for the 3-year period immediately preceding the date of physical qualification under § 391.44 for the first time, the individual would not be required to complete a § 391.31 road test. FMCSA lacks internal data to estimate how many individuals would be excepted from a road test by this provision, but expects only a small number of individuals would qualify for the exception. In addition, the paperwork burden to except an individual from the road test requirement would be less than the burden for the individual to take the road test. Therefore, FMCSA opted for a conservative approach of assuming all 1,085 individuals would require a road test.

The estimated incremental annual burden associated with the requirement in the proposed rule that individuals physically qualified under § 391.44 for the first time would be required to complete a road test in accordance with § 391.31 (IC-2), is as follows.

Estimated number of respondents: 1,085 motor carriers.

Estimated responses: 3,255.

Estimated burden hours: 609.

Estimated cost: \$30,578.

The total estimated annual burden associated with the 391.31 Road Test Requirement ICR for IC-1 and IC-2 is as follows:

Total estimated number of respondents: 560,809 motor carriers.

Total estimated responses: 2,306,709.

Total estimated burden hours: 430,588.

Total estimated cost: \$21,623,811.

Additional information for the assumptions, calculations, and methodology summarized above is provided in the draft supporting statement for the 391.31 Road Test Requirement ICR. The supporting statement is available in the docket for this rulemaking.

2. Net Information Collection Reporting Burdens

As shown above, the net effect of the proposed rule on the Medical Qualification Requirements ICR would be a reduction in burden hours of 1,754 and in cost of \$29,419. The effect of the proposed rule on the 391.31 Road Test Requirement ICR would be an addition in burden hours of 609 and in cost of \$30,578. Thus, the net effect of the proposed rule would be a reduction in burden hours of 1145 ($-1,754$ hours related to the Medical Qualification Requirements ICR + 609 hours related to the 391.31 Road Test Requirement ICR = -1145). The net effect of the proposed rule with respect to cost would be an addition of \$1,159 ($-\$29,419$ related to the Medical Qualification Requirements ICR + \$30,578 related to the 391.31 Road Test Requirement ICR = \$1,159).

3. Request for Comments

FMCSA asks for comment on the information collection requirements of this proposed rule, as well as the revised total estimated burden associated with the Medical Qualification Requirements ICR and the total estimated burden associated with the new 391.31 Road Test Requirement ICR. Specifically, the Agency asks for comment on: (1) whether the proposed information collections are necessary for FMCSA to perform its functions; (2) how the Agency can improve the quality, usefulness, and clarity of the information to be collected; (3) the accuracy of FMCSA's estimate of the burden of this information collection; and (4) how the Agency can minimize the burden of the information collection.

If you have comments on the collection of information, you must submit those comments as outlined under section I.E. at the beginning of this NPRM.

H. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” FMCSA determined that this proposal would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

I. Privacy

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005,⁸⁶ requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. In accordance with this Act, a privacy impact assessment is warranted to address any privacy implications contemplated in the proposed rulemaking.

With respect to the proposed Vision Evaluation Report, Form MCSA-5871, the DOT Chief Privacy Officer has evaluated the risks and effects that this rulemaking might have on collecting, storing, and sharing personally identifiable information and has examined protections and alternative information handling processes in developing the proposal to mitigate potential privacy risks. The privacy risks and effects associated with this proposed rule are not unique and have been addressed previously by the DOT/FMCSA 009 – National Registry of Certified Medical Examiners system of records

⁸⁶ Pub. L. 108–447, 118 Stat. 2809, 3268, December 8, 2004 (5 U.S.C. 552a note).

notice published on October 4, 2019 (84 FR 53211), available at <https://www.transportation.gov/privacy>. The DOT Chief Privacy Officer has determined that a new system of records notice for this rulemaking is not required.

In this rulemaking, FMCSA proposes a two-step process for the physical qualification of individuals who cannot satisfy either the current distant visual acuity or field of vision standard, or both, in one eye. First, an individual seeking physical qualification would obtain a vision evaluation from an ophthalmologist or optometrist who would record the requested information on the proposed Vision Evaluation Report, Form MCSA-5871. Next, at a physical qualification examination, an ME would consider the information provided on the Vision Evaluation Report, Form MCSA-5871, and determine whether the individual is physically qualified to operate a CMV safely. The Vision Evaluation Report, Form MCSA-5871, would be used exclusively as part of the physical qualification process and would collect only information that is necessary to assist the ME in making a physical qualification determination.

