

prohibition in the FMCSRs for interstate CMV drivers:

Eric Barnwell (MI)  
Christopher Bird (OH)  
Gary Clark (KY)  
Todd Davis (WI)  
Scott DeJarnette (KY)  
Gary J. Gress (PA)  
Curtis Alan Hartman (MD)  
Wendell F. Headley (MO)  
Jason Kirkham (WI)  
Dannie Kuck (MT)  
Robert Spencer (FL)

The drivers were included in docket number FMCSA–2010–0203, FMCSA–2013–0106, FMCSA–2013–0107, FMCSA–2015–0117, FMCSA–2015–0119, FMCSA–2017–0178, FMCSA–2017–0181, FMCSA–2017–0251, or FMCSA–2018–0052. Their exemptions were applicable as of December 16, 2021 and will expire on December 16, 2023.

As of December 23, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Gary Freeman (WI); Aaron Gillette (SD); and David Kestner (VA)

The drivers were included in docket number FMCSA–2006–25854 and FMCSA–2013–0108. Their exemptions are applicable as of December 23, 2021 and will expire on December 23, 2023.

#### V. Conditions and Requirements

*The exemptions are extended subject to the following conditions:* (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was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(e) and 31315(b).

#### VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

#### VII. Conclusion

Based on its evaluation of the 14 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

*Associate Administrator for Policy.*

[FR Doc. 2021–28307 Filed 12–28–21; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0058; FMCSA–2018–0136; FMCSA–2018–0138; FMCSA–2018–0139; FMCSA–2019–0109; FMCSA–2019–0110]

#### Qualification of Drivers; Exemption Applications; Hearing

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 23 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

**DATES:** The exemptions are applicable on December 26, 2021. The exemptions expire on December 26, 2023. Comments must be received on or before January 28, 2022.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2017–0058, Docket No.

FMCSA–2018–0136, Docket No. FMCSA–2018–0138, Docket No. FMCSA–2018–0139, Docket No. FMCSA–2019–0109, or Docket No. FMCSA–2019–0110 using any of the following methods:

- *Federal eRulemaking Portal:* Go to [www.regulations.gov/](http://www.regulations.gov/), insert the docket number, FMCSA–2017–0058, FMCSA–2018–0136, FMCSA–2018–0138, FMCSA–2018–0139, FMCSA–2019–0109, or FMCSA–2019–0110 in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click on the “Comment” button. Follow the online instructions for submitting comments.

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

- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, [fmcamedical@dot.gov](mailto:fmcamedical@dot.gov), FMCSA, DOT, 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. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation

###### A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2017–0058, Docket No. FMCSA–2018–0136, Docket No.

FMCSA–2018–0138, Docket No. FMCSA–2018–0139, Docket No. FMCSA–2019–0109, or Docket No. FMCSA–2019–0110), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to [www.regulations.gov/](http://www.regulations.gov/), insert the docket number, FMCSA–2017–0058, FMCSA–2018–0136, FMCSA–2018–0138, FMCSA–2018–0139, FMCSA–2019–0109, or FMCSA–2019–0110 in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click the “Comment” button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

#### B. Viewing Comments

To view comments go to [www.regulations.gov](http://www.regulations.gov). Insert the docket number, FMCSA–2017–0058, FMCSA–2018–0136, FMCSA–2018–0138, FMCSA–2018–0139, FMCSA–2019–0109, or FMCSA–2019–0110 in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, 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.

#### C. Privacy Act

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

#### II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-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 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver’s medical certification.

The physical qualification standard for drivers regarding hearing found in 49aCFRa391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 3, 1971).

The 23 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

#### III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

#### IV. Basis for Renewing Exemptions

In accordance with 49a U.S.C. 31136(e) and 31315(b), each of the 23 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 23 drivers in this notice remain in good standing with the Agency. In addition, for Commercial Driver’s License (CDL) holders, the Commercial Driver’s License Information System and the

Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver’s Licensing Agency. These factors provide an adequate basis for predicting each driver’s ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of December 26, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 23 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Mario Alvarado (CA)  
 Kasseh Andrews (MA)  
 Denis Ayers (MD)  
 Joseph Bence (OH)  
 Daryl A. Broker (MN)  
 Justin Brooks (WA)  
 Christa Butner (NC)  
 William Darnell (AZ)  
 Travis Davisson (IA)  
 Erik De Leon (TX)  
 Mitchell Estill (MO)  
 Paul Hoover (PA)  
 Amy Ivins (NE)  
 James Johnson (MN)  
 Keith Kenyon (WI)  
 Nicholas Kulasa (IL)  
 John Martikainen (CT)  
 John Silvers (NY)  
 Michael Swetnam (TX)  
 Mark Tabangcora (CA)  
 Yvon Victor (NJ)  
 Jeremy Williams (CA)  
 Joseph Williams (MD)

The drivers were included in docket number FMCSA–2017–0058, FMCSA–2018–0136, FMCSA–2018–0138, FMCSA–2018–0139, FMCSA–2019–0109, and FMCSA–2019–0110. Their exemptions are applicable as of December 26, 2021 and will expire on December 26, 2023.

