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**MATT BLUNT**

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at <http://www.sos.mo.gov/adrules/pubsched.asp>

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## HOW TO CITE RULES AND RSMo

**RULES**—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 26, *Missouri Register*, page 27. The approved short form of citation is 26 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division in the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

**RSMo**—Cite material in the RSMo by date of legislative action. The note in parentheses gives the original and amended legislative history. The Office of the Revisor of Statutes recognizes that this practice gives users a concise legislative history.

**R**ules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

**R**ules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

**A**ll emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

**Title 7—DEPARTMENT OF TRANSPORTATION  
Division 10—Missouri Highways and Transportation  
Commission  
Chapter 3—Utility and Private Line Location  
and Relocation**

**EMERGENCY RESCISSION**

**7 CSR 10-3.040 Division of Relocation Costs.** This rule provided a uniform system for the designation of cost responsibility for a utility relocation.

*PURPOSE:* The commission is rescinding this rule and will work towards adopting a new rule that more clearly provides for the designation of cost responsibility.

*EMERGENCY STATEMENT:* This emergency rescission will rescind rulemaking intended to clarify the cost responsibilities associated with the relocation of utilities. On October 7, 2002, the commission filed proposed rulemaking. The proposed rulemaking was published November 15, 2002, in the *Missouri Register*. Comments to the proposed rulemaking were received from three (3) separate utility companies. An order of rulemaking was published in the *Missouri Register*. The rule was published in the April 30, 2003 *Code of State Regulations*. However, prior to the rule becoming effective, the Missouri Energy Development Association (MEDA) and the Missouri

Telecommunication Association (MTA), and various other utility companies expressed strong opposition to the rulemaking before the Joint Committee on Administrative Rules. Due to the controversy of the proposed rule expressed by the utility industry and members of the general assembly, and in order to preserve a compelling governmental interest, the commission desires to rescind the controversial rule. The scope of this emergency rescission is limited to address the circumstances creating the emergency and requiring the emergency action. The commission believes this emergency rescission is fair to all interested persons and parties under the circumstances, and will comply with the protections extended by the *Missouri* and *United States Constitutions*. A proposed rescission covering this same material is published in this issue of the *Missouri Register*. This emergency rescission was filed June 6, 2003, effective June 16, 2003 and expires February 26, 2004.

*AUTHORITY:* sections 226.020 and 227.240, RSMo 2000. Original rule filed Oct. 7, 2002, effective May 30, 2003. Emergency rescission filed June 6, 2003, effective June 16, 2003, expires Feb. 26, 2004. A proposed rescission covering this same material is published in the this issue of the *Missouri Register*.

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

**EMERGENCY RULE**

**7 CSR 10-25.010 Skill Performance Evaluation Certificates For Commercial Drivers**

*PURPOSE:* This rule implements the provisions of section 622.555, RSMo, as enacted by House Bills No. 1270 and No. 2032, 91st General Assembly, Second Regular Session, 2002, by prescribing requirements relating to applications for skill performance evaluation certificates, and the issuance, renewal, suspension and revocation of those certificates by the commission. These certificates authorize certain individuals, who cannot satisfy the physical qualifications generally required by federal regulations, to drive commercial motor vehicles in intrastate commerce if they satisfy alternative requirements which demonstrate their ability to maintain an equivalent or greater level of safety while operating commercial motor vehicles.

*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.

*EMERGENCY STATEMENT:* For the reasons described below, the commission finds that there is an immediate danger to the public health, safety or welfare, which requires emergency action in the adoption of this rule, and that this rule is necessary to preserve a compelling governmental interest that requires an early effective date as permitted in section 536.025, RSMo 2000.

The commercial transportation industry throughout the country, including Missouri, has been suffering an ongoing shortage of qualified drivers to operate commercial motor vehicles (CMVs). Not long ago, for example, in a notice of proposed rulemaking relating to Commercial Drivers License Standards, the Federal Motor Carrier Safety Administration (FMCSA) estimated the driver shortage in the motor carrier industry to be eighty thousand (80,000) drivers. See 66 FedReg 22499, at 22505 (May 4, 2001). "A serious shortage currently exists in some segments of the trucking industry that could disrupt a significant portion of our fine-tuned distribution system. It's not a freight or equipment shortage; surprisingly, it's a shortage of men and women qualified to drive trucks. . . . In fact, the trucking industry expects to need eighty thousand (80,000) new drivers each year for the next decade." Professional Truck Driver Institute, Inc., *Careers in Trucking, "America Needs More Drivers,"* <http://www.ptdi.org/careers/america.htm> (April 29, 2003).