The information collected on the Vision Evaluation Report, Form MCSA-5871, would provide a means for healthcare professionals to exchange information about an individual who cannot satisfy either the current distant visual acuity or field of vision standard, or both, in one eye. This is the same type of communication that occurs when the ME needs to follow up with an individual's primary care provider regarding the individual's health and exchanges information. Therefore, no new category of medical or privacy information would be generated because of this proposed rule.

The Agency expects that this information would be safeguarded along with all the other medical information that these healthcare providers maintain. In other words, the ophthalmologist or optometrist would maintain certain medical records about the individual based on his or her vision evaluation, and the ME would maintain certain medical records to support the physical qualification determination. The Vision

Evaluation Report, Form MCSA-5871, would be attached to the Medical Examination Report Form, MCSA-5875, that must be maintained by the ME for at least 3 years from the date of the examination. The Vision Evaluation Report, Form MCSA-5871, would be provided only to FMCSA upon request if there were an investigation or audit. Therefore, this proposed rule would provide a privacy-positive outcome because it results in less sensitive data being held by the Agency. There is privacy risk not controlled by the Agency because the Vision Evaluation Report, Form MCSA-5871, would be maintained by the ME at his or her office. However, as healthcare providers, MEs are required to maintain and disclose medical information and personally identifiable information in accordance with applicable Federal and State privacy laws.

With respect to the proposed requirement for a road test as part of the alternative vision standard, the Agency has completed a Privacy Threshold Assessment to evaluate the risks and effects the proposed requirement might have on collecting, storing, and sharing personally identifiable information. The Privacy Threshold Assessment has been submitted to FMCSA's Privacy Officer for review and preliminary adjudication and will be submitted to DOT's Privacy Officer for review and final adjudication.

J. E.O. 13175 (Indian Tribal Governments)

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. National Environmental Policy Act of 1969

FMCSA analyzed this proposed rule for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or

environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph 6.z. The content in this rule is covered by the Categorical Exclusions in paragraph 6.z.(1) regarding the minimum qualifications for individuals who drive CMVs, and in paragraph 6.z.(2) regarding the minimum duties of motor carriers with respect to the qualifications of their drivers.

List of Subjects in 49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, FMCSA proposes to amend 49 CFR part 391 as follows:

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

1. The authority citation for part 391 continues to read as follows:

AUTHORITY: 49 U.S.C. 504, 508, 31133, 31136, 31149, 31502; sec. 4007(b), Pub. L. 102-240, 105 Stat. 1914, 2152; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677; sec. 215, Pub. L. 106-159, 113 Stat. 1748, 1767; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; secs. 5403 and 5524, Pub. L. 114-94, 129 Stat. 1312, 1548, 1560; sec. 2, Pub. L. 115-105, 131 Stat. 2263; and 49 CFR 1.87.

2. Amend § 391.31 by:

a. Revising paragraph (f) by deleting the entry lines for “Social Security No”, “Operator’s or Chauffeur’s License No”, and “State” in the Certification of Road Test form; and

b. Adding paragraph (h).

The addition reads as follows:

§ 391.31 Road test.

* * * * *

(h) The information collection requirements of this section have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and have been assigned OMB control number 2126-TBD.

3. Revise § 391.41 paragraph (b)(10) to read as follows:

§ 391.41 Physical qualifications for drivers.

* * * * *

(b) * * *

(10)(i) 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; or

(ii) Meets the requirements in § 391.44;

* * * * *

4. Revise § 391.43 paragraph (b)(1) to read as follows:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(b) * * *

(1) A licensed ophthalmologist or optometrist may perform the part of the medical examination that involves visual acuity, field of vision, and the ability to recognize colors as specified in § 391.41(b)(10).

* * * * *

5. Add § 391.44 to read as follows:

§ 391.44 Physical qualification standards for an individual who cannot satisfy either the distant visual acuity or field of vision standard, or both, in one eye.

