

**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), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** FMCSA amends its regulations to permit individuals who do not satisfy, with the worse eye, either the existing distant visual acuity standard with corrective lenses or the field of vision standard, or both, to be physically qualified to operate a commercial motor vehicle (CMV) in interstate commerce under specified conditions. Currently, such individuals are prohibited from driving CMVs in interstate commerce unless they obtain an exemption from FMCSA. The new alternative vision standard replaces the current vision exemption program as the basis for determining the physical qualification of these individuals.

**DATES:** This final rule is effective March 22, 2022.

Comments on the information collections in this final rule must be submitted to the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) by February 22, 2022.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than February 22, 2022.

**ADDRESSES:** Comments and recommendations for the information collections should be sent within 30 days of publication of this final rule to <https://www.reginfo.gov/public/do/PRAMain>. Find the particular information collection by selecting “Currently under Review—Open for Public Comments” or by entering the OMB control number in the search bar.

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## **I. Availability of Rulemaking Documents**

To view any documents mentioned as being available in the docket or comments received, go to <https://www.regulations.gov/docket/FMCSA-2019-0049/document> and choose the

document to review. To view comments, click the notice of proposed rulemaking (NPRM) or Medical Review Board Task 21–1 Report: Proposed Alternative Vision Standard, and click “Browse Comments.” If you do not have access to the internet, go to Dockets Operations at the Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, 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 Dockets Operations.

## **II. Executive Summary**

### *A. Purpose and Summary of the Final Rule*

FMCSA amends its regulations to permit an individual who does not satisfy, with the worse eye, either the existing distant visual acuity standard with corrective lenses or the field of vision standard, or both, to be physically qualified to operate a CMV in interstate commerce under specified conditions. The individual must satisfy the new alternative vision standard, along with FMCSA’s other physical qualification standards. In addition, with limited exceptions, individuals physically qualified under the alternative standard for the first time must satisfactorily complete a road test administered by the employing motor carrier before operating a CMV in interstate commerce. This rule eliminates 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. The alternative vision standard enhances employment opportunities while remaining consistent with FMCSA’s safety mission.

### *B. Summary of the Major Provisions*

This rule establishes an alternative vision standard, as proposed in the NPRM (86 FR 2344 (Jan. 12, 2021)), with minor clarifications. The final rule clarifies that the alternative vision standard is applicable to individuals who do not satisfy, with the worse eye, the existing FMCSA distant visual acuity standard with corrective lenses or the field of vision standard, or both.

The alternative vision standard is comparable to the regulatory framework FMCSA adopted in § 391.46 for individuals with insulin-treated diabetes mellitus (see 83 FR 47486 (Sept. 19, 2018)). The alternative vision standard takes the same collaborative

approach to medical certification that includes a medical specialist, in this case an ophthalmologist or optometrist, in addition to a medical examiner (ME) on FMCSA's National Registry of Certified Medical Examiners.

Before an individual may be medically certified under the alternative vision standard, the individual must have a vision evaluation conducted by an ophthalmologist or optometrist. The ophthalmologist or optometrist records the findings of the vision evaluation and provides specific medical opinions on the new Vision Evaluation Report, Form MCSA-5871. Then, an ME performs a physical qualification examination and determines whether the individual meets the alternative vision standard, as well as FMCSA's other physical qualification standards. If the ME determines the individual meets the physical qualification standards, the ME may issue a Medical Examiner's Certificate (MEC), Form MCSA-5876, for a maximum of 12 months.

In making the physical qualification determination, the ME considers the information in the Vision Evaluation Report, Form MCSA-5871, and utilizes independent medical judgment to apply the following four standards. The new alternative vision standard provides that, to be physically qualified, 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 pass since the vision deficiency became stable to adapt to and compensate for the change in vision. FMCSA clarifies in the last of the four standards that there must be a period for the individual to adapt to and compensate for the vision loss after the vision deficiency is deemed stable by a medical professional.

Subject to limited exceptions, individuals physically qualified under the alternative vision standard for the first time must satisfactorily complete a road test before operating in interstate commerce. The employing motor carrier conducts the road test in accordance with the road test already required by § 391.31. Individuals are excepted from the road test requirement if they have 3 years of intrastate or specific excepted interstate CMV driving experience with the vision deficiency, hold a valid Federal vision exemption, or are medically certified under the previously administered vision waiver study program in § 391.64(b).

This rule takes a more individualized approach to medical certification than the vision exemption program it replaces and ensures that individuals medically certified under the alternative vision standard are physically qualified to operate a CMV safely. The process creates a clear and consistent framework to assist MEs with the physical qualification determination that is equally as effective as a program based on considering exemptions under 49 U.S.C. 31315(b). In addition, the approach of MEs making the physical qualification determination, instead of FMCSA as in the current exemption program, is consistent with Congress' directive in 49 U.S.C. 31149(d) for trained and certified MEs to determine the individual's physical qualification to operate a CMV.

The alternative vision standard replaces the current vision exemption program as the basis for determining the physical qualification of individuals to operate a CMV. Accordingly, the 1,967 current vision exemption holders<sup>1</sup> will no longer have to apply for an exemption. Exemption holders have 1 year after the effective date of this rule to comply with the alternative vision standard, at which time all exemptions issued under 49 U.S.C. 31315(b) become void. This transition year provides time to learn the new process for individuals whose MEC, Form MCSA-5876, expires near the time this rule becomes effective. Exemption holders will be notified by letter with details of the transition to the new standard.

Similarly, the approximately 1,800 individuals currently physically qualified under the grandfather provisions in § 391.64(b)<sup>2</sup> have 1 year after the effective date of this rule to comply. One year after the effective date of this rule all MECs, Form MCSA-5876, issued under § 391.64(b) become void.

### C. Costs and Benefits

FMCSA estimates this rule will reduce barriers to entry, thereby increasing employment opportunities, for current and future CMV drivers. The 1,967 drivers holding vision exemptions will no longer have to apply for an exemption, and potential drivers who would not qualify for an exemption because they 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. Additionally, previously qualified interstate CMV drivers who no longer satisfy, with the worse eye, either

the distant visual acuity standard with corrective lenses or field of vision standard, or both, will be able to return sooner than 3 years to operating in interstate commerce. These drivers are also relieved of the time and paperwork burden associated with applying for or renewing an exemption.<sup>3</sup> A one-time road test is 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 final rule results 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 \$44,000 for the road test. The Agency does not expect negative impacts on safety. The Agency also notes that no safety organizations commented on the NPRM.

### III. Abbreviations

ACOEM American College of Occupational and Environmental Medicine  
AOA American Optometric Association  
ATA American Trucking Associations, Inc.  
BLS Bureau of Labor Statistics  
CDL Commercial Driver's License  
CFR Code of Federal Regulations  
CMV Commercial Motor Vehicle  
DOL Department of Labor  
DOT Department of Transportation  
E.O. Executive Order  
FHWA Federal Highway Administration  
FMCSA Federal Motor Carrier Safety Administration  
FR Federal Register  
GDP Gross Domestic Product  
ICR Information Collection Request  
ME Medical Examiner  
MEC Medical Examiner's Certificate, Form MCSA-5876  
MRB Medical Review Board  
NAICS North American Industry Classification System  
NOA Notice of Availability  
NPRM Notice of Proposed Rulemaking  
OIRA Office of Information and Regulatory Affairs  
OMB Office of Management and Budget  
OODA Owner-Operator Independent Drivers Association  
RFA Regulatory Flexibility Act  
SBA Small Business Administration  
Secretary Secretary of Transportation  
§ Section  
U.S.C. United States Code

### 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),

<sup>3</sup> As discussed below in section X.F. with respect to the information collection titled "Medical Qualification Requirements," FMCSA attributes 2,236 annual burden hours at a cost of \$67,486 for drivers to request and maintain a vision exemption. The final rule eliminates this entire burden.

<sup>1</sup> FMCSA data as of August 5, 2021.

<sup>2</sup> FMCSA data as of August 5, 2021.

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 final rule does not impose any responsibilities on CMV drivers that “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 does not anticipate that drivers will be coerced to operate a vehicle because of this rule (section 31136(a)(5)).

Additionally, in 2005, Congress authorized the creation of the Medical Review Board (MRB), comprised 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, the Secretary has discretionary authority under 49 U.S.C. 31133(a)(8) to prescribe recordkeeping and reporting requirements.

FMCSA has considered the costs and benefits associated with this final rule (49 U.S.C. 31136(c)(2)(A) and 31502(d)). Those factors are discussed in the Regulatory Analyses section of this rule.

## V. Regulatory History

### A. NPRM

On January 12, 2021, FMCSA published an NPRM titled “Qualifications of Drivers; Vision Standard” (86 FR 2344). The NPRM included a detailed discussion of the background and regulatory history for this action, including the existing vision standard, the vision waiver study program and grandfathered drivers, and the Federal vision exemption program. It also included a discussion of the reports and analyses undertaken since 1990 to gather information and evaluate the vision standard, the vision waiver study program, and the vision exemption program, as well as the MRB recommendations pertaining to vision and FMCSA's conclusions regarding those reports and analyses. While not repeated here, these discussions can be found in the NPRM (86 FR 2348–56).

A detailed discussion of the rationale for the proposed alternative vision standard is set forth in the NPRM (86 FR 2356–61) and will not be repeated here. Summaries of the relevant provisions of the NPRM are included in the discussion of the comments below. The NPRM's comment period closed on March 15, 2021.

### B. MRB Task 21–1 and Report

The NPRM provided that following the closure of the comment period FMCSA would ask the MRB to review all comments from medical professionals and associations. Accordingly, in May 2021, FMCSA requested in MRB Task 21–1 that the MRB review and analyze the nine comments from medical professionals and associations, make recommendations regarding the proposed alternative vision standard, and identify factors the Agency should consider regarding next steps in the vision rulemaking. In addition, FMCSA requested the MRB's recommendations with respect to whether the information requested from ophthalmologists and optometrists on the proposed Vision Evaluation Report, Form MCSA–5871, provided sufficient information for an ME to make a medical certification determination.

In May 2021, the MRB held a public meeting to consider MRB Task 21–1, among other topics. On July 20, 2021, the MRB provided its recommendations to FMCSA in MRB Task Report 21–1.<sup>4</sup>

<sup>4</sup>Details of the meeting, including MRB Task 21–1, the MRB Task 21–1 Report, and supporting materials used by the MRB, are posted on the Agency's public website at <https://www.fmcsa.dot.gov/medical-review-board-mrb-meeting-topics> (last accessed Aug. 31, 2021). The

The MRB made the following recommendations:

### I. Overview

A. With respect to the medical aspects of the proposed alternative vision standard only, if the MRB does not make a specific recommendation to change a provision, the MRB concurs with the provision as proposed in the January 2021 NPRM.

B. The MRB recommends that the Agency deemphasize that the alternative vision standard begins with the vision evaluation because the individual may be examined first by the medical examiner.

### II. Recommendations for the Regulatory Standards

A. The MRB recommends that the current field of vision requirement be changed from 70 degrees to 120 degrees for the alternative vision standard for monocular vision drivers.

B. The MRB agrees that the requirement for sufficient time to adapt to and compensate for the vision deficiency should not be changed in the proposed alternative vision standard. The MRB notes it does not have sufficient data to establish a specific waiting period for an individual who has a new vision deficiency.

### III. Recommendations for the Vision Evaluation Report

A. The MRB recommends that the physical qualification standards for the alternative vision standard, as set forth in the paragraph below from Task 21–1 but modified to reflect a field of vision of at least 120 degrees, be added to page 1 in the instructions after FMCSA's definition of monocular vision:

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 120 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 vision deficiency.

B. The MRB recommends that the Agency expand the medical opinion in question 12 to require that the individual can drive a CMV safely with the vision condition. The MRB notes that the medical opinion provided by the ophthalmologist or optometrist regarding whether the individual has adapted to and compensated for the change in vision sufficiently encompasses depth perception. The MRB notes further that question 12 sufficiently implies that time is needed to adapt and compensate for the change in vision but appropriately relies on the ophthalmologist or optometrist conducting the vision evaluation to determine the appropriate period of time on a case-by-case basis.

C. The MRB recommends that the requests for information about stability in questions

MRB Task 21–1 Report is also available in the docket at <https://www.regulations.gov/document/FMCSA-2019-0049-0117>.

11 and 13 both be retained. The questions solicit different information.

D. The MRB recommends that the Agency change the order of the requested information to be questions 1 through 9, 10, 12, 13, and then 11.

E. The MRB recommends that the vision evaluation report not request information relating to severe non-proliferative diabetic retinopathy and proliferative diabetic retinopathy because they are evaluated separately under the standard for insulin-treated diabetes mellitus.

#### C. Notice of Availability

On August 24, 2021, FMCSA published a notice of availability (NOA) of the MRB's recommendations in the **Federal Register** and requested public comment on them (86 FR 47278). The comment period closed on September 23, 2021.

### VI. Discussion of Comments and Responses

#### A. Comment Overview

In this final rule, FMCSA responds to public comments to the NPRM and the NOA regarding the recommendations in the MRB Task 21–1 Report.

##### 1. NPRM

In response to the NPRM, FMCSA received 69 submissions. One submission was identified as not relevant, two submissions were duplicates, and one commenter provided two different submissions. Accordingly, 65 commenters (primarily individuals) provided responsive comments to the NPRM. The commenters were healthcare providers, one medical association, drivers, motor carriers, two trade associations, and private citizens. Fourteen commenters were anonymous. No safety organizations commented on the NPRM.

The majority of commenters (45) expressed general support for the proposed rule. These commenters included a board-certified retina surgeon and ophthalmologist, two MEs, CMV drivers with either Federal vision exemptions or State vision waivers, former drivers who no longer satisfy the vision standard, individuals who have not had the opportunity to drive a CMV because of their vision, the Owner-Operator Independent Drivers Association (OOIDA), and individuals who viewed the rule as reducing discrimination. Common reasons cited for supporting the proposal include the following: The evidence shows monocular drivers are safe and have no adverse impact on safety; the rule would remove barriers to entry, create job opportunities, encourage more individuals to enter the workforce, keep experienced drivers, and reduce the

driver shortage; the rule is modeled on the approach used to eliminate the exemption program and create an alternative physical qualification standard for insulin-treated diabetes mellitus that has worked well; the rule would be a step toward less discrimination and more inclusion in the workforce; and the proposed standard is more streamlined than the exemption process so it would decrease time and paperwork burdens for drivers.

Twenty commenters generally opposed the proposed rule (including commenters who supported the proposal in concept but wanted further study before implementing it). These commenters included four MEs, the American College of Occupational and Environmental Medicine (ACOEM), Concentra (a healthcare company that delivers occupational medicine and urgent care services to employers and patients), two drivers, and the American Trucking Associations, Inc. (ATA). Common reasons cited for opposing the proposal include the following: The proposal fails to demonstrate an appropriate level of safety or the data is inconclusive on safety; findings from drivers enrolled in the waiver and exemption programs cannot be applied to the general population of drivers; the road test is not a suitable alternative to 3 years of driving experience and places a burden on motor carriers; the field of vision requirement should be greater than 70 degrees; and the MRB has not recommended changes to the vision standard.

##### 2. NOA

In response to the NOA on the MRB Task 21–1 Report, FMCSA received 14 submissions. The commenters were one ME, one medical association, drivers and individuals with vision loss in one eye, one motor carrier, one trade association, private citizens, and five anonymous commenters. No safety organizations commented on the NOA.

The NOA stated that “Comments must be limited to addressing the recommendations in the MRB Task 21–1 Report” (86 FR 47279). Only four commenters provided comments that were responsive, at least in part, to the MRB recommendations. Five commenters provided general support for the alternative vision standard. Two commenters opposed the new vision standard. Three comments were outside the scope of the rulemaking.

The MRB's recommendations and public comments responsive to them are addressed where applicable in the discussion of comments and responses

below.<sup>5</sup> Because comments to the NOA were limited to the MRB recommendations, comments relating to other aspects of the alternative vision standard are not discussed. FMCSA notes that none of these comments presented new issues or information not raised in the comments submitted in response to the NPRM.

#### B. Data Used To Determine the Safety Impact of the Alternative Vision Standard

**NPRM:** FMCSA summarized the reports and analyses undertaken since 1990 to gather information and evaluate the vision standard, previous waiver study program, and current exemption program, as well as the MRB recommendations pertaining to vision. FMCSA concluded that the available information did not call into question the validity of the vision exemption program. The Agency noted the available information did not establish strong relationships between specific measures of vision and their correlation to driver safety. FMCSA acknowledged “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” (86 FR 2356).

Accordingly, FMCSA found the experience with the vision waiver study and exemption programs to be most relevant in establishing an alternative vision standard. Based on that experience, FMCSA determined the safety performance of the individuals in the vision waiver study and vision exemption programs is at least as good as that of the general population of CMV drivers. FMCSA stated that, if an individual meets the proposed alternative vision standard, the Agency expects there will be no adverse impact on safety due to the individual's vision.

