

In addition to the regulations, FMCSA has published advisory criteria¹ to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The criteria states that 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 ME in consultation with the treating physician. Before certification is considered, it is suggested that a 6-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 has 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 5-year period or more.

As a result of MEs 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 ME 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 that time, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in § 391.41(b)(8).

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

III. Qualifications of Applicants

Joseph Harbaugh

Joseph Harbaugh is a 36-year-old class D license holder in Illinois. They have a history of complex partial seizure and have been seizure free since 2012. They take anti-seizure medication with the dosage and frequency remaining the same since December 2019. Their physician states that they are supportive of Joseph Harbaugh receiving an exemption.

Erik Hernandez

Erik Hernandez is a 28-year-old class B commercial driver's license (CDL) holder in Alaska. They have a history of epilepsy and have been seizure free since 2011. They take anti-seizure medication with the dosage and frequency remaining the same since December 2020. Their physician states that they are supportive of Erik Hernandez receiving an exemption.

Robert Hilburn

Robert Hilburn is a 58-year-old class A CDL holder in Texas. They have a history of generalized seizure disorder and has been seizure free since 1992. They take anti-seizure medication with the dosage and frequency remaining the same since January 2011. Their physician states that they are supportive of Robert Hilburn receiving an exemption.

Herman Lee

Herman Lee is a 35-year-old class A CDL holder in Virginia. They have a history of epilepsy and have been seizure free since 2013. They take anti-seizure medication with the dosage and frequency remaining the same since 2013. Their physician states that they

are supportive of Herman Lee receiving an exemption.

Joel Vasquez

Joel Vasquez is a 21-year-old class D license holder in New York. They have a history of generalized epilepsy and have been seizure free since July 2014. They take anti-seizure medication with the dosage and frequency remaining the same since 2014. Their physician states that they are supportive of Joel Vasquez receiving an exemption.

Spencer William

Spencer William is a 31-year-old class A CDL holder in Ohio. They have a history of generalized seizure and myoclonic jerks and have been seizure free since 2008. They take anti-seizure medication with the dosage and frequency remaining the same since 2009. Their physician states that they are supportive of Spencer William receiving an exemption.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), 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 under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0106; FMCSA-2015-0326; FMCSA-2016-0002; FMCSA-2020-0026]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for seven 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.

¹ These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy*: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

DATES: The exemptions were applicable on September 6, 2022. The exemptions expire on September 6, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, fmcsamedical@dot.gov. Office hours are 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. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number (FMCSA–2014–0106, FMCSA–2015–0326, FMCSA–2016–0002, or FMCSA–2020–0026) 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.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. 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 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Background

On August 24, 2022, FMCSA published a notice announcing its decision to renew exemptions for seven individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (87 FR 52107). The public comment period ended on September 23, 2022, and three comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(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 8, 1971), respectively).

III. Discussion of Comments

FMCSA received three comments in this proceeding. Jeff Daniels’ comment regarding drug testing was outside the scope of this notice. The Commercial Vehicle Training Association’s (CVTA’s) comment was found identical to the comment they submitted to the August 17, 2022, **Federal Register** notice (87 FR 50690). FMCSA provided a response to this comment in the December 29, 2022, **Federal Register** notice (87 FR 80254) that will not be repeated in this notice. Lastly, an anonymous individual opposed the same comment by CVTA.

IV. Conclusion

Based upon its evaluation of the seven renewal exemption applications and comments received, FMCSA announces its decision to exempt the following drivers from the hearing requirement in § 391.41(b)(11).

As of September 6, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (87 FR 52107):

Weston Arthurs (CA)
Charles DePriest (TX)
Richard Hoots (AR),
D’Nielle Smith (OH)

The drivers were included in docket number FMCSA–2014–0106, FMCSA–2015–0326, or FMCSA–2016–0002. Their exemptions were applicable as of

September 6, 2022 and will expire on September 6, 2024.

As of September 14, 2022, 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 hearing requirement in the FMCSRs for interstate CMV drivers:

Jonathan Kelly (TX)
Eddie Martinez (TX)
Willie Miller (IA)

The drivers were included in docket number FMCSA–2020–0026. Their exemptions were applicable as of September 14, 2022 and will expire on September 14, 2024.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (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 prior to being 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).

Larry W. Minor,

Associate Administrator for Policy.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0041]

Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillators (ICDs)

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

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

SUMMARY: FMCSA announces receipt of applications from four individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against operation of a commercial motor vehicle (CMV) by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope (transient loss of consciousness), dyspnea (shortness of breath), collapse, or congestive heart failure. If granted, the exemptions