One factor contributing to this driver shortage is that the Federal Motor Carrier Safety Regulations (FMCSRs) impose, under 49 CFR section 391.41, high standards for commercial driver qualifications, including strict physical qualifications for drivers of CMVs. These requirements are generally made applicable by Missouri law to drivers of CMVs on public highways in both intrastate and interstate commerce. See sections 307.400 and 390.063.6, RSMo 2000.

The commission finds that the early adoption of this rule would help to alleviate this commercial driver shortage, by implementing a medical exemption program pursuant to section 622.555, RSMo Supp. 2002, which would enable approximately seventy-nine (79) additional persons immediately to qualify to drive CMVs in Missouri intrastate commerce. This emergency action also could enable other persons with amputated and impaired limbs, or with impaired vision, more quickly to apply for intrastate skill performance evaluation (SPE) certificates and, after demonstrating their individual abilities to do so in a safe manner, to become legally qualified to operate CMVs in Missouri intrastate commerce.

The FMCSA reported to the Missouri Department of Transportation (department) that currently there are twenty-five (25) individuals in Missouri to whom it has granted vision exemptions, which authorize those individuals to operate CMVs in interstate commerce, notwithstanding that they cannot satisfy the vision standards generally prescribed for commercial drivers by 49 CFR 391.41(10). In addition, FMCSA reported that there are currently fifty-four (54) individuals in Missouri to whom it has granted SPE Certificates, which authorize those individuals to operate CMVs in interstate commerce, without which they would not satisfy the qualification standards generally prescribed by 49 CFR 391.41(b)(1)-(2), because of limb impairments or amputations. However, state law generally precludes these federally-certified drivers from lawfully operating CMVs in intrastate commerce, because Missouri has not yet implemented any medical exemption program for intrastate drivers that corresponds with and complements these FMCSA programs for interstate drivers.

This rule is urgently needed to implement the provisions of section 622.555, RSMo Supp. 2002, so that these seventy-nine (79) qualified persons, who have already demonstrated to FMCSA's satisfaction their capability to operate CMVs safely, will have the opportunity to obtain state exemptions from the driver physical qualification requirements to operate CMVs in intrastate commerce. Upon the effective date of this emergency rule, these seventy-nine (79) "pre-qualified" persons would immediately become eligible to apply, pursuant to section (8) of this emergency rule, for the immediate issuance of an intrastate SPE certificate authorizing them to operate CMVs in intrastate commerce. Emergency action would enable these additional, qualified drivers immediately to begin operating CMVs in intrastate commerce, and would make them available to motor carriers to help alleviate the continuing shortage of qualified commercial drivers. Enabling these persons to obtain state certification to drive

CMVs in intrastate commerce, through this emergency rule, will immediately expand their employment opportunities beyond just interstate driving, by authorizing them to drive in intrastate CMV operations also.

If the emergency rule were not approved, then these seventy-nine (79) individuals, who have already been pre-qualified by applying for and obtaining either SPE certificates or vision exemptions from FMCSA, would have to wait at least six (6) months or more for the proposed rule to become effective, before they could apply for and obtain SPE certificates authorizing them to drive intrastate CMVs. That would unfairly and unnecessarily disadvantage these qualified drivers, and the motor carrier industry, by continuing to exclude these individuals from intrastate driving opportunities during the lengthy process necessary for the commission to adopt the corresponding proposed rule, when they have already demonstrated their capabilities to operate CMVs, the FMCSA has already authorized them to operate CMVs in interstate commerce, and Missouri's enactment of section 622.555, RSMo Supp. 2002 has recently provided statutory authority for the department to implement this medical exemption program. Therefore, emergency action is necessary to avoid the immediate danger to the public welfare which would result from unnecessary delays in implementing this intrastate medical exemption program for drivers of intrastate CMVs.