#### V. Conditions and Requirements

*The exemptions are extended subject to the following conditions:* (1) Each driver must report any crashes or accidents as defined in § 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the

exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded 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(e) and 31315(b).

#### VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

#### VII. Conclusion

Based upon its evaluation of the 23 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA-2001-11213, Notice No. 26]

#### Drug and Alcohol Testing: Determination of Minimum Random Testing Rates for 2022

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notification of determination.

**SUMMARY:** This notification of determination announces FRA's minimum annual random drug and minimum annual random alcohol testing rates for covered service and maintenance-of-way (MOW) employees for calendar year 2022.

**DATES:** This determination takes effect December 29, 2021.

**FOR FURTHER INFORMATION CONTACT:** Gerald Powers, FRA Drug and Alcohol Program Manager, by email: [gerald.powers@dot.gov](mailto:gerald.powers@dot.gov) or by telephone: 202-493-6313; or Sam Noe, FRA Drug and Alcohol Program Specialist, by email: [sam.noe@dot.gov](mailto:sam.noe@dot.gov) or by telephone: 615-719-2951.

**SUPPLEMENTARY INFORMATION:** FRA is announcing the 2022 minimum annual random drug and alcohol testing rates for covered service and MOW employees. For calendar year 2022, the minimum annual random testing rates for covered service employees will continue to be 25 percent for drugs and 10 percent for alcohol, while the minimum annual random testing rates for MOW employees will be lowered to 25 percent for drugs and will continue to be 10 percent for alcohol. Because these rates represent minimums, railroads and railroad contractors may conduct FRA random testing at higher rates.

#### Discussion

To set its minimum annual random testing rates for each year, FRA examines the last two complete calendar years of railroad industry drug and alcohol program data submitted to its Management Information System (MIS). FRA has also, however, reserved the right to consider factors other than MIS-reported data before deciding whether to lower annual minimum random testing rates. See 85 FR 81265 (Dec. 15, 2020).

#### *Random Testing Rates for Covered Service Employees*

The rail industry's random drug testing positive rate for covered service employees (employees subject to the Federal hours of service laws and regulations) remained below 1.0 percent for 2019 and 2020. The Deputy Administrator has therefore determined the minimum annual random drug testing rate for covered service employees will remain at 25 percent for the period January 1, 2022, through December 31, 2022. The industry-wide random alcohol testing violation rate for covered service employees remained below 0.5 percent for 2019 and 2020. Therefore, the Deputy Administrator has determined the minimum random alcohol testing rate for covered service employees will remain at 10 percent for

the period January 1, 2022, through December 31, 2022.

#### *Random Testing Rates for MOW Employees*

MOW employees became subject to FRA random drug and alcohol testing in June 2017. See 81 FR 37894 (June 10, 2016). Although FRA had MIS data for two full, consecutive years of industry-wide performance rates for MOW employees when announcing the random testing rates for 2021, the Administrator found it was not in the interest of railroad safety to lower the random drug testing rate for MOW employees at that time. The Administrator did, however, lower the random alcohol testing rate for MOW employees to 10 percent. For an explanation of the Administrator's findings and determination, please refer to FRA's notification of determination for calendar year 2021. See 85 FR 81265-81267.

FRA now has MIS data for three full, consecutive years (2018-2020) for the industry-wide performance rates for MOW employees. The random drug testing violation rate for MOW employees has remained below 1.0 percent for the past two consecutive years, and has never been above 1.0 percent. The random drug testing violation rate for MOW employees also trended downwards in 2020, decreasing from 0.8 percent in 2019 to 0.59 percent in 2020, which is the lowest since FRA started collecting MIS data for MOW employees in 2017. Taking these factors into consideration, the Deputy Administrator has determined that the minimum annual drug testing rate for MOW employees will be lowered to 25 percent for the period January 1, 2022, through December 31, 2022. If the random drug testing violation rate for MOW employees increases to 1.0 percent or higher, FRA will raise the minimum annual drug testing rate back to 50 percent. See 49 CFR 219.625(d)(2).

Because the random alcohol testing violation rate for MOW employees remained below 0.5 percent for 2019 and 2020, the Deputy Administrator has determined that the minimum annual random alcohol testing rate for MOW employees will continue to be 10 percent for the period January 1, 2022, through December 31, 2022.

#### Appendix