**Comments on the Data Used To Determine the Safety Impact of the Alternative Vision Standard:** Robert E. Morris, M.D., a board-certified retina surgeon and ophthalmologist, stated, “it is well recognized in medical journals that individuals who have experienced a vision loss in one eye can and usually develop compensatory viewing behavior to mitigate the vision loss. My

<sup>5</sup> The MRB indicated in the MRB Task 21–1 Report that it limited its recommendations to the medical aspects of the proposed alternative vision standard. Therefore, FMCSA does not reference the MRB Task 21–1 Report in sections that do not relate to the medical aspects of the alternative vision standard.

experience in treating patients with the loss of vision in one eye is that these individuals, over time, are not limited by their lack of binocularity with respect to driving once they have adapted to and compensated for the change in vision.” Dr. Morris indicated that if an individual meets the alternative vision standard there will be no adverse impact on safety due to the vision. Dr. Morris encouraged, “without any reservation,” that the alternative vision standard be adopted as proposed.

A commenter who is an ME and has examined a moderate number of drivers with monocular vision stated that they have adapted to the monocular vision and “have been driving professionally successfully.” The commenter referred to an August 2005 abstract published in *Optometry and Vision Science*, titled “The Impact of Visual Field Loss on Driving Performance: Evidence from On-Road Driving Assessments,” that “concluded ‘a large proportion of monocular drivers were safe drivers.’”

OOIDA stated that the “research presented demonstrates that individuals with monocular vision can safely operate a CMV.” OOIDA stated further that “There is also considerable medical literature indicating that individuals with vision loss in one eye can and do develop compensatory viewing behavior to mitigate their vision loss.” OOIDA commented that the alternative vision standard “ensures sufficient physical qualifications are met.”

Three commenters stated studies show the alternative vision standard will not compromise safety. A different commenter stated, “There is no factual evidence to support the idea that reduced vision has a negative impact on driving abilities.” Another commenter, a motor carrier, also commented that the alternative vision standard would not increase danger to the public.

A commenter stated the alternative vision standard “comports with current scientific findings” and “is not arbitrary, . . . It is based on actual reports from credentialed professionals.” The commenter noted that “safeguards will be in place to catch and mitigate any safety issues.” For example, an ME makes the vision determinations instead of an FMCSA employee. The road test ensures a driver operating under the alternative vision standard can physically drive the CMV safely. Finally, the proposed 12-month maximum certification period ensures a driver will be re-evaluated in a year to determine continued eligibility for CMV driving.

A commenter who holds a Federal vision exemption stated individuals who have had time to adapt and

“compensate for their deficiency are, indeed, safer and more conscientious than your average driver.” Several other commenters who hold intrastate vision waivers noted their safe driving records or that their vision does not hinder them in any way. They stated it does not make sense that they can drive in intrastate commerce but not in interstate commerce. A commenter, who has always had monocular vision and has a “terrific driving record,” stated “Having one eye increases your awareness of the need to be diligent about your surroundings.”

In contrast, ACOEM and Concentra commented that the studies cited are inconsistent in the definition of the conditions studied (*i.e.*, different definitions of monocular vision were used) and conclusions reached. They stated that some of the studies reported insufficient evidence of monocular drivers being at higher risk of crash; however, they reminded “all concerned that lack of evidence of the risk is not evidence of absence.” They stated that the study findings from drivers enrolled in the vision waiver and exemption programs cannot be applied to the general population of drivers. According to ACOEM and Concentra, the drivers in these programs were a carefully selected (subject to very specific criteria that included 3 years of driving experience and a good driving record), highly motivated, and closely vetted and monitored group. ACOEM added that “making the jump to apply these findings to the general population of drivers is lacking in sufficient evidence to modify the current vision standard.”

Concentra commented that one of the rebuttals to its concerns will be that there have not been any significant problems with monocular drivers in the last 30 years. It stated this “could lead one to conclude drivers with monocular vision are as safe as other drivers.” Concentra reminded readers that data is either absent or conflicting regarding the safety of monocular drivers.

Additionally, with such a small percentage of drivers having monocular vision, Concentra stated the “data will continue to be difficult to obtain in a statistically significant manner.”

Two commenters, who are medical doctors and MEs, stated that the existing vision standard should not be changed. One stated that the existing standard is loose enough as it is. The other added that, as a criterion for safe driving, it is imperative to have acuity in vision to drive a multi-ton vehicle around other drivers and pedestrians on the road. A commenter agreed with the doctors, stating that when it comes to public safety individuals with vision

impairments should not drive CMVs because the impairments affect their capabilities. A different commenter who is an ME expressed “concern about changing the vision requirements.”

ATA commented that since 1992 it has consistently objected to loosening the vision standard in the absence of robust data showing such revisions would not deteriorate the current level of safety. ATA stated it “has consistently advocated that a revised but universally applied vision standard would be superior to the current exemption program and the inconsistency that results from its ad hoc application.” ATA noted that its “members accept FMCSA’s analysis that the Agency ‘has observed no adverse impact on CMV safety due to the vision exemption program.’” However, ATA continued that it “strongly objects to FMCSA’s use of the federal vision exemption program data without factoring in the safety implications of removing essential safeguards contained within the program to warrant the proposed revision to the vision standard.” ATA stated that “FMCSA’s NPRM fails to propose a standard that would demonstrably maintain the appropriate level of safety.”

Three commenters recommended that FMCSA undertake further studies before proposing an alternative vision standard. The first commenter stated: (1) The statement about vision data from the “Visual Requirements and Commercial Drivers” report supports maintaining the current requirements for overall safety; (2) the MRB recommended in 2008 that the vision standard should not be changed; and (3) the 2008 evidence report summarized that the data was not conclusive to determine crash risk so more study is required. The commenter noted that the accident rate study conducted from August 1992 to November 1995 found the accident rates of both the waiver group and control group were significantly better/lower than that of the national rates because both groups were being monitored. The commenter stated that one can infer that if all CMV drivers were in a similar monitoring program then the overall national accident rates would follow this reduced accident rate trend and improve overall safety. The commenter also stated that, before any reduction to existing vision standards can occur, all relevant data must be evaluated through consistent methodologies (*i.e.*, the creation of studies, defined terms, data collection, reports, documentation standards, safety standards, etc.). The second commenter supported the “idea of this rule,” but the commenter stated

that further study must be done to determine the full impact of this rule before it is adopted. The third commenter stated that, as “the study results are mixed, a more detailed study or review of the available literature should be conducted before this rule is finalized. The current literature does not appear to support the argument that there will be no impact on safety.”

One commenter noted a finding in the November 2016 Analysis Brief that the crash rate of vision exemption drivers was statistically different and higher than the crash rate in the control group. That commenter “would feel safer if the vision standards became a little stricter for CMVs.”

Another commenter stated the proposed amendment finds “the perfect balance between the correct qualification need for these individuals and road safety.” The commenter continued that modification of the existing vision standard is needed and the proposal seems to provide a framework for who ensures proper evaluation and criteria are met. However, the commenter noted the need to remain vigilant of the data presented because of inconsistencies among studies and “limitations in regard to our populations.”

A commenter, who acknowledged not reading the reports discussed in the NPRM, stated that as a safety-minded professional the commenter saw “the reduced standards as a gateway for more accidents.” The commenter asked, if FMCSA has data to indicate drivers with vision exemptions had no significant issues, is it possible the data was based on limited markets where drivers operated in areas with less traffic. The commenter concluded that the alternative vision standard “will have a profound impact on public safety” and “hope[d] the FMCSA discards this NPRM in the interest of public safety.”

Several additional commenters opposed the alternative vision standard based on general safety concerns. For example, one commenter stated, while agencies are working to get more drivers on the road and make it easier for drivers to obtain their Federal medical certification, “there should remain certain criteria for obvious safety reasons.” The commenter continued that an amendment to the vision standard would not be in the best interest of the driver or the public on the road. Similarly, a different commenter noted the rule would be effective in creating more job opportunities and saving a big amount of money but did “not think that this rule is effective in ensuring roads are

safe for every driver.” Another commenter stated our roads are dangerous enough already and did not want people with vision impairments on the road. One commenter, who has been driving for more than 34 years, stated the vision standards should be left alone. Finally, another commenter stated that FMCSA needs to be more worried about other issues and that the existing standard is not a cause in that many accidents.

**MRB Task 21–1 Report:** The MRB stated with respect to the medical aspects of the proposed alternative vision standard only, if the MRB did not make a specific recommendation to change a provision, the MRB concurred with the provision as proposed in the January 2021 NPRM. The MRB did not recommend that FMCSA forego adoption of the alternative vision standard.

**Comments on MRB Task 21–1 Report:** ATA repeated its prior comments that the data on which the rule is based is insufficient. ATA stated data collected from the vision exemption program included a requirement that drivers have 3 years of intrastate driving experience with a stable vision deficiency and exempted drivers must meet strict driving record requirements. “Accordingly, the data collected under the exemption program does not accurately indicate the level of safety that can be expected from all drivers qualified under the proposed alternative standard should the new standard remove these safeguards.” ATA urged FMCSA “to collect more data on the safety of drivers with a vision deficiency prior to adopting the alternative standard as introduced.”

**Response:** The Agency stands by its conclusion that individuals who satisfy the alternative vision standard requirements do not create an increased risk of unsafe operation of a CMV due to their vision that would cause injury to persons or property. The alternative vision standard is therefore “adequate to enable them to operate the vehicles safely” (49 U.S.C. 31136(a)(3)). Indeed, the comments provided by Dr. Morris,<sup>6</sup> a board-certified retina surgeon and ophthalmologist who encouraged the adoption of the alternative standard without reservation, are consistent with FMCSA’s assessment of the safety impact of the new standard. Commenters provided no new information or data that persuades the

Agency to depart from its conclusion.<sup>7</sup> Moreover, the MRB generally supports moving ahead with an alternative vision standard.

The Agency acknowledges, as it did in the NPRM, that the data on the relationship between monocular vision and crash involvement is sparse, conflicting with respect to crash risk, and not definitive. It does not establish strong relationships between specific measures of vision and their correlation to driver safety. FMCSA also acknowledges that different definitions of “monocular vision” are used in the literature. These limitations in studies relating to crash risk explain why the Agency elects to rely on its long experience with the vision waiver study and exemption programs as a basis for this rule in addition to the medical literature.

Further studies evaluating the impact of a vision deficiency in one eye on driving performance are unnecessary for the purposes of this rule. Considering the long period over which the vision waiver and exemption programs have operated, the Agency has sufficient information and experience to reach generalized conclusions. The experience with the programs has allowed FMCSA to evaluate the vision criteria used in the programs since 1992 and adopted in this rule in the context of actual CMV driving experience. Contrary to the implication by one commenter, FMCSA finds no basis for the assertion that the experience of drivers in the programs occurred in limited markets with less traffic.

FMCSA disagrees that the experience and safety determinations based on the vision waiver study and exemption programs cannot be applied to the alternative vision standard. To isolate the impact of a vision deficiency on driving, the Agency excluded drivers with a history of unsafe driving behaviors. After 30 years of experience with the vision waiver study and exemption programs, FMCSA finds it is reasonable to conclude that, if the vision deficiency had an adverse impact on the ability to operate a CMV, there would be observed evidence of that adverse impact over the long period, even though the individuals were generally safe drivers, experienced in driving with the vision deficiency, or monitored. FMCSA has no such evidence.

<sup>6</sup> The Curriculum Vitae submitted establishes Dr. Morris as an expert in the vision field (see <https://www.regulations.gov/comment/FMCSA-2019-0049-0087>).

<sup>7</sup> Although the study titled “The Impact of Visual Field Loss on Driving Performance: Evidence from On-Road Driving Assessments” referred to by a commenter generally supports the safety of monocular drivers, FMCSA does not rely on the study to support this rule due to the study’s small sample size.

One commenter noted a finding in the November 2016 Analysis Brief that the crash rate of vision exemption drivers was statistically different and higher than the crash rate in the control group. As FMCSA explained in the NPRM, that finding is not cause for concern. The findings of the Analysis Brief represent a limited period and are subject to several limitations. In particular, the crash information did not consider whether the CMV driver was at fault in any given crash. Moreover, it is not possible to know whether visual function caused or contributed to the crash. FMCSA monitors the performance of individual drivers in the vision exemption program continuously. FMCSA has no evidence to suggest drivers in the exemption program are less safe than the general population of CMV drivers.

Another commenter stated that the August 1992 to November 1995 study found the accident rates of the waiver group and control group were significantly lower than that of the national rate. The commenter inferred that was because the waiver and control groups were monitored in some manner. The Agency clarifies that study did not include a control group. The comparison was of the accident rate in the waiver group to the national rate.

FMCSA disagrees that the alternative vision standard presents a “loosening” or “reduction” in vision standards. The Agency finds, as did Dr. Morris, that the requirements adopted are appropriate and will not adversely impact safety. The rule allows individuals who have developed the skills to adapt to and compensate for the vision loss to demonstrate that they also have the skills to operate a CMV safely. The rule includes safeguards to ensure that only individuals who have developed the skills to adapt to and compensate for the vision loss will be physically qualified.

As compared to the existing physical qualification process, individuals physically qualified under the alternative vision standard are subject to more stringent requirements. Individuals physically qualified under the existing vision standard undergo only a basic vision screening test performed by MEs at least once every 2 years. Individuals physically qualified under the alternative vision standard must undergo a thorough eye evaluation conducted by an ophthalmologist or optometrist using sophisticated equipment at least once a year. As discussed further below, the ophthalmologists and optometrists performing the evaluations are to provide their medical opinions regarding whether the individuals

evaluated have adapted to and compensated for the change in vision such that they can drive a CMV safely with the vision deficiency. Moreover, individuals physically qualified under the alternative vision standard must undergo a physical qualification examination at least once a year.

As compared to the case-by-case determinations made in the exemption program, the alternative vision standard provides a consistent approach to medical certification of individuals who do not meet the existing vision standard. This approach of MEs making the physical qualification determination, instead of FMCSA, as in the exemption program, is consistent with Congress’ directive in 49 U.S.C. 31149(d) for trained and certified MEs to assess the individual’s health status.

#### *C. The Two-Step Physical Qualification Process*

*NPRM:* FMCSA proposed a two-step process for physical qualification under the alternative vision standard. 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, 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.

*Comments on the Two-Step Physical Qualification Process:* Six commenters remarked favorably regarding the collaborative physical qualification process. Three stated the approach has worked well in the standard for insulin-treated diabetes mellitus. For example, one commenter who is an ME stated the alternative standard for insulin-treated diabetes mellitus, which involves a similar two-step process for physical qualification, has worked very well in practice. The commenter continued that the proposed changes to the vision standard would make the certification process easier for both MEs and drivers. Other commenters agreed that medical professionals should determine whether an individual meets the physical qualification standards. OOIDA stated that, as in the current Federal vision exemption program, the alternative vision standard still requires consultation with and approval from medical professionals, but it will eliminate time and paperwork burdens that are required under the exemption program.

*MRB Task 21-1 Report:* The MRB recommended that the Agency

deemphasize that the alternative vision standard begins with the vision evaluation because the individual may be examined first by the ME.

*Comments on MRB Task 21-1 Report:* The American Optometric Association (AOA) supported the two-step process to physically qualify drivers and the requirement to have the first step be for the individual to seek an evaluation by an ophthalmologist or optometrist. It continued that ensuring all individuals are thoroughly evaluated by an expert in eye care is critical and the information and opinions should be carefully considered and respected. The AOA commented that “Relying on the information provided by the doctor of optometry or ophthalmologist will be critical in evaluating potential drivers.”

ATA cautioned “that deemphasizing the two-step process might result in additional burdens for a driver who would need to make multiple visits to a medical examiner.” ATA emphasized that individuals who know they will be physically qualified under the alternative vision standard should see the vision specialist first. However, if a driver is evaluated by an ME first and subsequently referred to a vision specialist, that driver will have to return to the ME again. At the same time, ATA stated its concern that deemphasizing the two-step certification process would result in some individuals with a vision deficiency being wrongly issued medical certification because MEs are not vision specialists, so individuals should see an ophthalmologist or optometrist before the physical qualification examination.

*Response:* FMCSA agrees that the alternative vision standard would lessen the complexity of the medical certification process for individuals who do not meet the vision standard without an exemption. The similar streamlined approach for medical certification of individuals with insulin-treated diabetes mellitus has worked well and received positive acceptance from drivers and employers in the motor carrier industry. The collaborative physical qualification process in this final rule provides sufficient safeguards to ensure that only individuals who have adapted to and compensated for their vision deficiency will receive medical certification.

In response to the MRB’s recommendation, FMCSA made changes to the terminology in this preamble to emphasize that a vision evaluation must be completed before an individual may be physically qualified under the alternative vision standard (see 49 CFR 391.44(b) and (c)). FMCSA uses “collaborative” to describe the process



without emphasizing which medical professional first assesses the individual.

