

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 25—Motor Carrier Operations

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SECRETARY OF STATE
ADMINISTRATIVE RULES

PROPOSED AMENDMENT

7 CSR 10-25.010 Skill Performance Evaluation Certificates For Commercial Drivers. The Missouri Highways and Transportation Commission is amending sections (1) and (3); deleting sections (4) and (5); and re-numbering sections (6) through (10).

PURPOSE: This proposed amendment removes language regarding vision and limb exemptions that duplicates federal regulation and removes an unnecessary process.

[PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.]

(1) Definitions and Substitutions. Except when the context clearly suggests otherwise, the words and terms used in this rule, or in any federal regulation incorporated by reference in this rule, shall have the meaning stated in this section.

(A) Whenever the terms "application," "letter of application," "written request," or any similar terms used in the federal regulation refer to a document to be filed with a federal agency or official, the word "application" shall be substituted for those terms, which means a writing filed with the director, which shall contain all information required to complete the applicable form provided for that purpose by the department.

(B) Whenever the term "commercial motor vehicle" is used in the federal regulation, the term shall include any motor vehicle, or the operation or driver of any motor vehicle, within the jurisdiction of the commission pursuant to the provisions of section 226.008, RSMo.

(C) The word "commission" means the Missouri Highways and Transportation Commission.

(D) The word "department" means the Missouri Department of Transportation.

(E) The word "director" means the director of Motor Carrier Services of the Missouri Department of Transportation.

(F) Whenever the term "exemption" is used in or has reference to 49 CFR part 381, the term "SPE certificate" shall be substituted for the term "exemption." **With the exception of Subpart C, Section 381.315, the commission incorporates by reference in, and makes a part of this rule, the provisions of Title 49, CFR Part 381 as published by the United States Government Printing Office, 732 North Capitol Street NW, Washington DC 20401, on March 17, 2016. This rule does not incorporate any subsequent amendments or additions to 49 CFR Part 381.** "SPE certificate" means a skill performance evaluation certificate, as defined in subsection 4 of section 622.555, RSMo.

(G) Whenever the term "FMCSA," "field service center, FMCSA" or any comparable term is

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used in the federal regulation, then the words "Missouri Department of Transportation, Motor Carrier Services" shall be substituted for those terms. If the federal regulation prescribes an address applicable to any of these terms, then the current business address of the director of Motor Carrier Services shall be substituted for that address.

(H) Whenever the terms "Federal Motor Carrier Safety Administrator," "Federal Highway Administrator," "State Director, FMCSA" or any comparable terms are used in the federal regulation, then the words "Missouri Department of Transportation, director of Motor Carrier Services" shall be substituted for those terms. If the federal regulation prescribes an address applicable to any of these terms, then the current business address of the director of Motor Carrier Services shall be substituted for that address.

(I) *[Whenever the term "Federal Register" or any comparable term is used in the federal regulation, the term "Missouri Register" shall be substituted for that term.*

(J) Whenever the word "interstate" is used in the federal regulation, the word "intra-state" shall be substituted for "interstate."

(J) Publication of a Missouri Register notice of application for Skill Performance Evaluation Certificates For Commercial Drivers is not required.

(3) Filing and Determination of Applications; Demonstration and Verification of Ability to Operate Commercial Motor Vehicles. Applications for an intrastate SPE certificate, and related documents, **and information reasonably required by the director of Motor Carrier Services** shall be filed with the director of Motor Carrier Services, at *[the current business address of the director.]* **P.O. Box 270, Jefferson City, MO 65102.** Every application shall include all information and supporting documents required by section 622.555, RSMo, this rule, and the *[latest form of]* "Application for Skill Performance Evaluation Certificate". **The application is incorporated here by reference and made a part of this rule as published on October 12, 2016 by the Missouri Department of Transportation Motor Carrier Services Division, P.O. Box 270, Jefferson City, MO 65102. The application and related instructions approved by the director, and any additional information reasonably required by the director. This rule does not incorporate any subsequent amendments or additions of the application.**

(A) The director may dismiss, grant or deny applications for SPE certificates, in accordance with the provisions of section 622.555, RSMo, and this rule.

(B) The director may issue SPE certificates that include reasonable limitations, conditions, and requirements to protect public safety, or to promote the department's effective administration of SPE certificates, or both.

(C) At any time while an application is pending, or after the person is issued a SPE certificate, the director may require the person to demonstrate or verify the person's present ability to operate a commercial motor vehicle safely with his/her physical deficiency or impairment. These requirements may include:

1. Successfully completing a road test, using a commercial motor vehicle and associated equipment of the type which the applicant drives or seeks to drive pursuant to the SPE certificate;

2. Obtaining additional or periodic physical examinations by a physician or opto[-]metrist; and

3. Filing additional or periodic reports with the director concerning the person's medical or vision examinations, treatment, prognosis, employment, driving record, accidents, traffic violations, and other pertinent information.