In addition, the emergency rule is urgently needed so that additional persons with vision problems, or impaired/amputated limbs, who are not yet known to the department, but who are otherwise qualified to drive CMVs, can be authorized to drive CMVs pursuant to the commission's issuance of SPE certificates. According to sources with the Division of Vocational Rehabilitation in the Missouri Department of Elementary and Secondary Education, the category of persons who might be eligible to apply for SPE certificates under Missouri's new program is expected to increase by approximately one and one-half percent (1.5%) annually. Aside from section (8) of this emergency rule (as discussed above), by making the remaining sections of the emergency rule applicable immediately, this rule would enable these other persons with limb impairments, amputations, or impaired vision, who do not yet possess FMCSA vision exemptions or SPE certificates, to quickly apply for the issuance of an intrastate SPE certificate, and to obtain expedited state approval after they have demonstrated their ability to operate CMVs safely in accordance with this rule. Therefore, the scope of this rule is limited to address the circumstances creating the emergency and requiring emergency action, which make it necessary for these persons to apply for and to obtain SPE certificates authorizing them to drive CMVs intrastate. This emergency rule is necessary to provide these physically challenged drivers with expanded employment opportunities at the earliest possible time.

Because of their vision impairments, or amputated or impaired limbs, many of these other persons who could apply for intrastate SPE certificates under this rule may be unemployed, and/or may have difficulty obtaining and keeping gainful employment due to their physical disabilities. These disabled persons may be dependent on the state government for financial aid or other assistance, through the Governor's Council on Disability, the Missouri Assistive Technology Council, and the Division of Worker's Compensation within the Department of Labor and Industrial Relations, and the Division of Vocational Rehabilitation within the Department of Elementary and Secondary Education. The state has a compelling governmental interest in promoting the employment of these disabled and dependent persons, because the gainful employment of these individuals could increase these citizens' ability to live independent and productive lives, and could decrease or end their dependence on state financial assistance. This rule is necessary to preserve this compelling governmental interest in promoting the employment of these disabled individuals, which requires and further justifies an early effective date for this rule as permitted pursuant to section

536.025, RSMo 2000.

*Adopting this rule as an emergency rule is best calculated to assure fairness to all interested persons and parties under the circumstances, and will comply with the protections extended by the Missouri and United States Constitutions. Early adoption of this rule will not impose any burdens or obligations on any interested party, but will merely expand potential employment opportunities for certain persons with physical disabilities by instituting this new medical exemption program. The rule will not endanger the public because it requires the commission to scrutinize applicants for intrastate SPE certificates according to the same standards that the federal FMCSA has predetermined will adequately protect public safety with reference to interstate CMV drivers. Also, the enactment of section 622.555, RSMo Supp. 2002, has already generally provided public notice of the state's intention to implement an intrastate medical exemption program, and this rule will merely implement that program in accordance with the statute. The department has also extensively communicated with our federal counterparts at FMCSA, to coordinate this program with the federal agency's issuance of interstate SPE certificates and vision waivers, so that this emergency rule follows procedures that will complement and supplement the existing laws and the requirements of the federal vision waiver and SPE certificate programs.*

*A proposed rule, which covers the same material, is published in this issue of the Missouri Register. This emergency rule was filed June 6, 2003, effective June 16, 2003, and expires February 26, 2004.*

(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." "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 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 "intrastate" shall be substituted for "interstate."

(2) Delegation of Authority. The commission authorizes the director to administer the skill performance evaluation program for intrastate drivers of commercial motor vehicles, as provided in section 622.555, RSMo, and this rule. The director, at his/her discretion, may delegate any part of this authority to other department personnel.

(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, shall be filed with the director of Motor Carrier Services, at the current business address of the director. 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" and related instructions approved by the director, and any additional information reasonably required by the director.

(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 optometrist; 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 incorporates by reference in this rule the provisions of subpart A (General) and subpart C (Procedures for Applying for Exemptions) of 49 CFR 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) 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) 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) 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) 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. 2002. Emergency rule filed June 6, 2003, effective June 16, 2003, expires Feb. 26, 2004. A proposed rule covering this same material is published in this issue of the Missouri Register.*