For individuals who are aware they will be physically qualified under § 391.44, they begin the certification process by going to an ophthalmologist or optometrist for a vision evaluation. For some, however, the need for a vision evaluation will not be known until they fail to satisfy the existing vision standards at a physical qualification examination. In this situation, a second visit to an ME is unavoidable. Because MEs are not vision specialists, a visit to an ophthalmologist or optometrist is always necessary to ensure the individual's vision is evaluated sufficiently before an ME may issue a medical certificate that ensures the individual can operate a CMV safely. This process is no different from current practice for other conditions when an ME makes a request for a referral to or consultation with another appropriate healthcare provider.

Regardless of how an individual begins the certification process, an individual being evaluated under the alternative vision standard must have an eye evaluation by an ophthalmologist or optometrist to be medically certified. Therefore, there is no concern that deemphasizing the order of the certification process will result in some individuals with a vision deficiency being incorrectly certified as physically qualified. The Vision Evaluation Report, Form MCSA-5871, contains the information necessary for an ME to determine whether the individual satisfies the existing vision standard using more sophisticated testing equipment or requires certification under the alternative vision standard.

FMCSA emphasizes that the ME is to consider the information provided on the Vision Evaluation Report, Form MCSA-5871, but is to use independent medical judgment to evaluate the information and determine whether the individual meets the alternative vision standard. It is the ME who makes the physical qualification determination in the collaborative process.

#### *D. The Role of Ophthalmologists and Optometrists*

*NPRM:* FMCSA proposed that an individual seeking physical qualification under the alternative vision standard 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.

*Comments on the Role of Ophthalmologists and Optometrists:*

Three commenters endorsed requiring an individual to be seen by an ophthalmologist or optometrist. Two other commenters, however, expressed concerns about allowing the individual to select the ophthalmologist or optometrist. One stated that having the evaluation by a doctor of an individual's choosing may be ineffective in proving whether an individual can operate a CMV with limited vision. The other commenter asked what would prevent a driver with recent loss of vision from "doctor shopping" until the driver finds an ophthalmologist or optometrist who is willing to state the driver has adjusted to the loss of vision. The commenter stated that FMCSA would have no way to be aware of drivers who doctor shop.

The same commenter remarked that the proposed process appears to be one that can be subjective, rather than objective like the regulation for individuals with insulin-treated diabetes mellitus that relies on numbers. The commenter noted a driver could simply report that the driver has adjusted to the partial vision loss when that may not be the case. The commenter asked if there could be direct numbers or procedures assigned to the driver's eye evaluation to prevent that from happening. In contrast, one commenter stated no doctor is going to sign off on a driver if the doctor knows a driver cannot drive in a safe manner.

*MRB Task 21-1 Report:* The MRB made five recommendations relating to the Vision Evaluation Report, Form MCSA-5871, that generally relate to the role of ophthalmologists or optometrists in the certification process. Those recommendations are discussed in detail in connection with the report and the relevant requirement in the alternative vision standard.

*Response:* FMCSA expects that ophthalmologists and optometrists will not complete the Vision Evaluation Report, Form MCSA-5871, unless they have reliable information on which to base their opinions, as stated by one commenter. Concerning the comments on drivers self-selecting ophthalmologists and optometrists and doctor shopping for favorable results, FMCSA anticipates that often the ophthalmologist or optometrist completing the report will have treated the individual seeking evaluation and have knowledge of the individual's vision medical history. However, the Agency is not requiring the ophthalmologist or optometrist completing the report to have provided medical treatment to the individual previously. If the ophthalmologist or optometrist does not have a previous relationship with an individual seeking

evaluation, typical medical practice would be for the ophthalmologist or optometrist to request and review the individual's prior vision and medical records.

The Vision Evaluation Report, Form MCSA-5871, requests objective information that is the basis for the medical opinions rendered by the ophthalmologist or optometrist. The information is obtained through a vision evaluation that includes formal perimetry results for the field of vision and prior medical documentation. The Agency finds it unlikely an ophthalmologist or optometrist would merely accept an individual's statement that the individual has adapted to and compensated for the vision loss. Instead, the ophthalmologist or optometrist makes that determination based on multiple factors such as the clinical examination, test results, history of the cause and duration of the vision loss, and medical information regarding the time needed to adapt to and compensate for the vision loss based on all the relevant factors. In addition, ophthalmologists and optometrists completing the report must attest that the information provided is true and correct to the best of their knowledge.

#### *E. Frequency of Vision Evaluations*

*NPRM:* FMCSA proposed that individuals physically qualified under the alternative vision standard would have vision evaluations by an ophthalmologist or optometrist before each annual or more frequent physical qualification examination by an ME.

*Comments on the Frequency of Vision Evaluations:* Dr. Morris, a board-certified retina surgeon and ophthalmologist, encouraged FMCSA, "without any reservation," to adopt the alternative vision standard. Another commenter agreed that vision evaluations should be completed at least yearly. A different commenter, an ME, stated the MRB recommended that FMCSA seek comments from ophthalmologists, optometrists, or their professional associations regarding the frequency of evaluation because there are many different eye conditions and they could be fixed or progressive.

*MRB Task 21-1 Report:* The MRB did not recommend a change to the frequency of vision evaluations; therefore, the MRB concurred with the frequency of vision evaluations as proposed.

*Response:* FMCSA continues to find that at least annual vision evaluations are appropriate for individuals physically qualified under the alternative vision standard. The Vision Evaluation Report, Form MCSA-5871,



asks ophthalmologists and optometrists to provide an opinion on whether a vision evaluation is required more often than annually for the individual evaluated. If so, they are to state how often a vision evaluation should be required. In addition, the ME performing the physical qualification examination may exercise medical discretion, based on the findings of the examination and driver health history, and require an eye evaluation more often than annually by medically certifying the individual for less than the maximum 12-month period. Finally, ophthalmologists, optometrists, and their professional associations had the opportunity to submit comments on this issue in response to the NPRM.

#### *F. Vision Evaluation Report, Form MCSA-5871*

*NPRM:* FMCSA proposed that an ophthalmologist or optometrist would record the findings from the vision evaluation and provide specific medical opinions on the Vision Evaluation Report, Form MCSA-5871. The report would be provided to and considered by the ME in making a qualification determination.

*Comments on the Vision Evaluation Report, Form MCSA-5871:* No comments were received on the substance or format of the report. ACOEM commented, however, that the MRB recommended in September 2015 that, if the vision standard is changed, a form should be designed to be completed by the ophthalmologist or optometrist that includes all the information required by the current vision exemption program, which could then be reviewed by the ME. Another commenter, an ME, stated similarly that FMCSA should seek comment from professional associations for ophthalmologists or optometrists regarding comorbid conditions, disease processes, and any other additional helpful information.

*MRB Task 21-1 Report:* In the first of five recommendations for the Vision Evaluation Report, Form MCSA-5871, the MRB recommended that the physical qualification standards for the alternative vision standard (modified to reflect a field of vision of at least 120 degrees) be added to page 1 after FMCSA's definition of monocular vision as information for the ophthalmologist or optometrist.

The second recommendation was to expand the medical opinion for question 12, regarding sufficient time to adapt and compensate for the change in vision, to require that the individual can drive a CMV safely with the vision condition. The MRB noted that the

medical opinion regarding whether the individual has adapted to and compensated for the change in vision sufficiently encompasses depth perception. The MRB further noted that question 12 sufficiently implies that time is needed to adapt and compensate for the change in vision, but appropriately relies on the ophthalmologist or optometrist conducting the vision evaluation to determine the appropriate period of time on a case-by-case basis.

The remainder of the MRB recommendations, three through five, concerned the order of questions and the necessity of certain questions. The MRB recommended the information about stability in questions 11 (vision deficiency) and 13 (progressive eye conditions) be retained because the questions solicit different information. The MRB recommended the Agency change the order of the requested information to be questions 1 through 9, 10, 12, 13, and then 11. This would place the question concerning stability of the vision deficiency (question 11) after the question about progressive eye diseases (question 13). Finally, the MRB recommended the Agency not request information on the report relating to severe non-proliferative diabetic retinopathy and proliferative diabetic retinopathy because they are evaluated separately under the standard for insulin-treated diabetes mellitus.

*Response:* With respect to ACOEM and the ME's comments to the NPRM, FMCSA followed the MRB's September 2015 recommendations and developed a form for ophthalmologists and optometrists to complete that is provided to MEs. The Vision Evaluation Report, Form MCSA-5871, is based on the September 2015 recommendations and information obtained in the current vision exemption program. It includes requests for information about progressive eye conditions. A summary of the proposed report was included in the NPRM, and a draft of the report was available in the rulemaking docket. The NPRM afforded the opportunity for all interested parties, including eye professionals and their organizations, to provide comment on the proposed rule and report.

The final Vision Evaluation Report, Form MCSA-5871, includes the alternative vision standards on page 1 as requested by the MRB. However, FMCSA does not modify the vision standards to reflect a field of vision of at least 120 degrees for the reasons discussed below.

FMCSA agrees with the MRB that reordering the medical opinions and information about progressive eye

conditions improves the report. Accordingly, FMCSA inserts the question about progressive eye conditions before the medical opinions. That move consolidates all the vision information before the medical opinions are provided. Question 11, which provides the medical opinion concerning whether the vision deficiency is stable, follows the question about progressive eye conditions as the MRB recommended. FMCSA does not place the medical opinion about stability of the vision deficiency after the other medical opinions, however. The alternative vision standard requires that the vision deficiency must be stable first, and then there must be time to adapt and compensate for the vision change. As recommended, FMCSA expands question 12, regarding adapting to and compensating for the vision deficiency, to include that the individual can drive the CMV safely.

FMCSA agrees with the MRB's recommendation and rationale regarding not to include questions concerning severe non-proliferative and proliferative diabetic retinopathy on the report. These conditions are covered by the separate standard for insulin-treated diabetes mellitus.

The final Vision Evaluation Report, Form MCSA-5871, is available in the docket for this rulemaking. The Agency invites public comment on the report under the Paperwork Reduction Act as provided in the information collection, titled "Medical Qualification Requirements," discussed in section X.F. below. Comments should be submitted to OIRA at OMB as provided in the **ADDRESSES** section above.

#### *G. The Role of MEs*

*NPRM:* FMCSA proposed that, 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 ME would conduct a physical qualification examination and determine whether the individual meets the alternative vision standard, as well as the other physical qualification standards.

*Comments on the Role of MEs:* A commenter stated one safeguard in the alternative vision standard is that determinations regarding whether an individual can operate a CMV safely will be made by an ME, a licensed healthcare professional, instead of an FMCSA employee. In contrast, ACOEM stated the proposed standard would shift considerable responsibility to the ME who may not have the training or experience to adequately assess the vision deficiency. An ME commented that the ME would refuse to examine

any drivers who fall within the proposed alternative vision standard “for the sake of the driving public and as a personal liability concern.”

*MRB Task 21–1 Report:* The MRB did not recommend a change with respect to the role of the ME in the proposed alternative vision standard; therefore, the MRB concurred with the role of the ME as proposed.

*Response:* FMCSA disagrees that under the alternative vision standard more responsibility or liability is shifted to MEs for which they are not trained or have experience. FMCSA has determined that MEs are qualified to perform their role in this collaborative medical certification process and to perform physical qualification examinations on all individuals, including those with vision deficiencies. The role of the ophthalmologist or optometrist is to provide relevant information and medical opinions regarding the individual’s vision status to assist the ME to determine whether the individual meets the alternative vision standard. The role and responsibility of the ME, who is licensed by a State authority to perform physical examinations and is trained in FMCSA’s physical qualification standards and the demands of operating a CMV, is to exercise independent medical judgment to medically certify that the individual can safely operate a CMV. The ME’s role with the alternative vision standard is consistent with current practice for any medical condition for which the ME considers additional information to reach a medical certification determination.

MEs have proven experience making medical certification determinations. This approach of MEs making the physical qualification determination is consistent with Congress’ directive in 49 U.S.C. 31149(d) for trained and certified MEs to determine the individual’s physical qualification to operate a CMV.

If an ME determines that additional information is necessary to make the certification determination, the ME could confer with the ophthalmologist or the optometrist for more information on the individual’s vision medical history and current status, make requests for other appropriate referrals, or request medical records from the individual’s treating provider, all with the appropriate consent. MEs routinely confer with and obtain opinions from treating providers concerning the stability of individuals’ underlying medical conditions and how the medical conditions may impact safety.

#### *H. Frequency of Physical Qualification Examinations and Maximum Period of Certification*

*NPRM:* FMCSA proposed that individuals medically certified under the alternative vision standard have physical qualification examinations at least every 12 months and be medically certified for a maximum period of 12 months.

*Comments on the Frequency of Physical Qualification Examinations and Maximum Period of Certification:* A commenter stated the 12-month maximum certification period is a safeguard that ensures an individual will be re-evaluated in a year to determine continued eligibility for CMV driving. One commenter, an ME, stated that the MRB recommended certification for 1 year if FMCSA develops an alternative vision standard. Another commenter who also is an ME noted that FMCSA issues vision exemptions for 2 years. The commenter asked if individuals designated as legally blind could be medically certified for 2 years because their vision is not going to change.

*MRB Task 21–1 Report:* The MRB did not recommend a change with respect to the frequency of physical qualification examinations or maximum period of certification; therefore, the MRB concurred with the requirement for physical qualification examinations at least every 12 months and certification for a maximum of 12 months.

*Response:* FMCSA continues to find it appropriate for individuals medically certified under the alternative vision standard to have physical qualification examinations at least every 12 months and to be medically certified for a maximum of 12 months. The Agency agrees with the first commenter cited above that the 12-month maximum certification period is a safeguard that allows for early detection and consideration of conditions that may impact an individual’s ability to safely operate a CMV.

FMCSA continues to conclude, as stated in the NPRM, that even individuals who have a non-functional eye or have lost an eye must undergo vision evaluations at least annually. It is important to monitor compliance with the vision standard in the unaffected eye because of the potential for vision changes in that eye (86 FR 2358). Accordingly, at least annual physical qualification examinations are appropriate for individuals designated as legally blind in one eye. Although Federal vision exemptions are issued for 2 years, individuals undergo a vision evaluation and a physical qualification

examination at least annually. The maximum certification period is 12 months for an individual with a vision exemption. Thus, the approach in the alternative vision standard is consistent with the vision exemption program.

If an ME determines an individual merits closer monitoring, the ME may certify the individual for less than the maximum 12-month period. This approach allows the ME to exercise medical discretion as necessary in making individualized medical certification determinations.

#### *I. Individuals Eligible for the Alternative Vision Standard*

*NPRM:* FMCSA proposed that the physical qualification standard for vision would be satisfied if an individual meets the requirements of the existing vision standard or the requirements of the alternative vision standard in § 391.44. Section 391.44 proposed an alternative vision standard for an individual “who cannot satisfy either the distant visual acuity or field of vision standard, or both,” in the existing vision standard in one eye. On the Vision Evaluation Report, Form MCSA–5871, FMCSA defined 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 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.”

*Comments on Individuals Eligible for the Alternative Vision Standard:* ACOEM stated that the proposed alternative vision standard goes beyond the scope of the current vision exemption program. ACOEM commented that the current exemption program is only applicable to drivers whose best corrected vision in their worse eye prevents them from meeting the vision standard. The proposed alternative vision standard, however, seems to allow any driver to meet the vision standard if vision in one eye is at least 20/40 with or without corrective lenses. This would permit a driver who chooses not to obtain corrective lenses to use the proposed standard if the driver’s vision in the better eye meets the existing vision standard. ACOEM continued, “True monocular vision is defined by medical professionals as vision with only one eye whether it be due to functional loss or physical loss of the eye.” However, the alternative vision standard would apply to a driver who simply does not meet the existing visual acuity requirements and does not

specify whether due to a long-term condition, surgery, or just normal vision changes. Concentra made a similar comment. Both ACOEM and Concentra commented that the proposed alternative vision standard would permit having one eye corrected to distant vision and the other corrected for near vision.

*MRB Task 21–1 Report:* The MRB did not recommend a change with respect to eligibility for the alternative vision standard; therefore, the MRB concurred with the alternative standard as proposed in this regard.

*Response:* FMCSA clarifies in this final rule that only individuals who do not satisfy, with the worse eye, either the distant visual acuity standard with corrective lenses or the field of vision standard, or both, in the existing vision standard are eligible to be physically qualified under the alternative vision standard. FMCSA changes the regulatory text and definition of monocular vision on the Vision Evaluation Report, Form MCSA–5871, accordingly. Individuals who choose not to obtain corrective lenses for the worse eye when the better eye meets the existing vision standard must not be physically qualified under § 391.44. It was not the Agency’s intent to change the scope of the current vision exemption program in this regard or to allow individuals who simply need corrective lenses to be physically qualified under the alternative vision standard. The Agency elects to optimize overall safety on our roadways by requiring individuals to satisfy the existing vision standard when they are able to do so with the use of corrective lenses. Moreover, FMCSA assumes that individuals will make the rational decision to improve their vision if it is less burdensome than incurring the additional expense of annual eye evaluations and physical qualification examinations.