(4) *Limb Exemption.* The commission incorporates by reference in this rule the provisions of 49 CFR section 391.49 (Alternative physical qualification standards for the loss or impairment of limbs), as those regulations have been and periodically may be amended. Except to the extent they are inconsistent with any provisions of section 622.555, RSMo, or of this rule, those regulations are hereby made applicable to the issuance of intrastate SPE certificates to persons who are not physically qualified to drive pursuant to paragraphs (1) or (2), or both paragraphs (1) and (2), of subsection (b) of 49 CFR section 391.41, because of the person's loss or impairment of one (1) or more of the following: a foot, leg, hand, arm, or any part thereof.

(5) *Vision Exemption.* The commission in[-]corporates by reference in this rule the provisions of subpart A (General) and subpart C (Procedures for Applying for Exemptions) of part 381 (Waivers, Exemptions and Pilot Programs) of Title 49, Code of Federal Regulations, and 49 CFR section 391.64 (Grandfathering for certain drivers participating in vision and diabetes waiver study programs), as those regulations have been and periodically may be amended. Except to the extent those regulations are inconsistent with any provisions of section 622.555, RSMo, or of this rule, those regulations are hereby made applicable to the issuance of intrastate SPE certificates to persons who are not physically qualified to drive pursuant to paragraph (10) of subsection (b) of 49 CFR section 391.41, because of impaired vision. Notwithstanding any provisions of 49 CFR part 381 to the contrary, this rule shall not authorize waivers or pilot programs, as defined in part 381.

(A) Every application filed pursuant to this section shall include one (1) or more affidavits describing the applicant's motor vehicle driving experience during the three (3)-year period immediately before the date of the application. Each affidavit shall contain all information required by the latest form of "Affidavit of Driving Experience" and pertinent instructions approved by the director.

(B) Notwithstanding any requirement of Title 49 CFR, or of any federal agency or officer made pursuant to Title 49 CFR, to the contrary, the director may determine that an applicant has adequately demonstrated the ability to operate a commercial motor vehicle safely with the vision impairment for the three (3)-year period immediately before the date of the application, if the director reasonably finds that:

1. During that three (3)-year period, the applicant safely and continuously operated commercial motor vehicles, or other motor vehicles licensed and used on public highways, with the vision impairment; and

2. If the driving experience required by paragraph 1. of this subsection was not performed in a commercial motor vehicle, then within sixty (60) days immediately before the date of the application, or while the application is pending, the applicant has successfully completed a road test as provided in subpart D of 49 CFR part 391, with the vision impairment, using a commercial motor vehicle and associated equipment of the type which the applicant seeks to drive pursuant to the SPE certificate.

(6) *Other Physical Deficiencies.* Persons who are physically unqualified to drive commercial motor vehicles pursuant to any provision of 49 CFR section 391.41(b)[, except paragraphs (1), (2) and (10).] may apply for intrastate SPE certificates, and the director may issue intrastate SPE certificates to those applicants, only if:

(A) The Federal Motor Carrier Safety Administration (FMCSA) is currently administering a program for issuing SPE certificates, or exemptions from the physical qualification requirements, to interstate drivers who are physically unqualified because of the same physical deficiency or

impairment affecting the applicant;

(B) The applicant files an application for SPE certificate with the director, which conforms to all applicable requirements of section 622.555, RSMo, and this rule, and conforms to the same standards and procedures that are applicable under FMCSA's comparable interstate SPE certificate or exception program, as modified and supplemented by any applicable provisions of section 622.555, RSMo, or this rule.

(~~7~~5) Multiple Physical Conditions. The director may deny applications for SPE certificates, and may suspend or revoke SPE certificates, regarding any person who is not physically qualified pursuant to the requirements of two (2) or more separate paragraphs within subsection (b) of 49 CFR section 391.41, except a person who is physically unqualified only pursuant to paragraphs (1) and (2) of that subsection.

(~~8~~6) Federal Exemption or SPE Certification. Upon the filing of an application containing such information as the director may require, the director may waive any procedural requirements pursuant to this rule and shall issue an intrastate SPE certificate to any driver who is authorized to operate commercial motor vehicles in interstate commerce by a currently valid SPE certificate or vision exemption issued by the FMCSA. Each SPE certificate issued pursuant to this section shall be conditioned upon the driver's continued possession of the federal SPE certificate in good standing, and the driver's compliance with all applicable requirements, including all conditions specified in the driver's federal SPE certificate, and any other conditions imposed by the director.

(~~9~~7) Operation in Conformity with Terms of SPE Certificate. No person shall operate a commercial motor vehicle by authority of any SPE certificate issued pursuant to this rule, unless the vehicle is operated in conformity with all limitations, requirements and other terms specified in that SPE certificate.

(~~10~~8) Suspension and Revocation. For good cause, the director may revoke a person's SPE certificate after notice and an opportunity for hearing before the Administrative Hearing Commission, or may suspend the certificate until it is determined whether the certificate should be revoked.

*AUTHORITY: sections 226.008 and 622.555, RSMo Supp. 2003. * Emergency rule filed June 6, 2003, effective June 16, 2003, expired Feb. 26, 2004. Original rule filed June 6, 2003, effective Dec. 30, 2003. Amended: October 14, 2016.*

**Original authority: 226.008, RSMo 2002; 622.555, RSMo 2002.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Transportation, Pam Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*