

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

II. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-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 five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The three individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV 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 CMV.

In addition to the regulations, FMCSA has published advisory criteria¹ to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy*: § 391.41(b)(8), paragraphs 3, 4, and 5.]

The advisory criteria states the following:

If an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure

medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the Medical Examiner in consultation with the treating physician. Before certification is considered, it is suggested that a six-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a five-year period or more.

As a result of Medical Examiners misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified Medical Examiner based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a Notice of Final Disposition titled, Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders, (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have "no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV." Since the January 15, 2013 notice, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in 49 CFR 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (MEP) (78 FR 3069).

III. Qualifications of Applicants

Christopher M. Dowling

Mr. Dowling is a 39-year-old class A CDL holder in Indiana. He has a history of a seizure disorder and has been seizure free since 2006. He takes anti-seizure medication with the dosage and frequency remaining the same since April 2016. His physician states that he is supportive of Mr. Dowling receiving an exemption.

Robert Drake

Mr. Drake is a 46-year-old class D driver in Arizona. He has a history of epilepsy and has been seizure free since 2010. He takes anti-seizure medication with the dosage and frequency remaining the same since 2007. His physician states that he is supportive of Mr. Brown receiving an exemption.

Daniel H. Threatt

Mr. Threatt is a 21-year-old class C driver in North Carolina. He has a history of epilepsy and has been seizure free since 2009. His anti-seizure medication was discontinued in 2010. His physician states that he is supportive of Mr. Threatt receiving an exemption.

IV. Request for Comments

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

Issued on: January 30, 2019.

Larry W. Minor,

Associate Administrator for Policy.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0003]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of denials.

¹ See http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391_171.a and <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

SUMMARY: FMCSA announces its decision to deny applications from 62 individuals who requested an exemption from the vision standard in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a CMV in interstate commerce.

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

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2019-0003, in the keyword box, and click "Search." Next, click the "Open Docket Folder" button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

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II. Background

FMCSA received applications from 62 individuals who requested an exemption from the vision standard in the FMCSRs. FMCSA has evaluated the eligibility of these applicants and concluded that granting these exemptions would not provide a level of safety that would be equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(10).

III. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption if it finds such an exemption would likely

achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption.

The Agency's decision regarding these exemption applications is based on the eligibility criteria, the terms and conditions for Federal exemptions, and an individualized assessment of each applicant's medical information provided by the applicant.

IV. Conclusion

The Agency has determined that these applicants do not satisfy the eligibility criteria or meet the terms and conditions of the Federal exemption and granting these exemptions would not provide a level of safety that would be equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(10). Therefore, the 62 applicants in this notice have been denied exemptions from the physical qualification standards in 49 CFR 391.41(b)(10).

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final action by the Agency. This notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following three applicants did not have sufficient driving experience over the past three years under normal highway operating conditions:

Colin H. Goss (KY); Samuel R. Jennings (WA); and Michael A. Tomsha (IA).

The following 29 applicants had no experience operating a CMV:

Michael J. Baragona (NY)
Daniel E. Barnes (FL)
David R. Baskin (PA)
Victor D. Calderon (FL)
Onesimus C. Callaway (WA)
Daryl K. Chavis (MO)
Kevin F. Christof (TX)
William T. Comer (OH)
Kevin E. Curry (TX)
Patrick M. Cynar (IL)
Wondimu L. Fantawu (OH)
Phillip T. Ferraro (NJ)
Juan A. Flores (TX)
Gregory B. Gosha (AL)
Raymond W. Gudenau (MI)
Lucian D. Jackson (OH)
Anthony Jenkins (AL)
Eric C. Johnson (PA)
Candice Lambert (IL)
Dakota P. Mayberry (IL)
Ryan K. McConnell (SC)
Cameron A. Mote (TX)

Edwin J. Orellana (NJ)
Javier A. Outeiro (UT)
Ryan T. Roberts (MN)
Robert Singley (NY)
Matthew A. Spaits (CO)
Joshua B. Wells (KY)
Matthew Zappi (PA)

The following four applicants did not have three years of experience driving a CMV on public highways with their vision deficiencies:

Dale R. Bratcher (NM)
Robert A. Maston (GA)
Thomas W. Rush (TN)
Lance L. Russell (NY)

The following 16 applicants did not have three years of recent experience driving a CMV on public highways with their vision deficiencies:

Ronald D. Averill (CO)
Mihail Bendos (WA)
Jeffrey W. Blackmon (TX)
Waynetta J. Evans (FL)
James L. Fourcher (UT)
William C. Kelley (WI)
Earl D. Lilley (TX)
Alan M. Mahler (IN)
Scott M. McDonnell (MI)
Ricky Moore (LA)
Anthony J. Mumphrey (IA)
William L. Peterson (NE)
Gregory D. Shirah (AL)
Shannon R. Smit (AZ)
Steve Trought (FL)
Joshua D. Wilcox (MD)

The following applicant, William T. Satterley (KY), did not have sufficient driving experience over the past three years under normal highway operating conditions (gaps in driving record).

The following seven applicants were denied for multiple reasons:

Megin Berlin (NE)
Curtis V. Boys (IL)
Howard L. Jenkins (VA)
Joan C. Landis (FL)
Carlos Smith (LA)
Thomas L. Stollings (IN)
Michael R. Wilder (CO)

The following two applicants have not had stable vision for the preceding three-year period:

Earl W. Gibson (MO); and Donald E. Ratliff (KY).

Issued on: January 30, 2019.

Larry W. Minor,

Associate Administrator for Policy.

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