



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2021-0004]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from nine individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA-2021-0004 using any of the following methods:

- **Federal eRulemaking Portal:** Go to www.regulations.gov/, insert the docket number, FMCSA-2021-0004, in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click on the “Comment” button. Follow the online instructions for submitting comments.
- **Mail:** Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- Fax: (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE, Room W64-224, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-2021-0004), indicate 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 that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to www.regulations.gov/docket?D=FMCSA-2021-0004. Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click the “Comment” button, and type your comment into the text box on the

following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then 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.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number, FMCSA-2021-0004, in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., ET, 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 Dockets 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 FDMS), which can be reviewed at www.transportation.gov/privacy.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely

achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The nine individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in §391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

On July 16, 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (57 FR 31458). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of § 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely in intrastate commerce with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at www.regulations.gov/docket?D=FMCSA-1998-3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively.¹ The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors – such as age, sex, geographic location, mileage driven and conviction history – are used every day by insurance companies and motor vehicle bureaus to predict the probability of an

¹ A thorough discussion of this issue may be found in a FHWA final rule published in the *Federal Register* on March 26, 1996 and available on the internet at <https://www.govinfo.gov/content/pkg/FR-1996-03-26/pdf/96-7226.pdf>.

individual experiencing future crashes (See Weber, Donald C., “Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,” Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used three consecutive years of data, comparing the experiences of drivers in the first two years with their experiences in the final year.

Qualifications of Applicants

Jack A. Hemelgarn

Mr. Hemelgarn, 68, has a retinal detachment in his left eye due to a traumatic incident in 2008. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2020, his optometrist stated, “In my opinion, from a vision stand point, he can safely perform the driving tasks required to operate a commercial vehicle.” Mr. Hemelgarn reported that he has driven buses for 28 years, accumulating 1.12 million miles. He holds an operator’s license from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joshua D. Kelley

Mr. Kelley, 35, has had a cataract in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2020, his ophthalmologist stated, “It is my medical opinion that Joshua Kelley Sr. has sufficient vision to perform the driving tasks required to operate a commercial vehicle.” Mr. Kelley reported that he has driven buses for 7 years, accumulating 437,500 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows one crash, which he was not cited for, and no convictions for moving violations in a CMV.

Richard T. Kessen

Mr. Kessen, 63, has had optic nerve coloboma in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, hand motion. Following an examination in 2020, his optometrist stated, "Overall, his vision appears stable at this time in both eyes and he has demonstrated that he has an adequate vision to perform the driving task required to operate a commercial vehicle." Mr. Kessen reported that he has driven straight trucks for 40 years, accumulating 540,000 miles and tractor-trailer combinations for 40 years, accumulating 4 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles W. McClister III

Mr. McClister, 46, has had aphakia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2020, his optometrist stated, "In my opinion, I believe Mr. McClister does have sufficient vision to perform the tasks to operate a commercial vehicle." Mr. McClister reported that he has driven straight trucks for 3 years, accumulating 420,000 miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Craig Neblett

Mr. Neblett, 58, has had amblyopia in his right eye since 1977. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2020, his optometrist stated, "In my medical opinion, Craig Neblett has stable and sufficient vision OS and his condition OD (longstanding since 1977, 43 years) should not adversely affect his ability to operate a commercial motor vehicle safely due to 43 years of experience with only left eye vision." Mr. Neblett reported that he has driven straight trucks for 20 years, accumulating 80,000 miles. He holds a Class B CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving

violations in a CMV.

John G. Shaver

Mr. Shaver, 53, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/40, and in his left eye, 20/80. Following an examination in 2020, his optometrist stated, "In my medical opinion, John Shaver, has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Shaver reported that he has driven tractor-trailer combinations for 26 years, accumulating 3,380,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes but one conviction for speeding in a CMV; he exceeded the speed limit by 10 mph.

Robert L. Strange, Jr.

Mr. Strange, 52, has a retinal detachment in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, hand motion. Following an examination in 2020, his optometrist stated, "It is my professional opinion that with 20/20 vision in his right eye and with both eyes operating together as well as a normal visual field as documented by automated perimetry, it should be safe for Mr. Strange to continue to operate a commercial vehicle safely." Mr. Strange reported that he has driven straight trucks for 15 years, accumulating 300,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Scott E. Wertman

Mr. Wertman, 60, has had optic neuropathy in his right eye since 2001. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2020, his ophthalmologist stated, "Patient has demonstrated the ability to operate a commercial vehicle with the previous 2 decades, his examination is essentially unchanged

[sic], and I do not see any alteration in his visual abilities at this time from his success in the past.” Mr. Wertman reported that he has driven straight trucks for 26 years, accumulating 32,500 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas L. Wiles

Mr. Wiles, 40, has a retinal detachment in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/30, and in his left eye, 20/150. Following an examination in 2020, his optometrist stated, “In my professional opinion, this patient has sufficient vision to perform the driving tasks required to operate a commercial motor vehicle.” Mr. Wiles reported that he has driven straight trucks for 12 years, accumulating 819,000 miles. He holds a Class A CDL from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated under the DATES section of the notice.

Larry W. Minor,
Associate Administrator for Policy.

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