(a) *General.* An individual who cannot satisfy either the distant visual acuity or field of vision standard, or both, in § 391.41(b)(10)(i) in one eye is physically qualified to operate a commercial motor vehicle in interstate commerce provided:

(1) The individual meets the other physical qualification standards in § 391.41 or has an exemption or skill performance evaluation certificate, if required; and

(2) The individual has the vision evaluation required by paragraph (b) of this section and the medical examination required by paragraph (c) of this section.

(b) *Evaluation by an ophthalmologist or optometrist.* Prior to the examination required by § 391.45 or the expiration of a medical examiner's certificate, the individual must be evaluated by a licensed ophthalmologist or optometrist.

(1) During the evaluation of the individual, the ophthalmologist or optometrist must complete the Vision Evaluation Report, Form MCSA-5871.

(2) Upon completion of the Vision Evaluation Report, Form MCSA-5871, the ophthalmologist or optometrist must sign and date the Report and provide his or her full name, office address, and telephone number on the Report.

(c) *Examination by a medical examiner.* At least annually, but no later than 45 days after an ophthalmologist or optometrist signs and dates the Vision Evaluation Report, Form MCSA-5871, an individual who cannot satisfy either the distant visual acuity or field of vision standard, or both, in § 391.41(b)(10)(i) in one eye must be medically examined and certified by a medical examiner as physically qualified to operate a commercial motor vehicle in accordance with § 391.43.

(1) The medical examiner must receive a completed Vision Evaluation Report, Form MCSA-5871, signed and dated by an ophthalmologist or optometrist for each

required examination. This Report shall be treated and retained as part of the Medical Examination Report Form, MCSA-5875.

(2) The medical examiner must determine whether the individual meets the physical qualification standards in § 391.41 to operate a commercial motor vehicle. In making that determination, the medical examiner must consider the information in the Vision Evaluation Report, Form MCSA-5871, signed by an ophthalmologist or optometrist and, utilizing independent medical judgment, apply the following standards in determining whether the individual may be certified as physically qualified to operate a commercial motor vehicle.

(i) The individual is not physically qualified to operate a commercial motor vehicle if in the better eye the distant visual acuity is not at least 20/40 (Snellen), with or without corrective lenses, and the field of vision is not at least 70° in the horizontal meridian.

(ii) The individual is not physically qualified to operate a commercial motor vehicle if the individual is not able to recognize the colors of traffic signals and devices showing standard red, green, and amber.

(iii) The individual is not physically qualified to operate a commercial motor vehicle if the individual's vision deficiency is not stable.

(iv) The individual is not physically qualified to operate a commercial motor vehicle if there has not been sufficient time to allow the individual to adapt to and compensate for the change in vision.

(d) *Road test.* (1) Except as provided in paragraphs (d)(3), (4), and (5) of this section, an individual physically qualified under this section for the first time shall not drive a commercial motor vehicle until the individual has successfully completed a road test subsequent to physical qualification and has been issued a certificate of driver's road test in accordance with § 391.31 of this part. An individual physically qualified under this

section for the first time must inform the motor carrier responsible for completing the road test under § 391.31(b) that the individual is required by § 391.44(d) to have a road test. The motor carrier must conduct the road test in accordance with § 391.31(b) thorough (g).

(2) For road tests required by paragraph (d)(1) of this section, the provisions of § 391.33 of this part for the equivalent of a road test do not apply. If an individual required to have a road test by paragraph (d)(1) of this section successfully completes the road test and is issued a certificate of driver's road test in accordance with § 391.31, then any otherwise applicable provisions of § 391.33 will apply thereafter to such individual.

(3) An individual physically qualified under this section for the first time is not required to complete a road test in accordance with § 391.31 if the motor carrier responsible for completing the road test under § 391.31(b) determines the individual possessed a valid commercial driver's license or non-commercial driver's license to operate, and did operate, a commercial motor vehicle in either intrastate commerce or in interstate commerce excepted by § 390.3T(f) of this subchapter or § 391.2 of this part from the requirements of subpart E of this part with the vision deficiency for the 3-year period immediately preceding the date of physical qualification under this section for the first time.

(i) The individual must certify in writing to the motor carrier the date the vision deficiency began.

