

Regulations for 52 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemption renewals will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at <http://dmses.dot.gov>.

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The Notices were published on April 13, June 13, and June 20, 2007. The comment periods ended on May 14, and July 13, and July 20, 2007, respectively.

Discussion of Comments

FMCSA received the same comment in all three proceedings. The comment was considered and discussed below.

Advocates for Highway and Auto Safety (Advocates) expressed opposition to FMCSA's policy to grant exemptions from the FMCSR, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which FMCSA presents driver information to the public and makes safety determinations; (2) objects to the Agency's reliance on conclusions drawn from the vision waiver program; (3) claims the Agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31136(e) and 31315); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568

(September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 52 renewal applications, FMCSA renews the Federal vision exemptions for Rodger B. Anders, David F. Bardsley, Sr., Gary A. Barrett, Ivan L. Beal, Johnny A. Beautler, John D. Bolding, Jr., Daniel R. Brewer, James T. Butler, Jr., Darryl D. Cassatt, Brett L. Condon, Mark W. Coulson, Roger K. Cox, Michael P. Curtin, Myron D. Dixon, Albion C. Doe, Richard L. Elyard, Michael R. Forschino, William H. Goss, David R. Gross, James K. Holmes, Thomas E. Howard, John R. Hughes, Daryl A. Jester, Billy L. Johnson, Robert L. Joiner, Jr., James P. Jones, Christopher J. Kane, Clyde H. Kitzan, Larry J. Lang, Dennis D. Lesperance, John W. Locke, Herman G. Lovell, Eugene A. Maggio, Michael L. Manning, Clifford E. Masink, Ronald L. Maynard, William A. Moore, Jr., Kirby G. Oathout, James R. Petre, Danny R. Pickelsimer, Richard C. Rehbein, William E. Reveal, Duane L. Riendeau, Bernard E. Roche, Darrell L. Rohlfs, David E. Sanders, Daniel J. Schaap, David B. Speller, Janusz Tyrpien, Lynn D. Veach, Harry S. Warren, and Michael C. Wines.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: August 2, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2006-25854]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

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

SUMMARY: FMCSA announces receipt of applications from nine individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy (or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV)) from operating CMVs in interstate commerce. If granted, the exemptions would enable these individuals with seizure disorders to operate CMVs in interstate commerce.

DATES: Comments must be received on or before September 10, 2007.

ADDRESSES: You may submit comments identified by Department of Transportation (DOT) Docket Management System (DMS) Docket Number FMCSA-2006-25854 using any of the following methods:

- **Web Site:** <http://dmses.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- **Fax:** 1-202-493-2251.

- **Mail:** Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- **Hand Delivery:** Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket number for this notice. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or Room W12-

140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; April 11, 2000). This information is also available at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366-4001, maggi.gunnels@dot.gov, FMCSA, Room W64-224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The nine individuals listed in this notice have recently requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness, or any loss of ability to control a commercial motor vehicle.

FMCSA provides medical advisory criteria and guidelines for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate CMVs in interstate commerce.

Currently, FMCSA's medical advisory criteria and guidelines include a recommendation that individuals diagnosed with epilepsy and taking anticonvulsant medication to reduce the likelihood of seizures are at high risk for further episodes and should not be considered for medical certification. Individuals diagnosed with epilepsy and taking anticonvulsant medication which helps them control their seizures may be at low risk of having a seizure. However, CMV drivers are exposed to conditions which place them at increased risk for loss of consciousness and therefore increased risk for seizure occurrence, for example, obtaining or replacing anti-seizure medication if their medications are lost or forgotten. This would place such drivers at some increased risk of seizures. These individuals should not be authorized to drive commercial vehicles. Drivers diagnosed with epilepsy, seizure-free and off medication for 10 years may be medically certified to operate CMVs.

FMCSA further recommends that individuals who experience a single unprovoked seizure, but who do not have epilepsy, per se, are clearly at a higher risk than the general population to have further seizures. Individuals with a single unprovoked seizure, seizure-free for a 5-year period and off medication, should not be restricted from obtaining a license to operate a CMV. The history of the occurrence of febrile seizures in childhood should not be a restriction to licensing to operate a CMV. Seizures, in the context of a systemic metabolic dysfunction, should not be a primary reason for restriction from medical certification to operate a CMV. Any restriction should be based upon the risk of recurrence of the primary condition. There are several conditions in which the risk for unprovoked seizures is sufficiently high, even in the absence of the occurrence of acute seizures, that medical certification should be restricted for variable periods following these incidents (head injury, surgical procedures involving dural penetration, cerebrovascular disease and infections of the central nervous system).