The alternative vision standard is not an option for an individual who can meet the existing vision standard with correction. The Vision Evaluation Report, Form MCSA–5871, specifically questions whether the individual has corrected or uncorrected vision, and whether the correction is by glasses or contacts. An ME who receives and reviews a Vision Evaluation Report, Form MCSA–5871, and detects the individual in each eye meets the minimum visual acuity standard of 20/40 with correction, has a field of vision of 70 degrees, and is able to recognize the standard red, green, and amber traffic control signal colors, should inform the individual that medical

certification under the alternative vision standard is not applicable.

Under FMCSA’s existing vision standard, it is permissible for an individual to have one eye corrected to distant vision and the other corrected for near vision if each eye meets the existing visual acuity standard. If one eye does not meet the visual acuity standard, the individual must obtain and wear corrective lenses that enable the individual to satisfy the visual acuity standard in each eye while operating a CMV.

#### *J. Acceptable Field of Vision*

*NPRM:* FMCSA proposed that an individual must have, in the better eye, field of vision of at least 70 degrees in the horizontal meridian to be physically qualified under the alternative vision standard. The Agency stated in the NPRM that it was “not proposing changes to the current vision standard found in § 391.41(b)(10)” (86 FR 2358).

*Comments on Acceptable Field of Vision:* Dr. Morris, a board-certified retina surgeon and ophthalmologist, encouraged FMCSA, “without any reservation,” to adopt the alternative vision standard as proposed. Dr. Morris indicated that if an individual meets the proposed vision standard there will be no adverse impact on safety due to the individual’s vision, and that the loss of vision is not likely to play a significant role in whether the individual can drive a CMV safely. A commenter, who holds a Federal vision exemption, stated that when an individual has reduced vision in one eye the peripheral field sharpens over time. Another commenter also noted an improvement in the field of vision due to compensation when compared to before the vision loss.

Concentra and ACOEM commented that the existing vision standard considers 70 degrees in the horizontal meridian in each eye to be sufficient; however, normal field of vision is twice that, *i.e.*, 50 degrees nasally and 90 degrees temporally for a total of 140 degrees. Concentra noted pilots are required to have normal field of vision. It recommended that 120 degrees bilaterally be considered the minimum acceptable standard for § 391.41, and that drivers not meeting that standard should be disqualified. Concentra continued that “Depending on the cause of the vision deficit, perhaps the driver could be eligible for an exemption under either the current exemption program or the proposed § 391.44.” ACOEM stated that the field of vision standard has long been an area of controversy and that this rule would be an appropriate time to address the field of vision standard. It noted the MRB

previously recommended that a 120-degree field of vision be adopted.<sup>8</sup>

Concentra provided diagrams that it states demonstrate a driver with 70 degrees of horizontal field of vision has a markedly decreased field of vision. Concentra continued that a “field of vision limited to 70 degrees is not normal vision and if detected on an examination, is reason to have a comprehensive evaluation by a specialist.” ACOEM noted the proposed rule would allow a quarter of a normal visual field to meet the standard. Both Concentra and ACOEM commented than any discussion of field of vision should specify if it is from nasal, temporal, or total.

A commenter stated that FMCSA needs to seek comment from eye specialists and professional associations regarding field of vision criteria, which is not supposed to be 70 degrees as stated in the existing vision standard.

*MRB Task 21–1 Report:* The MRB recommended that the field of vision requirement be changed from 70 degrees to 120 degrees for the alternative vision standard.

*Comments on MRB Task 21–1 Report:* The AOA supported the MRB’s recommendation. The AOA commented that “Using 120 degrees in the horizontal meridian as a requirement would create greater consistency with recognized driving standards.” ATA noted Concentra and Dr. Morris supported a 120-degree field of vision instead of the proposed 70 degrees. ATA stated that it supports “efforts to maintain a stringent vision standard for commercial drivers and believes that the MRB recommendation to increase the required [field of vision] and the required evaluation from a vision specialist accomplishes this goal.”

In contrast, an ME commenter recommended keeping the 70-degree peripheral vision requirement. A different commenter asked if there have been any studies showing that drivers with a wider field of vision have fewer accidents. The commenter continued “If not, then leave things alone,” especially when there is no evidence that drivers with a narrower field of vision are more dangerous on the road.

*Response:* The Agency has long considered 70 degrees in the horizontal meridian in each eye to be the sufficient minimum standard for field of vision. As stated above, the NPRM did not propose changes to the field of vision requirement for the existing vision

<sup>8</sup> FMCSA Medical Review Board, Meeting Summary, Oct. 19, 2012, available at [https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/October\\_2012\\_Certified\\_Meeting\\_Summary.pdf](https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/October_2012_Certified_Meeting_Summary.pdf) (last accessed Aug. 17, 2021).

standard. Accordingly, the comments recommending changes to the existing vision standard are out of the scope of this rulemaking and will not be addressed here.

Dr. Morris concluded, as has FMCSA, that if an individual meets the proposed vision standard there will be no adverse impact on safety due to the individual's vision. Contrary to ATA's interpretation, Dr. Morris did not support a 120-degree field of vision for the alternative vision standard. Dr. Morris noted only that his patient has field of vision of 120 degrees in the horizontal meridian.

The alternative vision standard adopts the major vision criteria of the current Federal vision exemption program, which were also used in the preceding Federal vision waiver study program since the early 1990s. Under the current vision exemption program, FMCSA considers exemptions for those individuals who have a field of vision of at least 70 degrees in the horizontal meridian in the better eye. An ophthalmologist or optometrist must conduct formal perimetry to assess 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 meridian. The ophthalmologist or optometrist must submit the formal perimetry for each eye and interpret the results in degrees of field of vision. The Vision Evaluation Report, Form MCSA-5871, includes the same requirements for testing and formal perimetry. The report also requires a medical opinion from the ophthalmologist or optometrist regarding whether the individual has adapted to and compensated for the change in vision and can drive a CMV safely.

Commenters did not provide in response to the NPRM or NOA any new data that shows drivers with a horizontal field of vision of 70 degrees in the better eye are less safe than drivers with a field of vision of 120 degrees. The Agency has nearly 30 years of experience with drivers who have been physically qualified under the vision waiver study and the exemption programs with a field of vision of at least 70 degrees. Based on that experience, which has not revealed concerns regarding a horizontal field of vision of 70 degrees in the better eye, FMCSA has determined that individuals who meet the alternative vision standard will be at least as safe as the general population of CMV drivers.

#### K. Meaning of Stable Vision

*NPRM:* FMCSA proposed that an individual is not physically qualified under the alternative vision standard to

operate a CMV "if the individual's vision deficiency is not stable." FMCSA did not propose a definition for what constitutes stable vision.

*Comments on the Meaning of Stable Vision:* Concentra commented that the "term 'stable' is too broad and is guaranteed to cause controversy and confusion." Similarly, ACOEM asked how stable would be defined. ACOEM also asked if a modest change in vision in the worse eye over a 5- to 10-year period would be considered stable. Concentra asked FMCSA to consider the driver who needs new corrective lenses every 2 to 3 years to even reach 20/40 in the worse eye. Concentra and ACOEM both asked if any progressive eye diseases should ever be considered stable. They commented that, not only will eye care professionals have different opinions on stability, but many MEs will not have sufficient knowledge of vision disorders to evaluate whether an eye disorder is stable or progressive. They stated that removing the 3-year driving experience requirement will only amplify this issue.

*MRB Task 21-1 Report:* The MRB did not recommend a change with respect to the meaning of stable vision; therefore, the MRB concurred with the alternative vision standard in this regard. As noted above with respect to the Vision Evaluation Report, Form MCSA-5871, the MRB recommended the questions about stability of the vision deficiency and progressive eye conditions be retained because the questions solicit different information.

*Comment on the MRB Task 21-1 Report:* The AOA stated the MRB noted that the medical opinion provided by the ophthalmologist or optometrist must be respected regarding whether the individual has stable vision deficiency.

*Response:* FMCSA declines to incorporate a specific definition of *stable vision* in the final rule that applies to all individuals who are physically qualified under the alternative vision standard. Instead, ophthalmologists and optometrists who are trained to evaluate vision and know what constitutes stable vision are to provide medical opinions regarding when an individual's vision is stable.

However, FMCSA changes the Vision Evaluation Report, Form MCSA-5871, by adding a question after the ophthalmologist or optometrist provides an opinion regarding whether the individual's vision deficiency is stable. It asks, "If yes, when did the vision deficiency become stable?" With respect to progressive eye conditions, FMCSA also adds a request for additional information if the condition is not stable. These changes provide

additional information for the ME to independently assess whether the individual's vision is stable.

Determining when vision is stable requires an individualized assessment. Many variables, such as the nature, severity, and duration of the underlying medical condition or vision deficiency, treatment, and response to treatment, influence when an ophthalmologist or optometrist deems vision to be stable for both progressive and fixed vision deficiencies. Therefore, the Agency finds that whether an individual has stable vision is a clinical rather than a regulatory determination and most appropriately defined for the individual by healthcare professionals.

FMCSA does not expect MEs will make unassisted or uninformed vision qualification determinations, as indicated by commenters. The alternative vision standard emphasizes the separate but collaborative roles of ophthalmologists or optometrists and MEs in the medical certification process. Specifically, the ophthalmologist or the optometrist performs a vision evaluation and completes the required Vision Evaluation Report, Form MCSA-5871, based on the clinical findings of the evaluation of the individual and knowledge of the individual's medical history. The report provides the relevant information and medical opinions for the ME to consider when making the final physical qualification determination. The MRB did not state that the medical opinions provided by ophthalmologists and optometrists must be respected. FMCSA emphasizes that the final determination rests with the ME regarding whether the individual meets the alternative vision standard.

#### L. Elimination of the Exemption Program's 3-Year Driving Experience Criterion

*NPRM:* FMCSA stated the 3 years of intrastate driving experience with the vision deficiency criterion in the vision exemption program has been equated to sufficient time for the driver to adapt to and compensate for the change in vision. Rather than continuing the criterion, FMCSA proposed for the alternative vision standard that an individual is not 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." FMCSA did not propose a minimum period for the time to adapt to and compensate for the change in vision. Instead, the medical professionals would determine when an individual has adapted to and compensated for a change in vision

based on an individualized assessment of all the relevant factors. As an alternative to the driving experience criterion, FMCSA proposed that individuals physically qualified for the first time ever under the alternative vision standard must satisfactorily complete a road test before operating in interstate commerce, with limited exceptions.

*Comments on Elimination of the Exemption Program's 3-Year Driving Experience Criterion:* Dr. Morris, a board-certified retina surgeon and ophthalmologist, encouraged that the alternative vision standard be adopted as proposed. Dr. Morris stated, "As a retina surgeon, it is well recognized in medical journals that individuals who have experienced a vision loss in one eye can and usually develop compensatory viewing behavior to mitigate the vision loss. My experience in treating patients with the loss of vision in one eye is that these individuals, over time, are not limited by their lack of binocularity with respect to driving once they have adapted to and compensated for the change in vision."

OOIDA stated the prolonged period of required intrastate driving can discourage drivers from staying in the industry. OOIDA commented that the alternative vision standard "ensures sufficient physical qualifications are met, but also establishes a more practical process that will help safe drivers continue to operate in the trucking industry."

A commenter noted that not adopting the alternative vision standard would prolong the process for previously qualified interstate CMV drivers who are no longer able to meet the existing vision standard to return to driving. The commenter also stated the rule would reduce barriers of entry. Another commenter supported the alternative vision standard but emphasized that adequate depth perception is key to avoiding collisions. The commenter continued that under the new standard an individual's depth perception should be assessed first and foremost.

ATA stated it strongly opposed replacing the vision exemption program's criterion of 3 years of driving experience with the road test required in § 391.31. ATA strongly objected to FMCSA's use of vision exemption program data without factoring in the safety implications of removing essential safeguards of the program. ATA also strongly disagreed with FMCSA's assessment that, by eliminating the intrastate CMV experience requirement and replacing it with the mandated road test in § 391.31,

the alternative vision standard could increase the number of drivers entering the industry without adversely impacting safety. ATA stated that, regardless of age, years of experience consistently equates to lower rates of crashes, crash involvements, and moving violations, which are factors that were overlooked in the NPRM.

ACOEM commented that the "current requirement for 3 years of commercial driving experience with the vision deficiency would allow the individual with a vision impairment a period of time under which they could adjust to the vision deficit." ACOEM and Concentra stated that a simple road test is insufficient evaluation for drivers lacking experience operating CMVs. They stated further that the "presently available data regarding the safety of drivers with monocular vision is inconclusive." They referred to statements in the NPRM that noted crash data on drivers with monocular vision is sparse and conflicting, and cautioned on interpreting data because "monocular vision" is defined differently in the literature. ACOEM and Concentra concluded that these observations "actually support maintaining the requirement for experience over a road test."

One commenter who is an ME stated FMCSA should retain the 3-year driving experience criterion. Another commenter stated the 3-year driving experience criterion should be kept as a minimum, but that time should be compared with ME reports and driving logs and records for increased safety. A different commenter stated that the 3 years of driving experience does a better job of proving that an individual can safely operate a vehicle than a simple test would.

Another commenter, who noted a modification of the existing standard is needed, stated a one-time test may not be sufficient to balance road safety, but that does not necessarily imply that the current 3-year driving criterion should stay in place. The commenter continued that the alternative vision standard must take into account a reasonable standard time period for individuals to demonstrate their abilities.

ATA, ACOEM, and Concentra commented generally that establishing an alternative vision standard contradicts the MRB's advice, which they stated consistently supported continuing the existing vision standards and current exemption program. It was noted that the MRB raised concerns that data suggest drivers who suffer traumatic eye loss often need time to adjust to their condition and recommended that FMCSA seek

comment from eye specialists on the minimum amount of time for individuals to return to CMV driving after a sudden change in binocular vision. The commenters also stated the MRB recommended that FMCSA should investigate whether the 3-year driving experience criterion could be shortened.

ATA stated, while the alternative standard includes a requirement that individuals are not 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 requirement does not entirely address the MRB's recommendation that a period of adjustment is necessary after a sudden loss of vision. ATA stated further that the NPRM fails to sufficiently address why the Agency moved forward with a revision against the MRB's support to maintain the status quo.

*MRB Task 21-1 Report:* The MRB stated generally that with respect to the medical aspects of the proposed alternative vision standard, if the MRB did not make a specific recommendation to change a provision, the MRB concurred with the provision as proposed in the January 2021 NPRM. "The MRB agree[d] that the requirement for sufficient time to adapt to and compensate for the vision deficiency should not be changed in the proposed alternative vision standard. The MRB note[d] it [did] not have sufficient data to establish a specific waiting period for an individual who has a new vision deficiency."

With respect to the Vision Evaluation Report, Form MCSA-5871, the MRB noted that "the medical opinion provided by the ophthalmologist or optometrist regarding whether the individual has adapted to and compensated for the change in vision sufficiently encompasses depth perception." The MRB continued that the requested medical opinion "sufficiently implies that time is needed to adapt and compensate for the change in vision but appropriately relies on the ophthalmologist or optometrist conducting the vision evaluation to determine the appropriate period of time on a case-by-case basis." The MRB recommended, however, that FMCSA expand the medical opinion "to require that the individual can drive a CMV safely with the vision condition."

*Comments on MRB Task 21-1 Report:* The AOA commented that it supports the MRB's recommendation that the ophthalmologist or optometrist conducting the vision evaluation should "independently determine" the appropriate period needed to adapt on a case-by-case basis. It also stated that

the MRB noted the medical opinions provided by the ophthalmologist or optometrist “must be respected” regarding whether the individual has adapted to and compensated for the change in vision. Finally, the AOA commented that considerations may come into play when determining vision issues that can hinder driving beyond monocular Snellen visual acuity, horizontal visual fields, and color testing, which include inferior, superior, and central field visual assessment; contrast sensitivity assessment; visual processing assessments; and eye and systemic disease assessments.

ATA commented that it understands it is difficult to establish a standardized waiting period for adjustment. Nevertheless, ATA expressed concern “that without any guidance, there will be an inconsistency in the certification of a driver depending on the judgement of his or her optometrist, ophthalmologist, or medical examiner.” ATA stated FMCSA “should seek to gather more data and establish clearer guidance on when a medical examiner can assure that a driver has sufficiently adapted to their vision deficiency.”