(ii) If the motor carrier determines the individual possessed a valid commercial driver's license or non-commercial driver's license to operate, and did operate, a commercial motor vehicle in either intrastate commerce or in interstate commerce excepted by either § 390.3T(f) or § 391.2 from the requirements of subpart E of this part with the vision deficiency for the 3-year period immediately preceding the date of

physical qualification in accordance with § 391.44 for the first time, the motor carrier must—

(A) Prepare a written statement to the effect that the motor carrier determined the individual possessed a valid license and operated a commercial motor vehicle in intrastate or excepted interstate commerce (as applicable) with the vision deficiency for the 3-year period immediately preceding the date of physical qualification in accordance with § 391.44 for the first time and, therefore, is not required by § 391.44(d) to complete a road test;

(B) Give the individual a copy of the written statement; and

(C) Retain in the individual's driver qualification file the original of the written statement and the original, or a copy, of the individual's certification regarding the date the vision deficiency began.

(4) An individual physically qualified under this section for the first time is not required to complete a road test in accordance with § 391.31 if the individual holds on [DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER] a valid exemption from the vision standard in § 391.41(b)(10) issued by FMCSA under 49 CFR part 381. Such an individual is not required to inform the motor carrier that the individual is excepted from the requirement in § 391.44(d)(1) to have a road test.

(5) An individual physically qualified under this section for the first time is not required to complete a road test in accordance with § 391.31 if the individual is medically certified on [DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER] under the provisions of § 391.64(b) for drivers who participated in a previous vision waiver study program. Such an individual is not required to inform the motor carrier that the individual is excepted from the requirement in § 391.44(d)(1) to have a road test.

6. Amend §391.45 by:

a. Redesignating existing paragraphs (f) and (g) as paragraphs (g) and (h), respectively;

b. Adding a new paragraph (f); and

c. Revising paragraph (b).

The addition and revision read as follows:

§ 391.45 Persons who must be medically examined and certified.

* * * * *

(b) Any driver who has not been medically examined and certified as qualified to operate a commercial motor vehicle during the preceding 24 months, unless the driver is required to be examined and certified in accordance with paragraph (c), (d), (e), (f), (g), or (h) of this section;

* * * * *

(f) Any driver who cannot satisfy either the distant visual acuity or field of vision standard, or both, in § 391.41(b)(10)(i) in one eye and who has obtained a medical examiner's certificate under the standards in § 391.44, if such driver's most recent medical examination and certification as qualified to drive did not occur during the preceding 12 months;

* * * * *

7. Amend § 391.51 by revising paragraph (b)(3) to read as follows:

§ 391.51 General requirements for driver qualification files.

* * * * *

(b) * * *

(3) The certificate of driver's road test issued to the driver pursuant to § 391.31(e), a copy of the license or certificate which the motor carrier accepted as equivalent to the driver's road test pursuant to § 391.33, or the original of the written

statement providing that the motor carrier determined the driver is not required by § 391.44(d) to complete a road test pursuant to § 391.44(d)(3)(ii)(A) and the original, or a copy, of the driver's certification required by § 391.44(d)(3)(i);

* * * * *

8. Amend §391.64 by revising the section title and paragraph (b) introductory text, and adding paragraph (b)(4) to read as follows.

§ 391.64 Grandfathering for certain drivers who participated in the vision waiver study program.

* * * * *

(b) Until [DATE 60 DAYS AND 1 YEAR AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], the provisions of § 391.41(b)(10) do not apply to a driver who was a participant in good standing on March 31, 1996, in a waiver study program concerning the operation of commercial motor vehicles by drivers with visual impairment in one eye; *provided:*

* * * * *

(4) On [DATE 60 DAYS AND 1 YEAR AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], the provisions of paragraph (b) of this section are removed, and any medical examiner's certificate issued under § 391.43 of this part on the basis that the driver is qualified by operation of the provisions of 49 CFR 391.64(b), related to drivers with visual impairment in one eye, is void.

Appendix A to Part 391—Medical Advisory Criteria [Amended]

9. Remove and reserve paragraph II. J., Vision: § 391.41(b)(10), of Appendix A to Part 391.

Issued under the authority of delegation in 49 CFR 1.87.

James W. Deck
Deputy Administrator

[FR Doc. 2020-28848 Filed: 1/11/2021 8:45 am; Publication Date: 1/12/2021]