Summary of Application

David L. Basso

Mr. Basso is a route sales truck driver who delivers to local grocery and convenience stores. He states that he has a clinical diagnosis of epilepsy and is currently taking anti-seizure medication. His doctor certified that he has been seizure-free for seventeen years on his current dose of medication. Mr. Basso believes that he would achieve a

level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free since 1990.

Halliard V. Brown

Mr. Brown is a store delivery driver whose company is requesting that he should have a federal exemption due to his seizure disorder. He states that he has no clinical diagnosis of epilepsy and has had all necessary testing done. His medical examiner certified that he has been seizure-free for three years on his current dose of medication.

Mr. Brown currently has a State waiver from Ohio, continues to drive in Ohio and has been crash-free for the past five years.

Aaron Gillette

Mr. Gillette is a CMV driver who is presently disqualified to perform his duties because of the anti-seizure medication he is taking. He has had three seizures within the past two years. His doctor certified that he has a history of idiopathic epilepsy that is currently controlled on Lamictal monotherapy; he also noted that Mr. Gillette is approximately 8 to 9 months seizure-free and is compliant on medications. Mr. Gillette believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free.

David P. Losh

Mr. Losh is a CMV driver who has driven in the state of Ohio for over 10 years. At the age of 5 years, he contracted spinal meningitis which eventually led to epileptic seizures beginning at age 9. Mr. Losh underwent experimental surgery in 1991 to remove the focal point (cause) of the seizures. He was licensed to operate a CMV in 1995 and granted an intrastate waiver for his seizure disorder. He has had one seizure since the surgery, on October 16, 1996; he was not taking his medication (Dilantin) at that time. His license was suspended for 6 months due to this incident; he has since resumed taking his medication. Mr. Losh has been seizure-free and crash-free for about 10 years now.

Dorothy R. Pokornowski

Ms. Pokornowski is a CMV driver in the State of Minnesota. She was diagnosed with epilepsy at age 22. Her doctor certified that she has been stable with no seizure activity on medication since 1985. Her doctor also stated that her anti-seizure medication was changed from Phenobarbital to Topimax in 2006 due to concerns for osteoporosis

and fatigue. Ms. Pokornowski has been seizure-free and crash-free for the past twelve years. She believes that she would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because she continues to take her medication as directed by her doctor and also gets her blood levels checked every year.

Brian J. Porter

Mr. Porter is a CMV driver who states that he has been driving in the east coast for about 10 years. His neurologist states that he has a history of seizures but has not had any in the past 20 years. He is currently taking Dilantin and Phenobarbital (anti-seizure medications).

Daniel L. Pulse

Mr. Pulse is a route sales representative with a history of seizures as a child following a head injury. His doctor states that he has a history of seizures but has not had any since 1996. He is currently taking Dilantin (anti-seizure medication). Mr. Pulse states that he has no clinical diagnosis of epilepsy and the medical tests performed by his neurologist on December 12, 2004, certify that "This is an overall normal electroencephalogram. No epileptiform activity is noted". Mr. Pulse has been crash-free for over 30 years. He holds a Class B Commercial Driver's License (CDL) from Iowa.

Michael W. Thomas

Mr. Thomas is a driver who was diagnosed with seizure disorder in 1987. His doctor certified he has been seizure-free for over 20 years. He is currently taking Tegretol (anti-seizure medication). His doctor certified that he is very compliant with his treatment and he can safely operate any CMV he is qualified to drive. Mr. Thomas currently has a State waiver from Kansas, continues to drive in Kansas and has been crash-free throughout his commercial driving career. He holds a Class A CDL from New York. Mr. Thomas believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free for over 20 years through stringent medical compliance using the same medication and dosage.

Jay A. Whitehead

Mr. Whitehead is a motor equipment mechanic who works on CMVs. He was diagnosed with epilepsy in 1979 and has used medication since then. He is currently taking Dilantin (anti-seizure

medication) and has been on this medication for more than 10 years now. In the past 10 years, he has not had any seizures or loss of consciousness. Following an annual physical examination in 2006, his doctor certified that his seizure disorder is stable and he has no seizure activity; she also recommended that he should continue to take Dilantin and Omeprazole (anti-seizure medications). Mr. Whitehead stated that he would be operating a variety of CMVs after repairing them and that the actual time spent driving would be less than 10% of his 8 hour work day. He holds a Class B CDL from New York.

Request for Comments

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

Issued on: August 2, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2007-28904]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MANITOU.

SUMMARY: As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2007-28904 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383

and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before September 10, 2007.

ADDRESSES: Comments should refer to docket number MARAD-2007-28904. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MANITOU is:

Intended Use: "For marriages at dockside, vow renewals and small celebrations."

Geographic Region: "South shore of Lake Superior-Bayfield, Apostles Island area."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.