*Response:* FMCSA has fully factored in the safety implications of not continuing the 3 years of intrastate driving experience criterion in the alternative vision standard. FMCSA continues to find that once an individual has adapted to and compensated for the loss of vision in one eye the individual has the visual capacity to operate a CMV safely. While most drivers benefit from practice and experience, the Agency finds there is no persuasive evidence that supports continuing to hold individuals physically qualified under the alternative vision standard to the higher standard of driving in intrastate commerce after they have adapted to and compensated for the vision loss. The alternative vision standard with its collaborative physical qualification approach and one-time road test ensures drivers are visually capable of driving a CMV safely before they operate a CMV in interstate commerce.

As stated in the NPRM, and affirmed by Dr. Morris, it is well recognized in the medical literature that individuals with vision loss in one eye can and do develop compensatory viewing behavior to mitigate the vision loss. The 30 years of experience with the vision waiver study and exemption programs 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.

Dr. Morris has had similar experience with drivers with vision loss in one eye.

The medical literature also shows the time needed to adapt to and compensate for the loss of vision in one eye varies. FMCSA noted in the NPRM that when the criterion was selected in the 1990s the medical community indicated it can take several months to a full year to compensate for a vision impairment (86 FR 2356). FMCSA cited a 2002 study that found the time to adapt to sudden vision loss was 8.8 months and to adapt to gradual vision loss was 3.6 months (86 FR 2357). Thus, the 3 years of intrastate driving experience criterion far exceeds the findings of the medical community that it can take up to a year to adapt to and compensate for vision loss in one eye. In the alternative vision standard, the additional time after a vision deficiency becomes stable provides the period of adjustment needed to adapt to and compensate for the vision loss.

It is no longer necessary to discuss the previous MRB recommendations because it has made new recommendations. In MRB Task 21–1 Report, the MRB accepted moving ahead with the alternative vision standard without the 3 years of driving experience criterion. The MRB agreed with FMCSA’s approach of not requiring a minimum period to adapt to and compensate for the loss of vision in one eye. The MRB indicated the time varies by individual and stated it did not have data to establish a specific waiting period. Thus, as the MRB stated, the alternative vision standard “appropriately relies” on the ophthalmologist or optometrist conducting the vision evaluation, which includes a thorough evaluation of depth perception, to determine on a case-by-case basis when an individual has adapted to and compensated for the loss of vision in one eye. It is therefore appropriate that there be inconsistency in the time intervals it takes to adapt to and compensate for the loss of vision in one eye. Because the time needed to adapt to and compensate for a loss of vision is highly dependent on individual factors, gathering more data and attempting to establish clearer guidance is not necessary or feasible.

FMCSA finds a change to the alternative vision standard requirements will help to clarify that there must be a period for the individual to adapt to and compensate for the vision loss after the vision deficiency is deemed stable by a medical professional. Accordingly, FMCSA changes § 391.44(c)(2)(iv) to read, “The individual is not physically qualified to operate a commercial motor vehicle if sufficient time has not passed

since the vision deficiency became stable to allow the individual to adapt to and compensate for the change in vision.” FMCSA also makes conforming changes in the Vision Evaluation Report, Form MCSA–5871, to the medical opinion regarding whether the individual has adapted to and compensated for the change in vision.

In response to the AOA comments that it supports the ophthalmologist or optometrist “independently determining” the appropriate period of time needed to adapt and that such a determination “must be respected,” FMCSA clarifies that the MRB noted only that question 12 sufficiently implies that time is needed to adapt to and compensate for the change in vision. FMCSA does not expect the ophthalmologist or optometrist conducting the vision evaluation to independently determine the appropriate period of time to adapt to or compensate for the vision loss or to determine whether an individual meets the relevant standard. Rather, as the MRB indicated, it expects the ME to appropriately rely on all the information provided by the ophthalmologist or optometrist to make the final determination of whether the individual meets the alternative vision standard and should be physically qualified.

FMCSA further revises question 12 to incorporate the MRB’s recommendation to expand the medical opinion provided by the ophthalmologist or optometrist to require that the individual can drive a CMV safely with the vision condition. FMCSA also adds a request in the report to provide the month and year the vision deficiency became stable. The additional information could assist MEs to evaluate whether the period over which the individual adapted to and compensated for the change in vision seems reasonable.

The Vision Evaluation Report, Form MCSA–5871, requests the information MEs need to determine whether an individual meets the alternative vision standard. The specific requirements of the alternative vision standard are provided on the report for the informational awareness of ophthalmologists and optometrists conducting the vision evaluations. While there may be multiple ways to evaluate vision, FMCSA expects ophthalmologists and optometrists to provide the information as requested on the report, which requires an evaluation of visual acuity measured in terms of the Snellen chart and field of vision measured in the horizontal meridian, for example.

Comments relating to the safety of drivers in the vision waiver study and

exemption programs, as well as drivers with monocular vision generally, and the data used to support this rulemaking are discussed above. Comments relating to specific aspects of the road test are discussed below.

#### *M. Road Test Requirement for Alternative Vision Standard*

*NPRM:* FMCSA proposed that, 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 specific excepted interstate CMV driving experience with the vision deficiency, hold a valid Federal vision exemption, or are medically certified under 49 CFR 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 49 CFR 391.31.

#### *1. Need To Separate the Physical Qualification Process From Driving Skill*

*Comments on the Need to Separate the Physical Qualification Process from Driving Skill:* ATA stated it “strongly believes FMCSA must separate the process of evaluating an individual’s skill level in operating specific CMV equipment and physical qualification status.” ATA stated that “separation would help ensure certified medical experts are the ones making medical certification determinations, and not motor carriers.”

*Response:* The commenter’s characterization of the process for enabling drivers with a vision deficiency to operate a CMV is mistaken. The road test conducted by the employer is separate from the physical qualification determination made by the ME. Employers are not making the medical certification determination by conducting a road test, but are making the same type of determination that is already required that an employee can operate a CMV safely. As stated in the NPRM, “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” (86 FR 2359). The individual has been physically qualified

by the ME and FMCSA expects there will be no adverse impact on safety due to the individual’s vision. However, by requiring a road test, FMCSA takes an additional step to ensure that, even though medically certified, the individual can operate a CMV safely. The Agency anticipates the road test will alleviate any concerns about employing a driver with a vision deficiency because the test provides the opportunity to assess the driver’s actual ability to operate a CMV safely.

The road test requirement in § 391.31 has been a long-standing provision that was adopted in 1970 to promote CMV safety by ensuring that drivers have demonstrated their skill and knowledge (35 FR 6458, 6459 (Apr. 22, 1970)). This road test requirement (or the equivalent skills test for commercial driver’s license (CDL) drivers, see 49 CFR 391.33(a)(1)) is an important aspect of the employer’s obligation to ensure that drivers they employ can operate a CMV safely, such as pre-employment record checks (49 CFR 391.23(a) and (d)) and the annual review of a drivers safety performance (49 CFR 391.25).

The employer, rather than the ME, is most familiar with the nature of the operation and the type of equipment the individual will be expected to operate, a particularly important consideration given the substantial variety of commercial vehicles operated in the industry. This circumstance is clearly recognized in the provisions of new § 391.44(d)(1), because it requires the road test to be conducted in accordance with the existing provisions of § 391.31(b) through (g). In particular, the road test regulation states, “The road test must be of sufficient duration to enable the person who gives it to evaluate the skill of the person who takes it at handling the commercial motor vehicle, and associated equipment, that the motor carriers intends to assign to him/her” (49 CFR 391.31(c)). That section goes on to specify the minimum tasks that the employer must include in the road test, all of which are essential aspects for safe operation of the particular CMV to be operated by the individual.

An individual must first be physically qualified by an ME under the alternative vision standard in § 391.44. Then the next step is a road test conducted with both the appropriate vehicle and under the operating conditions the individual has with the vision deficiency. This two-step process ensures that CMV operations can be performed safely. In other words, even if an individual with the vision deficiency is certified as physically qualified by an ME for the first time under the alternative standard,

CMV operation will not be permitted by the individual unless and until safe operation can be demonstrated.

#### *2. The Road Test Requirement Creates a Burden on Motor Carriers*

*Comments on the Road Test Requirement Creates a Burden on Motor Carriers:* ATA commented that FMCSA’s use of the road test would create an undue burden on employers by shifting some of the responsibility of the medical certification process from the ME to a non-medical professional, *i.e.*, the motor carrier. Additionally, ATA stated that § 391.31(b) requires motor carriers to ensure that road test evaluators are competent to evaluate and determine whether the individual tested can operate the assigned CMV. ATA continued that most road test evaluators are not medical professionals trained to evaluate and identify factors in which an individual’s vision deficiency would impact the ability to operate a CMV; therefore, FMCSA’s proposal would place an undue burden on motor carriers.

ACOEM stated the alternative vision standard shifts responsibility to the employer, who would be responsible for conducting a road test, which could result in inconsistent standards for assessing driver safety. In addition, ACOEM stated there is a concern the number of employer-required road tests will increase significantly. Concentra also commented that the alternative vision standard shifts responsibility to the employer for performing a road test.

In contrast, several commenters supported the inclusion of the road test as part of the alternative vision standard. For example, three commenters stated the road test is an additional safeguard that ensures a driver operating under the alternative vision standard can physically drive the CMV safely and a much more secure driver verification. Another commenter who has held a Federal vision exemption stated that a driving test would tell as much about the ability to drive safely “as a bunch of vision tests.”

*Response:* FMCSA agrees with the commenters who stated the road test is another safeguard to ensure individuals with a vision deficiency can operate a CMV safely. As explained in the previous response, the road test is not part of the physical qualification determination, but an important additional requirement to ensure that the employer is satisfied that the individual qualified under the alternative standard can operate a CMV safely under the conditions involved in the operation. An employer should not consider an opportunity to verify the



ability of a CMV driver it employs to operate safely to be an undue burden. Employers are already under an obligation to ensure compliance by CMV drivers with other safety regulations as well (see 49 CFR 390.11 and 392.1(a)).

FMCSA disagrees that road test examiners lack the skills necessary to evaluate the operation of a CMV by an individual with a vision deficiency. The road test examiners required by § 391.31(b) must be able “to evaluate and determine whether the person who takes the test has demonstrated that he/she is capable of operating the commercial motor vehicle.” Observation by the road test examiner of the specific minimum operational tasks specified in § 391.31(c) (as well as any additional tasks included because of the type of CMV to be operated) does not require any specialized knowledge about the vision deficiency. The road test examiner should observe and evaluate activities involved in operation of a CMV in the same manner for all drivers requiring a road test.

As for ACOEM’s concerns about the number of road tests increasing “significantly,” FMCSA does not find this will be the case. Drivers who have an appropriate level of experience operating a CMV with the vision deficiency are excepted from the road test, as provided in new § 391.44(d)(3) through (5). FMCSA uses a high estimate of 868 drivers who would be required to take the road test each year under the new alternative vision standard. The cost for each road test is estimated to be about \$50.77, for a total annual cost of \$44,000,<sup>9</sup> in addition to the costs of road tests already required. This is clearly not a financial or administrative burden on either any motor carrier required to administer a road test or the industry as a whole. The alternative vision standard offers an opportunity for CMV drivers unable to obtain a vision exemption to become qualified to operate a CMV in interstate commerce. The benefits, at a minimal cost, to the carriers and the industry of additions to the pool of CMV drivers are clear.

### 3. Road Test Creates Employer Conflicts of Interest

*Comments on the Road Test Creates Employer Conflicts of Interest:* ATA stated the road test could create conflicts of interest if a motor carrier has a financial interest in permitting the evaluated individual to work or a

personal relationship with the individual. ACOEM commented that “some carriers, especially smaller ones, may be more lenient on the passing criteria of the road test.” Another commenter noted motor carriers have a self-interest in making sure drivers pass the road test and many make the road test simple with a limited number of ways it can be failed.

*Response:* FMCSA recognizes the potential existence of conflicts of interest in having an employer administer a road test to employees but finds the existence of such conflicts to be unlikely. Also, the potential for such conflicts is not unique to drivers physically qualified under the alternative vision standard but is possible with respect to all drivers tested. However, the governing regulation includes particular requirements to mitigate such conflicts, such as specifying the type of vehicle to be used and the tasks to be included (49 CFR 391.31(c)). It also precludes an owner-operator (*i.e.*, a person who is both a motor carrier and a driver) from self-administering the road test (49 CFR 391.31(b)). The certificate required to be issued by the road test examiner is subject to the requirement that it not be fraudulent or intentionally false (49 CFR 390.35) and includes an affirmative statement from the road test examiner that the individual tested can operate safely (49 CFR 391.31(f)). Most importantly, employers have a strong financial interest in ensuring the safety of their operations by engaging drivers, including those physically qualified with a vision deficiency under the alternative standard, who are able to operate safely.

### 4. Sufficiency of the Road Test

*Comments on the Sufficiency of the Road Test:* Concentra and ACOEM commented that the road test as outlined in § 391.31 is fairly minimal. It only requires demonstrating use of the CMV controls, turning, operating in traffic, and pre- and post-trip duties. There is no requirement for evaluating safe operation in conditions of darkness, inclement weather, or complex multisensory environments, such as congested traffic and construction zones, where a vision deficiency may be detrimental. According to Concentra and ACOEM, the road test also is not specific to a vehicle. They stated a simple road test cannot substitute for drivers lacking experience operating CMVs. ACOEM stated that having employers conduct the road test could result in inconsistent standards for assessing driver safety.

Similarly, ATA stated that a road test is an inadequate method to determine if an individual’s vision deficiency will impact driving ability. ATA noted the driving environment would vary significantly among carriers and would not be a consistent evaluation tool.

Two commenters were generally supportive of the alternative vision standard as a way of opening the door for more job opportunities. However, one of the commenters stated that a single driving test may be too lenient to evaluate the full scope of driving capabilities. The commenter continued that it might be in the public interest to revise the proposed rule to scrutinize more than the proposed driving test. The other commenter stated that a one-time driving test may not be sufficient because individuals know they are under observation and can perform the one test safely.

Another commenter noted many motor carrier § 391.31 road tests are an exercise in “check the box,” and not a thorough test of the driver’s ability. If motor carriers are going to conduct the road tests, the commenter stated clear road-testing standards aimed at determining if the loss of vision is affecting the driver’s abilities and pass/fail criteria need to be provided.

*Response:* FMCSA finds the road test required under the alternative vision standard will be sufficiently comprehensive to evaluate and assess an individual’s capability to operate a CMV safely. In addition, the Agency fails to discern different considerations for administering road tests for drivers physically qualified under the alternative vision standard as compared to drivers who are not. After 30 years with the vision waiver study and exemption programs, experience shows 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. If an individual meets the alternative vision standard, the Agency expects there will be no adverse impact on safety due to the individual’s vision. Therefore, employers should apply the same road test requirements to all drivers.

FMCSA disagrees with commenters that the road test outlined in § 391.31 is fairly minimal. The regulation requires demonstration of the essential elements of operating a CMV, including driving in traffic, passing other vehicles, turning, braking, backing, and parking. FMCSA acknowledges employers may have somewhat different standards for assessing driver safety; however, § 391.31 ensures all drivers demonstrate

<sup>9</sup> See Section X.A. of the Regulatory Analyses below for a full description of how these estimates are calculated.

the fundamental skills necessary to operate a CMV safely. As noted above, employers have a strong financial interest in ensuring they employ drivers who can operate a CMV safely.

As also noted above, the road test, contrary to commenters' assertions, does require the use of the specific type of vehicle that will be assigned to the individual to operate (see 49 CFR 391.31(c)). In addition, the applicable regulation requires that "The motor carrier shall provide a road test form on which the person who gives the test shall rate the performance of the person who takes it at each operation or activity which is a part of the test" (49 CFR 391.31(d)). If the road test is completed satisfactorily, the road test examiner must sign a certificate that states that it is the examiner's considered opinion that the individual has "sufficient driving skill to operate safely" (49 CFR 391.31(f)). The employer then retains both the road test form and the certificate (or a copy) in the driver qualification file required by 49 CFR 391.51, along with additional documentation that supports a determination that the individual can operate safely.

The road test, when required under the alternative vision standard, is only one of multiple regulatory elements that can work together to ensure that an individual physically qualified under the standard can operate a CMV safely. The alternative vision standard includes the additional safeguards of the collaborative physical qualification process by medical professionals and limiting certification to 12 months. All in all, the road test for individuals qualified under the alternative vision standard is one part of a comprehensive regulatory approach to ensure safe operations of a CMV.

#### 5. Addition of a Driver Training Requirement

*Comments on the Addition of a Driver Training Requirement:* One commenter who supported the alternative vision standard stated a driving test should show proof that an individual qualified under the new standard can drive a CMV. However, the commenter did not agree with a one-time road test but stated a road test every year or every couple of years would suffice. The commenter continued that maybe there should be specialized training for individuals seeking certification under the alternative vision standard.

*Response:* FMCSA elects not to require any specialized training for individuals physically qualified under the alternative vision standard. The experience with the vision waiver and

exemption programs has not revealed the need for specialized training for drivers with a vision deficiency. As stated above, experience shows 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. Also, the driver will be subject to periodic review. Once a driver is hired, the employer is required to review the driver's safety performance through the annual motor vehicle record review (49 CFR 391.25).

#### *N. Review of an Individual's Safety Performance*

*NPRM:* FMCSA proposed that review of the safety performance of individuals medically certified under the alternative vision standard be performed by motor carriers in accordance with current regulatory requirements applicable to all drivers.

*Comments on the Review of an Individual's Safety Performance:* ATA stated it strongly opposes replacing the Agency review of an individual's driving record, as is done in the current exemption program, with the road test required in § 391.31. ACOEM commented that the MRB questioned in 2019 how a driver's safety record would be adequately assessed under an alternative vision standard, given that FMCSA reviews the driving safety record in the exemption program. ACOEM also stated the alternative vision standard shifts responsibility to the employer, who would be responsible for reviewing the safety record, which could result in inconsistent standards for assessing driver safety. Concentra made a similar comment.

*Response:* FMCSA does not find these comments persuasive and continues to find that the safety performance of individuals who are medically certified under the alternative vision standard should be evaluated in the same manner as that of other drivers. Motor carriers already routinely review and evaluate driving records for prospective and current employees, including employees with Federal vision exemptions. They must 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)). Motor carriers also must review motor vehicle records for all drivers annually (49 CFR 391.25). There is nothing different about evaluating a motor vehicle record for an individual medically certified under the alternative vision standard as compared

to any other driver. Motor carriers are also required to ensure compliance by drivers with all safety regulations (49 CFR 390.11) and that drivers are generally qualified to drive a CMV (49 CFR 391.11). Thus, reviewing the safety performance of individuals certified under the alternative vision standard presents nothing new or novel for motor carriers and does not add or change a responsibility for them.

As stated in the NPRM, the 3-year safe driving history criterion of the prior vision waiver study and exemption programs with FMCSA's review of the driving record has served its purpose and is no longer necessary (see 86 FR 2356–57). Finally, the MRB's 2021 recommendations supersede its 2019 recommendations.

#### *O. Restricting Eligibility To Use the Alternative Vision Standard by Vehicle Type*

*NPRM:* FMCSA did not propose to restrict eligibility to use the alternative vision standard based on the type of vehicle an individual operates.

*Comments on Restricting Eligibility to Use the Alternative Vision Standard by Vehicle Type:* A commenter who is an ME was "very concerned about changing the vision requirements." The commenter stated that most of the commenter's clients do not drive large CMVs, but rather drive delivery trucks, passenger vehicles, or emergency medical transport vehicles, which require "decent vision" for parking, maneuvering in traffic with lane changes, and driving in emergent conditions. The commenter suggested a "carve out" of eligibility to use the proposed alternative vision standard for individuals operating certain types of vehicles.

*Response:* FMCSA elects not to change the alternative vision standard based on this comment. The Agency continues to conclude that individuals who satisfy the alternative vision standard requirements do not create an increased risk of injury to themselves or others due to their vision and are physically qualified to operate any type of CMV safely. Neither the vision waiver study program nor the current exemption program restricted participation in the program based on the type of CMV the individual operated. Thus, the Agency has 30 years of experience evaluating individuals driving all types of CMVs. Commenters provided no new information or data that persuades the Agency to depart from its conclusion that the safety performance of individuals in the vision waiver study and the current exemption programs is at least as good as that of

the general population of CMV drivers, without regard to the type of vehicle operated. Accordingly, the Agency finds there is no available evidence to support holding individuals physically qualified under the alternative vision standard to a higher standard merely because of the type of CMV they operate.

*P. The Alternative Vision Standard Creates More Employment Opportunities*

*NPRM:* FMCSA stated in the NPRM that 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. Eliminating the exemption program criterion of 3 years of intrastate CMV driving experience with the vision deficiency would allow individuals who live in States that do not issue vision waivers to be physically qualified. In addition, individuals who live in a State that issues vision waivers 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 sooner to operating interstate.

*Comments on the Alternative Vision Standard Creates More Employment Opportunities:* Just over 40 percent of commenters supporting the proposed alternative vision standard stated it will provide more job opportunities for individuals to become interstate CMV drivers or provide the opportunity for existing drivers to stay in the industry. For example, OOIDA stated that, in many cases, drivers with decades of experience without any at-fault crashes must leave the profession because of the economic obstacles associated with the Federal vision exemption criteria. “The prolonged period of required intrastate driving can discourage these drivers from staying in the industry.” OOIDA commented that the alternative vision standard will “reduce barriers to entry for both active and future CMV drivers” and “allow safe and experienced drivers to stay on the road.” Another commenter stated the alternative vision standard could allow thousands of drivers who do not meet the existing vision standard to begin operating CMVs in interstate commerce without the need for an exemption. A different commenter stated the alternative vision rule allows for a larger pool of qualified drivers without compromising safety,

and noted the country is short of drivers.

One commenter, a motor carrier, stated that the alternative vision standard would be good for the trucking industry and not increase danger to the public. The new standard would open the field to many drivers who do not have or have not been able to get a vision waiver. The commenter noted it would add two drivers with proven work ethic and ability to the company’s interstate driving pool right off. Another commenter who is an ME has been unable to certify a few good drivers after they did not pass the vision standard. The commenter noted that it is difficult, particularly for local small businesses, to find qualified CDL operators.

Another commenter stated the proposed regulation has far reaching benefits. It would give individuals with vision that does not meet the existing outdated vision standard the opportunity to drive CMVs. It would boost the CMV driver industry; a boost that is needed now more than ever due to COVID-19. The rule also has the potential to bring greater efficiency to interstate commerce and the country in general. According to the commenter, it stands to reason that if fewer drivers are available it will take longer for goods to travel from place-to-place.

Six commenters who hold intrastate waivers stated they would benefit from being able to operate in interstate commerce. One of these commenters noted missing many good paying loads because of the intrastate restriction and further noted that eliminating it would increase the commenter’s income greatly. Seven commenters supported the proposed alternative vision standard because it would either allow them to return to work as a CMV driver following an eye injury or give them the opportunity to become a CMV driver, which they did not have before due to poor vision in one eye.

Several commenters supported the alternative vision standard because the more individualized approach allows capable individuals to demonstrate their ability to operate a CMV safely. For example, the commenters stated the new standard is a step toward less discrimination in the workplace, inclusion of individuals with vision deficiencies, less frequent denial of job opportunities for individuals when a disability does not affect the ability to do the task at hand, and the opportunity for people to change their lives and to live more independently. Several more commenters noted specifically that the alternative vision standard would benefit older workers and especially older drivers with good work ethics and

millions of miles worth of experience that benefits the industry and motoring public.

In contrast, one commenter, who has been driving for more than 34 years, stated the vision standard should be left alone. The commenter continued that the proposed alternative vision standard could put a lot of good drivers off the road.

*Response:* FMCSA continues to conclude the alternative vision standard, with its more individualized approach, is more equitable than the current exemption program and will enable more qualified individuals to operate as interstate CMV drivers without an adverse impact on safety. However, FMCSA clarifies that the new standard will not have a substantial impact on the industry or the number of available drivers. Although the rule provides substantial benefits to some individuals and will be beneficial to motor carriers and the industry, the Agency estimates approximately 868 interstate drivers will be added each year due to the new standard.<sup>10</sup>

The commenter who stated the alternative vision standard could take good drivers off the road misunderstands this rule. This rule does not change the existing vision standard. FMCSA expects current Federal vision exemption holders, as well as grandfathered drivers, will satisfy the alternative vision standard because it includes requirements they should already meet. Therefore, drivers who are currently operating in interstate commerce should not fail to satisfy the vision physical qualification standards, unless their vision has deteriorated.

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

*NPRM:* FMCSA proposed 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.

*Comments on the Change to the Medical Examination Process in 49 CFR 391.43(b)(1):* ACOEM stated that the “change allowing an ophthalmologist to complete the vision portion of the examination appears to be an oversight not previously identified and certainly makes sense. In fact, an ophthalmologist

<sup>10</sup> See Section X.A. of the Regulatory Analyses below for a full description of how this number is calculated.

may be preferred for complicated cases.”

*Response:* FMCSA adopts the changes to § 391.43(b)(1) as proposed in the NPRM with one minor change. FMCSA inserts “licensed” before optometrist for clarity and to conform to the existing regulatory text. FMCSA did not propose and declines to require the use of an ophthalmologist in any particular case.

#### *R. Outside the Scope of the Rulemaking*

*Comments to the NPRM Outside the Scope of the Rulemaking:* Rather than responding to the proposed rule, one commenter reported on the commenter’s own driving record.

*Comments to the NOA Outside the Scope of the Rulemaking:* One commenter suggested consistent Federal vision requirements across all types of vehicles, including passenger vehicles. Another commenter stated that if FMCSA keeps adding more regulation the trucking business will fade away and that FMCSA does not have any concept of what a good regulation is. A different commenter stated that, with all that is going on in the trucking industry, FMCSA should be focusing on other concerns, such as truck parking. Finally, the AOA made suggestions that relate to the physical qualification standard for individuals who are treated with insulin to control diabetes mellitus.

*Response:* Because these comments are outside the scope of this rulemaking or are not responsive to the NPRM or NOA, no response from FMCSA is required. Commenters presenting an issue that is outside of the scope of this rulemaking may wish to consult § 389.31 for information on how to petition FMCSA to establish, amend, interpret, clarify, or withdraw a regulation to the extent such options relate to their concerns.

### **VII. Changes From the NPRM**

This section describes changes relating to the alternative vision standard made in the final rule other than minor and editorial changes. The Agency discusses those changes in the Section-by-Section Analysis below. With respect to the Vision Evaluation Report, Form MCSA–5871, FMCSA describes all changes to the report because it is not discussed in the Section-by-Section Analysis.

#### *A. Alternative Vision Standard*

FMCSA proposed an alternative vision standard for an individual “who cannot satisfy either the distant visual acuity or field of vision standard, or both,” in the existing vision standard in one eye. ACOEM commented the proposed vision standard seems to

allow any driver to meet the vision standard if one eye is at least 20/40 with or without corrective lenses. ACOEM continued that this would permit a driver who chooses not to obtain corrective lenses to use the proposed standard if the driver’s vision in the better eye meets the existing vision standard. Concentra provided a similar comment. As discussed above, it was not the Agency’s intent to change the scope of the current vision exemption program in this regard or to allow individuals who simply need corrective lenses to be physically qualified under the alternative vision standard.

FMCSA clarifies in the final rule that the alternative vision standard is applicable only if the worse eye does not meet the distant visual acuity standard with corrective lenses. FMCSA adds the limitation in § 391.41(b)(10)(ii) that a person who meets the requirements in § 391.44 is physically qualified to operate a CMV “if the person does not satisfy, with the worse eye, either the distant visual acuity standard with corrective lenses or the field of vision standard, or both, in paragraph (b)(10)(i) of this section.” The Agency makes conforming changes in the title of § 391.44, in paragraphs (a) and (c) of § 391.44, and in new § 391.45(f).

In paragraph (c) of § 391.44, FMCSA proposed, “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.” The sentence is long and not easy to follow. To improve readability, FMCSA removes the clause “but no later than 45 days after an ophthalmologist or optometrist signs and dates the Vision Evaluation Report, Form MCSA–5871,” and includes the substance in a new second sentence. To provide additional clarity, the Agency changes “no later than” to “not more than” 45 days. The second sentence reads, “The examination must begin not more than 45 days after an ophthalmologist or optometrist signs and dates the Vision Evaluation Report, Form MCSA–5871.”

FMCSA proposed in § 391.44(c)(2)(iv) that an individual is not 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.” FMCSA has

determined a change to this requirement will help to clarify that there must a period for the individual to adapt to and compensate for the vision loss after the vision deficiency is deemed stable by a medical professional. Accordingly, FMCSA removes “there has not been sufficient time” and inserts “sufficient time has not passed since the vision deficiency became stable.” Section 391.44(c)(2)(iv) reads, “The individual is not physically qualified to operate a commercial motor vehicle if sufficient time has not passed since the vision deficiency became stable to allow the individual to adapt to and compensate for the change in vision.”

#### *B. The Vision Evaluation Report, Form MCSA–5871*

For the final Vision Evaluation Report, Form MCSA–5871, FMCSA makes several editorial changes on page 1. The paragraph reminding that the report contains sensitive information moves to the footer and appears on every page. FMCSA changes the heading “Instructions to the Individual” to “Information for the Individual” and places the paragraph before the new heading “Information for the Ophthalmologist or Optometrist.” The style for the definition of monocular vision changes from a paragraph to a numerical list for consistency purposes. Other minor editorial and formatting changes are made throughout the report for clarity, consistency, or as a result of making the report a fillable document.

The Agency deletes “(if applicable)” after the request for a driver’s license number because it is not necessary. All individuals obtaining a vision evaluation will have some type of driver’s license.

In the “Information for the Individual” section, FMCSA changes “no later than” to “not more than” 45 calendar days to conform the report to the revised regulatory text. FMCSA deletes “certified” before “medical examiner” in this section, as well as in the “Information for the Ophthalmologist or Optometrist” section, because it is no longer necessary. All MEs have been required to be certified and listed on FMCSA’s National Registry of Certified Medical Examiners for several years.

In the first paragraph under the new heading “Information for the Ophthalmologist or Optometrist,” FMCSA adds in the first sentence that the individual is being evaluated “as part of the process” to determine whether the individual meets FMCSA’s vision standard. This change clarifies that the physical qualification of individuals to operate a CMV is a

process, and the vision evaluation is one part of the process. In the second sentence, after “monocular vision,” FMCSA adds “as defined by FMCSA,” to signal to the reader that FMCSA has its own definition of monocular vision. The Agency deletes the sentence that provided, “Completion of this report does not imply that the ophthalmologist or optometrist is making a decision to qualify the individual to drive a commercial motor vehicle.” Instead, in the last sentence, FMCSA changes the word “Any” to “The” and inserts the following quoted language to provide more clearly that the determination as to whether the individual “meets the vision standard and” is physically qualified is made by an ME. FMCSA makes other minor changes for clarity, grammar, and to delete the use of pronouns.

In paragraph (2) of FMCSA’s definition of *monocular vision*, the Agency conforms the language to the regulatory text and current vision exemption program. It provides that *monocular vision* means the individual has, in the worse eye, distant visual acuity of less than 20/40 “with corrective lenses.”

As the MRB recommended, FMCSA adds the alternative vision standard that individuals with monocular vision, as defined by FMCSA, must satisfy to be physically qualified. The Agency states that the standard is provided “For general informational purposes only” to ensure that ophthalmologists and optometrists understand that they do not determine whether the individual meets the alternative vision standard for medical certification to operate a CMV.

In question 3 on page 2 pertaining to distant visual acuity, FMCSA replaces “(please provide both if applicable)” with “(select N/A if there is no vision in an eye).” The Agency adds boxes that can be checked to indicate distant visual acuity is not applicable when there is no vision in an eye.

With respect to question 7 on page 2, which asks if the individual has monocular vision as defined by FMCSA, the Agency includes a follow-up request. It provides, “If yes, cause of the monocular vision (describe),” which was question 8 in the draft report. FMCSA makes this change for consistency with the style for other follow-up questions in the report. FMCSA rennumbers the following questions accordingly.

In question 8, “When did the monocular vision begin?” changes to “Date the monocular vision began:” for consistency with the style of other entries.

Question 10 relating to progressive eye conditions, which was question 13 in the draft report, follows the questions regarding monocular vision to consolidate the medical information on the report. All the medical opinions follow. Instead of providing information about progressive eye conditions in a table, the report now uses a narrative format. FMCSA adds a request for additional information if the condition is not stable.

As recommended by the MRB, the medical opinion regarding whether the vision deficiency is stable follows the information about progressive eye conditions as question 11. FMCSA adds a follow-up request in question 11 for the date the vision deficiency became stable if it is deemed stable. This change provides additional information for the ME regarding how long the vision deficiency has been stable. In question 12, the Agency conforms the language to the revised regulatory text and expands the medical opinion as recommended by the MRB. It reads, “In your medical opinion, has sufficient time passed since the vision deficiency became stable to allow the individual to adapt to and compensate for the change in vision and to drive a commercial motor vehicle safely?”

FMCSA numbers the medical opinion asking if a vision evaluation is required more often than annually as question 13. FMCSA includes in the follow-up request not only how often a vision evaluation should be required, but why. FMCSA adds space to enter additional comments and instructions to attach additional pages as needed as a new question 14. Finally, FMCSA makes minor style changes to conform punctuation and formatting throughout the report.

The final Vision Evaluation Report, Form MCSA–5871, is available in the docket for this rulemaking. The Agency invites public comment on the report under the Paperwork Reduction Act as provided in the information collection, titled “Medical Qualification Requirements,” discussed in section X.F. below. Comments should be submitted to OIRA at OMB as provided in the **ADDRESSES** section above.

## VIII. International Impacts

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 will notify Canada that it has adopted an

alternative vision standard and propose the countries review their applicable vision standards to determine whether they remain equivalent.

## IX. Section-by-Section Analysis

This section-by-section analysis provides changes from the proposed rule. FMCSA discusses regulatory changes first in numerical order, followed by changes to Agency guidance.

### A. Regulatory Provisions

#### Section 391.31—Road Test

FMCSA adopts § 391.31(f) as proposed and removes the driver’s social security number, the driver’s license number, and the State of issuance of the driver’s license from the Certification of Road Test. The Agency adopts paragraph (h) as proposed but adds the control number (2126–0072) provided by OMB for the information collection.

#### Section 391.41—Physical Qualifications for Drivers

FMCSA adopts § 391.41(b)(10) as proposed but adds a limitation to clarify when the alternative vision standard is applicable. Specifically, the Agency adds the limitation in § 391.41(b)(10)(ii) that a person is physically qualified to operate a CMV who meets the requirements in § 391.44, “if the person does not satisfy, with the worse eye, either the distant visual acuity standard with corrective lenses or the field of vision standard, or both, in paragraph (b)(10)(i) of this section.”

#### Section 391.43—Medical Examination; Certificate of Physical Examination

FMCSA adds in § 391.43(b)(1) that an ophthalmologist may perform the vision part of the physical qualification examination as proposed. FMCSA also inserts the word “licensed” before optometrist to conform with the existing regulation.

#### Section 391.44—Physical Qualification Standards for an Individual Who Does Not Satisfy, With the Worse Eye, Either the Distant Visual Acuity Standard With Corrective Lenses or the Field of Vision Standard, or Both

FMCSA changes the title of § 391.44 and introductory paragraphs (a) and (c) to conform to the change in § 391.41(b)(10)(ii). Specifically, FMCSA clarifies the alternative vision standard is applicable to an individual “who does not satisfy, with the worse eye, either the distant visual acuity standard with corrective lenses or the field of vision standard, or both,” in renumbered § 391.41(b)(10)(i).

In introductory paragraph (b), the Agency inserts the word “licensed” before optometrist for consistency and clarity. In paragraph (b)(2), FMCSA replaces “his or her” with “the ophthalmologist or optometrist’s.”

To improve readability in introductory paragraph (c), FMCSA removes the clause “but no later than 45 days after an ophthalmologist or optometrist signs and dates the Vision Evaluation Report, Form MCSA–5871,” and includes the substance in a new second sentence. To provide additional clarity, the Agency changes “no later than” to “not more than” 45 days. The second sentence reads, “The examination must begin not more than 45 days after an ophthalmologist or optometrist signs and dates the Vision Evaluation Report, Form MCSA–5871.”

FMCSA makes clarifying changes to paragraph (c)(2)(iv). FMCSA removes “there has not been sufficient time” and inserts “sufficient time has not passed since the vision deficiency became stable.” The paragraph reads, “The individual is not physically qualified to operate a commercial motor vehicle if sufficient time has not passed since the vision deficiency became stable to allow the individual to adapt to and compensate for the change in vision.”

FMCSA makes minor changes in paragraph (d). In paragraph (d)(3)(ii)(A), FMCSA inserts “in the specific” before excepted interstate commerce to remind the reader that only interstate commerce excepted by either § 390.3T(f) or § 391.2 satisfies the requirements of the regulation. FMCSA changes a citation in paragraph (d)(4) from “§ 391.41(b)(10)” to “§ 391.41(b)(10)(i)” to clarify that the existing vision standard is being referenced. In addition, the Agency makes a tense change from “holds” to “held.” FMCSA also makes a tense change in paragraph (d)(5) from “is” to “was.”

#### Section 391.45—Persons Who Must Be Medically Examined and Certified

FMCSA makes conforming changes to § 391.45(f). It provides, in relevant part, any driver “who does not satisfy, with the worse eye, either the distant visual acuity standard with corrective lenses or the field of vision standard, or both, in § 391.41(b)(10)(i)” must be recertified at least every 12 months.

#### Section 391.51—General Requirements for Driver Qualification Files

FMCSA adopts § 391.51(b)(3) as proposed, which provides the driver qualification file must include the written statement from the motor carrier and certification from the driver required by § 391.44(d)(3).

#### Section 391.64—Grandfathering for Certain Drivers Who Participated in a Vision Waiver Study Program

FMCSA proposed to change the title of § 391.64 to remove a reference to a prior diabetes waiver study program; however, that change was made in a different rule (86 FR 35637 (July 7, 2021)). Otherwise, FMCSA adopts § 391.64 as proposed. This section provides that this rule does not apply to individuals certified under § 391.64(b) for 1 year from the effective date of this rule. After 1 year, any MEC, Form MCSA–5876, issued under § 391.64(b) will be void.

#### B. Guidance

This rule amends a regulation that has associated guidance. Such guidance does not have the force and effect of law, is strictly advisory, and is not meant to bind the public in any way. Conformity with guidance is voluntary. Guidance is intended only to provide information to the public regarding existing requirements under the law or FMCSA policies. Guidance does not alter the substance of a regulation.

#### Appendix A to Part 391—Medical Advisory Criteria

FMCSA removes section II.J., Vision: § 391.41(b)(10), in the Medical Advisory Criteria of appendix A to part 391 in its entirety as proposed.

#### Guidance for § 391.41

Guidance for specific regulations is available through the Guidance Portal on FMCSA’s website. The Agency revises the guidance to Question 3 for § 391.41<sup>11</sup> to reflect the changes made by this rule as proposed. FMCSA conforms the language to the number of medical conditions that are not subject to an ME’s judgment (*i.e.*, two medical conditions), and removes “vision” from the list of conditions for which an ME has no discretion. In addition, FMCSA changes “physical examinations” to “physical qualification examinations” to reflect current Agency terminology. Finally, the Agency removes the following quoted language that provides the ME is knowledgeable about whether “a particular condition would interfere with the driver’s ability to operate a CMV safely.” In its place, FMCSA inserts “the driver’s physical condition is adequate to enable the driver to operate the vehicle safely.” The inserted language aligns with the requirements

<sup>11</sup> Agency identifier FMCSA–MED–391.41–Q3, available at <https://www.fmcsa.dot.gov/medical/driver-medical-requirements/what-are-physical-qualification-requirements-operating-cmv> (last accessed Sept. 7, 2021).

in 49 U.S.C. 31136(a)(3) and reflects that each of FMCSA’s physical qualification standards has different regulatory requirements regarding how an ME is to evaluate a condition. The guidance for Question 3 reads 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 qualification 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 the driver’s physical condition is adequate to enable the driver to operate the vehicle 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. Regulatory Analyses

##### A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has considered the impact of this final rule under E.O. 12866 (58 FR 51735 (Oct. 4, 1993)), Regulatory Planning and Review; E.O. 13563 (76 FR 3821 (Jan. 21, 2011)), Improving Regulation and Regulatory Review; and DOT’s regulatory policies and procedures. OIRA within OMB has determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. Accordingly, OMB has not reviewed it under that E.O. The Agency has determined that the final rule results in cost savings.

The Regulatory Impact Assessment follows:

##### Baseline for the Analysis

Drivers who do not satisfy, with the worse eye, either the existing distant visual acuity standard with corrective lenses or the field of vision standard, or both, 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.<sup>12</sup> Currently, FMCSA grants exemptions to applicants who meet specific criteria, including stable vision and experience safely operating a CMV with the vision deficiency. 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. The Agency 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.

If an exemption is granted, the driver must meet certain conditions to maintain the 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 Federal Motor Carrier Safety Regulations (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, 1,967 drivers hold vision exemptions.<sup>13</sup> Compared to all interstate CMV drivers operating in the United States in 2019 (4 million, including 3.4 million who hold CDLs),<sup>14</sup> these drivers represent less than 0.1 percent of the population.<sup>15</sup> There are approximately 1,806 grandfathered drivers.<sup>16</sup> FMCSA checks the driving records of grandfathered drivers to determine if they continue to operate CMVs safely.

## Impact of the Final Rule: Physical Qualification and Road Test

### Physical Qualification

As a result of this final rule, an individual who does not satisfy, in the worse eye, either the existing distant visual acuity standard with corrective lenses or field of vision standard, or both, can be physically qualified without applying for or receiving an exemption. The individual will still have to receive a vision evaluation by an ophthalmologist or optometrist. The ophthalmologist or optometrist will complete the Vision Evaluation Report, Form MCSA-5871.

For those who obtain an MEC, Form MCSA-5876, this action may represent a streamlined process compared to the requirements of the vision exemption program in that the driver will 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.

This final rule will result in the discontinuation of the Federal vision exemption program. Instead, the physical qualification determination of individuals in, or who would be applying to, the exemption program will be made by an ME, who is trained and qualified to make such determinations, considering the information received in the Vision Evaluation Report, Form MCSA-5871, 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, individuals physically qualified under the alternative vision standard for the first time must complete a road test before operating in interstate commerce. The road test will be conducted by motor carriers in accordance with the road test already required by § 391.31.

As described in the NPRM, individuals will be excepted from the road test requirement if they have 3 years of intrastate or specific 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. FMCSA finds that a road test is 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 the Federal Highway Administration (FHWA), the predecessor agency to FMCSA, 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 (Apr. 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 meet the criteria of the Federal vision exemption program. The removal of the 3-year experience criterion under this final rule will more readily allow these individuals to operate in interstate commerce. However, the current number of exemption holders, grandfathered drivers, and applicants denied exemptions annually represents less than 1 percent of all interstate CMV drivers.

The Agency expects this final rule will be safety neutral. FMCSA notes that, although it will no longer directly monitor the safety performance of drivers, motor carriers will 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 final rule will result in incremental cost savings of approximately \$1.6 million annually from the elimination of the Federal vision exemption program and contract expenditures (Table 1). As described in detail below, FMCSA also accounts for

<sup>12</sup> 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 Aug. 19, 2021).

<sup>13</sup> FMCSA data as of August 5, 2021.

<sup>14</sup> FMCSA 2020 Pocket Guide to Large Truck and Bus Statistics, available at <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2020-10/FMCSA%20Pocket%20Guide%202020-v8-FINAL-10-29-2020.pdf> (last accessed Aug. 9, 2021).

<sup>15</sup> Compared to all (interstate and intrastate) CMV drivers, 6.8 million, or CDL drivers, 4.9 million, the percentage is even lower.

<sup>16</sup> 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.



the annual cost of the road test requirement at approximately \$44,000.

TABLE 1—COST SAVINGS: FEDERAL VISION EXEMPTION PROGRAM CONTRACT AND ROAD TEST  
[2020 dollars]

Fiscal year	Contract cost <sup>(a) (b)</sup>	Road test	Total
2021–2022 .....	(\$1,596,375)	\$44,048	(\$1,552,327)
2022–2023 .....	(1,644,267)	44,048	(1,600,219)
2023–2024 .....	(1,693,595)	44,048	(1,649,547)
2024–2025 .....	(1,744,402)	44,048	(1,700,354)

<sup>(a)</sup> For years 2022–2023, 2023–2024, and 2024–2025, FMCSA estimated an average contract cost increase of 3 percent and extrapolated based on the percent increase of previous years.

<sup>(b)</sup> The program contract estimate for 2021–2022 was adjusted to 2020 dollars from the value of \$1,577,268 in 2019 dollars used in the NPRM. FMCSA applied a multiplier of 1.012114, extracted from the Bureau of Economic Analysis Gross Domestic Product (GDP) Implicit Price Deflator series from December 21, 2020. The GDP deflator for 2020 of 113.625 divided by the deflator of 112.265 for 2019 is equal to 1.012114.  $\$1,577,268 \times 1.012114 = \$1,596,375$ .

The 1,967 current vision exemption holders will no longer have to apply for exemptions and potential drivers who would not qualify for an exemption because they 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. This rule leads to a reduction in burden, as drivers will 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 will result in a total annual cost impact

of \$44,000 (Table 2). There will be approximately 868 drivers requiring 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 2018 through 2020.<sup>17</sup> FMCSA recognizes this is a high estimation and overstates the burden associated with the road test. While some of the individuals will already be required to obtain a road test under § 391.31, in the absence of the requirement in § 391.44(d), FMCSA lacks internal data to estimate how many individuals will already be required to obtain a road test. Therefore, FMCSA opted for a conservative approach of assuming all 868 individuals would require a road test.

As described above, motor carriers will 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 \$31 for the drivers<sup>18</sup> (Table 3) and \$61 for the motor carrier's compliance officer.<sup>19</sup>

TABLE 2—ROAD TEST COST CALCULATIONS  
[2020 dollars]

Drivers/Motor carriers .....	868
Test Hours .....	0.55
Driver Wage .....	\$30.95
Subtotal .....	\$14,770
Compliance Officer Wage <sup>20</sup> .....	\$61.35
Subtotal .....	\$29,278
Sum .....	\$44,048

**Note:** Totals may not sum due to rounding.

TABLE 3—WAGE RATES FOR CMV TRUCK DRIVERS

Occupational title	BLS standard occupation code	North American Industry Classification System (NAICS) occupational designation	Total employees	Median hourly base wage	Fringe benefit rate <sup>(c)</sup>	Median hourly base wage + fringe benefits
Heavy and Tractor-Trailer Truck Drivers.	53–3032	All Industry .....	1,797,710	\$22.66	52%	\$34.47
Light Truck Drivers .....	53–3033	All Industry .....	929,470	17.81	52%	27.09
Bus drivers, school and or special client.	53–3052	All Industry .....	162,850	22.07	52%	33.57
Bus drivers, transit and intercity.	53–3058	All Industry .....	431,986	15.54	52%	23.64

<sup>17</sup> In 2018 there were 1,073 applicants, in 2019 there were 1,030, and in 2020 there were 500  $((1,073 + 1,030 + 500) \div 3 = 868)$ .

<sup>18</sup> Department of Labor (DOL), Bureau of Labor Statistics (BLS), Occupational Employment and Wages, May 2020, 53–0000 Transportation and Material Moving Occupations. Available at <https://www.bls.gov/oes/current/oes530000.htm> (last accessed Aug. 26, 2021).

<sup>19</sup> DOL, BLS, Occupational Employment and Wages, May 2020, 13–1041 Compliance Officers.

Available at <https://www.bls.gov/oes/current/oes131041.htm> (last accessed Aug. 26, 2021).

<sup>20</sup> In addition to the fringe benefit rate of 52 percent, FMCSA also applied an overhead rate of 27 percent to the compliance officer's wage. The Agency used industry data gathered for the Truck Costing Model developed by the Upper Great Plains Transportation Institute, North Dakota State University (Berwick, Farooq, Truck Costing Model for Transportation Managers. North Dakota State University. Upper Great Plains Transportation

Institute. Aug. 2003. Appendix A, pp. 42–47. Available at: <http://www.mountain-plains.org/pubs/pdf/MPC03-152.pdf> (last accessed Aug. 20, 2021)). Research conducted for this model found an average cost of \$0.107 per mile of CMV operation for management and overhead, and \$0.39 per mile for labor, indicating an overhead rate of 27 percent  $(27\% = \$0.107 \div \$0.39 \text{ (rounded to the nearest whole percent)})$ .

TABLE 3—WAGE RATES FOR CMV TRUCK DRIVERS—Continued

Occupational title	BLS standard occupation code	North American Industry Classification System (NAICS) occupational designation	Total employees	Median hourly base wage	Fringe benefit rate <sup>(c)</sup>	Median hourly base wage + fringe benefits
Weighted Driver Wage	.....	.....	.....	.....	.....	30.95

<sup>(c)</sup> DOL, BLS. "Employer Cost of Employee Compensation Dec. 2020 News Release," Table 4: Employer Costs for Employee Compensation for private industry workers by occupational and industry group. Available at <https://www.bls.gov/news.release/pdf/ecoc.pdf> (last accessed Nov. 2, 2020). The fringe benefit rate is the ratio of hourly wage for average hourly wage for a private industry worker and the associated hourly benefit rate (52% =  $13.78 \div \$26.45$  (rounded to the nearest whole percent)). FMCSA does not apply an overhead rate to the driver's hourly wage, as the road test occurs prior to being employed.

Although the Agency acknowledges there are motor carriers employing multiple drivers who would be certified under the new alternative vision standard, FMCSA lacks data to estimate the exact number of motor carriers impacted by this rule. 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 \$44,000 a likely overestimate. Additionally, there may be some drivers medically certified under the new alternative vision standard who are also 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. Using this approach, the Agency estimates the cost for each road test at \$50.77.<sup>21</sup>

#### Benefits

Eliminating the prohibition on certifying individuals who do not satisfy, in the worse eye, either the existing visual acuity standard with corrective lenses or field of vision standard, or both, without an exemption will enable more qualified individuals to operate as interstate CMV drivers without compromising safety. These drivers are relieved of the time and paperwork burden associated with applying for or renewing an exemption.<sup>22</sup> The alternative vision standard allows previously qualified interstate CMV drivers who are no longer able to satisfy, in the worse eye, either the existing distant visual acuity standard with corrective lenses or field of vision standard, or both, to return sooner to operating interstate. 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 in interstate commerce. A one-time road test is 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 provides more drivers the opportunity to operate a CMV.

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

#### B. Congressional Review Act

This final rule is not a *major rule* as defined under the Congressional Review Act (5 U.S.C. 801–808).<sup>23</sup>

#### C. 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,<sup>24</sup> requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term "small entities" comprises 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 of less than 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 businesses.

This rule affects 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 NAICS. This rule will 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 BLS with NAICS industry codes. A maximum of 868 motor carriers will be impacted in a given year. Even if all affected motor carriers were small and operated in the same NAICS code, it is unlikely that this rule will impact a substantial number of small entities.

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. One measure that could be used to illustrate a significant impact is revenue costs,

<sup>21</sup>  $(\$61.35 \times 0.55) + (\$30.95 \times 0.55) = \$50.77$ .

<sup>22</sup> As discussed below in section X.F. with respect to the information collection titled "Medical Qualification Requirements," FMCSA attributes 2,236 annual burden hours at a cost of \$67,486 for drivers to request and maintain a vision exemption. The final rule eliminates this entire burden.

<sup>23</sup> A *major rule* means any rule that 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 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)).

<sup>24</sup> Public Law 104–121, 110 Stat. 857 (Mar. 29, 1996), 5 U.S.C. 601 note.

specifically, if the cost of the regulation exceeds 1 percent of the average annual revenues of small entities in the sector. Given the rule's average annual per-entity impact of \$33.74,<sup>25</sup> a small entity would need to have average annual revenues of less than \$3,374 to experience an impact greater than 1 percent of average annual revenue. This is an average annual revenue that is smaller than would be required for a firm to support one employee; therefore, this action will not result in a significant impact.

Consequently, I certify that this action will not have a significant economic impact on a substantial number of small entities.

#### *D. Assistance for Small Entities*

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996,<sup>26</sup> FMCSA wants to assist small entities in understanding this final rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the SBA's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish 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.

#### *E. 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 \$170 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2020 levels) or more in any 1 year. Although this final rule will not result in such an expenditure, the Agency discusses the effects of this rule elsewhere in this preamble.

#### *F. Paperwork Reduction Act*

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)).

This final rule impacts 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 2126–0072). The ICRs will be discussed separately below, followed by a discussion of the net information collection and reporting burdens of the final rule. FMCSA will submit a copy of the final rule to OIRA at OMB for review and approval of the information collections.

#### *1. Information Collection Requests*

##### *a. Medical Qualification Requirements ICR*

This final rule revises the existing approved Medical Qualification Requirements ICR (OMB control number 2126–0006), which expires on December 31, 2024. FMCSA seeks approval for the revision of the ICR due to the Agency's development of this rule, which includes the use of the Vision Evaluation Report, Form MCSA–5871.

*Title:* Medical Qualification Requirements.

*OMB Control Number:* 2126–0006.

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

*Summary:* In this final rule, FMCSA establishes an alternative vision standard for individuals who do not satisfy, with the worse eye, either FMCSA's existing distant visual acuity standard with corrective lenses or the field of vision standard, or both, in renumbered 49 CFR 391.41(b)(10)(i) to be physically qualified to operate a CMV in interstate commerce under specified conditions. The alternative

vision standard uses a collaborative process for physical qualification. Before an individual may be medically certified under the alternative vision standard, the individual must have a vision evaluation conducted by an ophthalmologist or optometrist. The ophthalmologist or optometrist records the findings from the vision evaluation and provides specific medical opinions on the Vision Evaluation Report, Form MCSA–5871. Then, an ME performs an examination, considers the information provided on the report, and determines whether the individual meets the alternative vision standard, as well as FMCSA's other physical qualification standards. If the ME determines the individual meets the physical qualification standards, the ME may issue an MEC, Form MCSA–5876, for a maximum of 12 months. The 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.

*Response to comments:* The NPRM served as the 60-day notice for the information collection revision and requested public comment on the draft Vision Evaluation Report, Form MCSA–5871, and information collection. FMCSA received no substantive comments regarding the report, or the burden associated with the information collection, in response to the NPRM. As discussed above in sections V.B. and C., the MRB recommended minor changes to the report and FMCSA published an NOA seeking comment on the recommendations. FMCSA again received no substantive comments regarding the report or burden of the information collection. Section VII.B. above describes all the changes made to the report in the final rule. With respect to the information collection burden, FMCSA adds requests on the report for a date and a couple of words to explain why a progressive eye condition is not stable and the rationale when a vision evaluation is needed more frequently than annually. However, FMCSA finds that the minor changes to the Vision Evaluation Report, Form MCSA–5871, do not require revision of FMCSA's time estimate to complete the report. FMCSA finds no basis from the comments to change the analysis of the burden for the information collection.

*Burden estimates:* Because of this final rule, FMCSA adds a new information collection (IC–8 Qualifications of Drivers; Vision Standard) to the existing ICR for an ophthalmologist or optometrist to complete a Vision Evaluation Report, Form MCSA–5871. FMCSA estimates

<sup>25</sup> The motor carrier's wage is estimated at \$61.35, as described in more detail in the Regulatory Impact Assessment. The motor carrier would spend 30 minutes administering the road test, and 3 minutes on the associated paperwork, leading to a total of 33 minutes, or 0.55 hours. 0.55 hours × \$61.35 = \$33.74.

<sup>26</sup> Public Law 104–121, 110 Stat. 857, 858 (Mar. 29, 1996), 5 U.S.C. 601 note.

that ophthalmologists and optometrists will complete 4,641 reports annually and that it will take them 8 minutes to complete a report. Thus, the estimated annual burden hours associated with the information collection is 619 hours (4,641 forms  $\times$  8 minutes per form  $\div$  60 minutes = 619 hours, rounded to the nearest whole hour). At an average hourly labor cost of \$84.22 for optometrists,<sup>27</sup> the estimated salary cost associated with this information collection is \$52,130 (\$84.22 hourly labor costs  $\times$  619 hours = \$52,130, rounded to the nearest dollar).

*Estimated number of respondents:* 4,641 ophthalmologists and optometrists.

*Estimated responses:* 4,641.

*Frequency:* At least annually.

*Estimated burden hours:* 619.

*Estimated cost:* \$52,130.

The alternative vision standard eliminates the need for the Federal vision exemption program and the related information collection (IC-3a). The 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, in the OMB-approved supporting statement for IC-3a, 2,236 annual burden hours at a cost of \$67,486 to obtain and maintain a vision exemption, which is eliminated by this rule.

The net effect of this rule on this ICR is a reduction in burden hours of 1,617 hours (619 hours related to the Vision Evaluation Report, Form MCSA-5871 – 2,236 hours related to the current vision exemption program = – 1,617). In addition, the net effect of the rule with respect to costs is a reduction of \$15,356 (\$52,130 related to the report – \$67,486 related to the current vision exemption program = – \$15,356).

The revised total annual estimated burden associated with the Medical Qualification Requirements ICR that reflects the addition of the information collection for the Vision Evaluation Report, Form MCSA-5871, and elimination of the Federal vision exemption program is as follows.

*Total estimated number of respondents:* 6,226,330 CMV drivers, motor carriers, MEs, treating clinicians, ophthalmologists, and optometrists.

*Total estimated responses:* 35,545,790.

*Total estimated burden hours:* 2,705,862.

*Total estimated cost:* \$194,994,040.

Additional information for the assumptions, calculations, and methodology summarized above is provided in the supporting statement for the Medical Qualification Requirements ICR. The supporting statement is available in the docket for this rulemaking.

#### b. 391.31 Road Test Requirement ICR

FMCSA establishes 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 includes the incremental burden for motor carriers associated with § 391.31 road tests due to this final rule.

*Title:* 391.31 Road Test Requirement.

*OMB Control Number:* 2126–0072.

*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 (Apr. 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 1935<sup>28</sup> (1935 Act) and the Motor Carrier Safety Act of 1984<sup>29</sup> (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.

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 amid the various physical and mental demands of truck and bus 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.

As indicated above, 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)).

*Response to comments:* The NPRM served as the 60-day notice for the

<sup>27</sup> An hourly wage rate for ophthalmologists is not available.

<sup>28</sup> Public Law 74–255, 49 Stat. 543 (Aug. 9, 1935).

<sup>29</sup> Public Law 98–554, 98 Stat. 2829 (Oct. 30, 1984).

information collection and requested public comment on it. FMCSA received no substantive comments regarding the burden associated with the information collection in response to the NPRM. However, ATA referenced “a 30-minute road test,” which is consistent with FMCSA’s estimate for the road test. ACOEM expressed general concern that the number of employer-required road tests would significantly increase due to the alternative vision standard but provided no specific data or number. FMCSA finds no basis from the comments to change the analysis of the burden for the information collection.

**Burden estimates:** 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 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 \$61.35 per hour. The median salary for a file clerk is \$29.42 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 § 391.44 (IC–2). Most of the motor carrier burden hours and cost for the information collection relates to IC–1 and 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 rule that individuals physically qualified under the alternative vision standard in § 391.44 for the first time must complete a road test in accordance with § 391.31. However, individuals are excepted from the road test requirement if they have 3 years of intrastate or specific excepted interstate CMV driving experience with the vision deficiency, hold a valid Federal vision exemption, or are medically certified under § 391.64(b). FMCSA estimates there will be approximately 868 drivers requiring a road test under § 391.44 each

year. Therefore, the respondent universe of motor carriers is also 868.

The estimated incremental annual burden associated with the requirement in this rule that certain individuals physically qualified under § 391.44 for the first time must complete a road test in accordance with § 391.31 (IC–2), is as follows.

*Estimated number of respondents:* 868 motor carriers.

*Estimated responses:* 2,604.

*Frequency:* Once.

*Estimated burden hours:* 477.

*Estimated cost:* \$28,735.

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:* 497,981 motor carriers.

*Total estimated responses:* 1,493,943.

*Total estimated burden hours:* 273,888.

*Total estimated cost:* \$16,485,764.

Additional information for the assumptions, calculations, and methodology summarized above is provided in the 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 in Table 4 below, the combined net effect of the rule on the two ICRs is a reduction in burden hours of 1,140 and an addition of cost in the amount of \$12,255.

TABLE 4—NET BURDEN OF MEDICAL QUALIFICATIONS REQUIREMENTS ICR AND ROAD TEST ICR

ICR	Burden hours	Cost
Medical Qualifications Requirements .....	(1,617)	(\$16,480)
Road Test .....	477	\$28,735
Net Burden .....	(1,140)	\$12,255

## 3. Request for Comments

FMCSA asks for comment on the information collection requirements of this 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 **ADDRESSES** at the beginning of this final rule.

## G. 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 has determined that this rule does not have substantial direct costs on or for States, nor will 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.

## H. Privacy

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005,<sup>30</sup> requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. The assessment considers impacts of the rule on the privacy of information in an identifiable form and related matters.

This rule requires the collection of personally identifiable information and protected health information via the Vision Evaluation Report, Form MCSA–5871. The privacy risks and effects associated with this rule are not unique and have been addressed previously by the DOT/FMCSA 009—National Registry of Certified Medical Examiners system of records notice published on October 4, 2019 (84 FR 53211).<sup>31</sup> The DOT Chief Privacy Officer will determine whether a new system of records notice for this rule is required.

Before an individual may be medically certified under the alternative vision standard adopted in this rule, the individual must have a vision evaluation conducted by an ophthalmologist or optometrist. The ophthalmologist or optometrist records the findings of the vision evaluation and provides specific medical opinions on

<sup>30</sup> Public Law 108–447, 118 Stat. 2809, 3268 (Dec. 8, 2004), 5 U.S.C. 552a note.

<sup>31</sup> Available at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices> (last accessed Sept. 21, 2021).

the new Vision Evaluation Report, Form MCSA-5871. Then, an ME performs a physical qualification examination and uses the information provided on the report to determine whether the individual meets the alternative vision standard. The Vision Evaluation Report, Form MCSA-5871, is used exclusively as part of the physical qualification process. It collects only the information that is necessary for the ME to determine whether an individual meets the alternative vision standard and may be medically certified.

The Vision Evaluation Report, Form MCSA-5871, provides a means for healthcare professionals to exchange information about an individual for purposes of regulatorily required medical certification to operate a CMV. The report promotes uniform and consistent communication between ophthalmologists or optometrists and the certifying MEs. 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 is generated because of this rule.

The Agency expects that the Vision Evaluation Report, Form MCSA-5871, will be safeguarded along with all the other medical information that these healthcare providers retain. The report must be treated and retained as part of the Medical Examination Report Form, MCSA-5875, in the ME's medical records for the individual. The report must be retained by the ME for at least 3 years from the date of the physical qualification examination. The Vision Evaluation Report, Form MCSA-5871, is provided to FMCSA only upon request if there is an investigation or audit. Therefore, this rule provides 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, is retained by MEs. However, as healthcare providers, MEs are required to retain and disclose medical information and personally identifiable information in accordance with applicable Federal and State privacy laws.

With respect to the requirement that a Vision Evaluation Report, Form MCSA-5871, must be completed as part of the new alternative vision standard, the Agency has completed a Privacy Threshold Assessment to evaluate the risks and effects the requirement has on collecting, storing, and sharing

personally identifiable information and protected health information.

With respect to the requirement for a road test as part of the alternative vision standard, the Agency also has completed a Privacy Threshold Assessment to evaluate the risks and effects the requirement has on collecting, storing, and sharing personally identifiable information.

#### *I. 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.

#### *J. National Environmental Policy Act of 1969*

FMCSA analyzed this final rule pursuant to 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 (Mar. 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. In addition, the rule does not have any effect on the quality of the environment.

#### **List of Subjects in 49 CFR Part 391**

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

Accordingly, FMCSA amends 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. In paragraph (f), removing the entries “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 (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2126-0072.

■ 3. Revise § 391.41(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, if the person does not satisfy, with the worse eye, either the distant visual acuity standard with corrective lenses or the field of vision standard, or both, in paragraph (b)(10)(i) of this section;

\* \* \* \* \*

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

#### **§ 391.43 Medical examination; certificate of physical examination.**

\* \* \* \* \*

(b) \* \* \*

(1) A licensed ophthalmologist or licensed 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 does not satisfy, with the worse eye, either the distant visual acuity standard with corrective lenses or the field of vision standard, or both.**

(a) *General.* An individual who does not satisfy, with the worse eye, either the distant visual acuity standard with corrective lenses or the field of vision standard, or both, in § 391.41(b)(10)(i) 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 licensed 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 the ophthalmologist or optometrist's full name, office address, and telephone number on the Report.

(c) *Examination by a medical examiner.* At least annually, an individual who does not satisfy, with the worse eye, either the distant visual acuity standard with corrective lenses or the field of vision standard, or both, in § 391.41(b)(10)(i) must be medically examined and certified by a medical examiner as physically qualified to operate a commercial motor vehicle in accordance with § 391.43. The examination must begin not more than 45 days after an ophthalmologist or optometrist signs and dates the Vision Evaluation Report, Form MCSA-5871.

(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 sufficient time has not passed since the vision deficiency became stable 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. 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 paragraph (d) of this section 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 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 from the requirements of this subpart 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) of this subchapter or § 391.2 from the requirements of this subpart with the vision deficiency for the 3-year period immediately preceding the date of physical qualification in accordance with this section 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 in the specific excepted interstate commerce (as applicable) with the vision deficiency for the 3-year period immediately preceding the date of physical qualification in accordance with this section for the first time and, therefore, is not required by paragraph (d) of this section 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 held on March 22, 2022, a valid exemption from the vision standard in § 391.41(b)(10)(i) 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 paragraph (d)(1) of this section 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 was medically certified on March 22, 2022, 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 paragraph (d)(1) of this section to have a road test.

■ 6. Amend § 391.45 by:

■ a. Revising paragraph (b);

■ b. Redesignating paragraphs (f) and (g) as paragraphs (g) and (h), respectively; and

■ c. Adding a new paragraph (f).

The revision and addition 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 does not satisfy, with the worse eye, either the distant visual acuity standard with corrective

lenses or the field of vision standard, or both, in § 391.41(b)(10)(i) 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. Revise § 391.51(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 paragraph (b) introductory text and adding paragraph (b)(4) to read as follows:

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

\* \* \* \* \*

(b) Until March 22, 2022, 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 March 22, 2022, the provisions of paragraph (b) of this section are no longer in effect, and any medical examiner's certificate issued under § 391.43 on the basis that the driver is qualified by operation of the provisions of paragraph (b) of this section, related to drivers with visual impairment in one eye, is void.

**Appendix A to Part 391—[Amended]**

■ 9. Remove and reserve paragraph II.J. of appendix A to part 391.

Issued under the authority of delegation in 49 CFR 1.87.

**Meera Joshi,**

*Deputy Administrator.*

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