

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration**

[Docket No. FMCSA–2015–0371]

**Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillators****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Notice of denials of exemption applications.

**SUMMARY:** FMCSA announces its decision to deny applications from 7 individuals seeking exemptions from the Federal cardiovascular standard applicable to interstate truck and bus drivers and discusses the reasons for the denials. The Agency reviewed the medical information of each of the individuals who applied for an implantable cardioverter defibrillator (ICD) exemption. Based on a review of the applications and following an opportunity for public comment, FMCSA has concluded that the 7 individuals in the notice did not demonstrate they could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

**DATES:** Denial letters were sent to each of the individuals listed in this notice on March 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief Medical Programs Division, 202–366–4001, U.S. Department of Transportation, FMCSA, 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:****Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for up to five years 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.” FMCSA can renew exemptions for up to an additional five years at the end of each five-year period.<sup>1</sup>

On November 27, 2015, FMCSA published for public notice and comment, FMCSA 2015–0371, listing 7

individuals seeking exemptions for ICDs. Accordingly, the Agency has evaluated each applicant’s request to determine whether granting an exemption will achieve the required level of safety mandated by statute.

**Evaluation Criteria—Cardiovascular Medical Standard and Advisory Criteria**

The individuals included in this notice have requested an exemption from the provisions of 49 CFR 391.41(b)(4), which applies to drivers who operate CMVs in interstate commerce, as defined in 49 CFR 390.5. Section 391.41(b)(4) states that:

A person is physically qualified to drive a commercial motor vehicle if—

\* \* \* \* \*

that person has no 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 [a temporary loss of consciousness due to a sudden decline in blood flow to the brain], dyspnea [shortness of breath], collapse, or congestive cardiac failure.

The FMCSA provides medical advisory criteria as recommendations for use by medical examiners in determining whether drivers with certain medical conditions and drivers who have undergone certain procedures and/or treatments should be certified to operate CMVs in interstate commerce in accordance with the various physical qualification standards in 49 CFR part 391, subpart E. The advisory criteria are currently set out in Appendix A to 49 CFR part 391. The advisory criteria for section 391.41(b)(4) provide, in part, that:

The term “has no current clinical diagnosis of” is specifically designed to encompass: “a clinical diagnosis of” (1) a current cardiovascular condition, or (2) a cardiovascular condition which has not fully stabilized regardless of the time limit. The term “known to be accompanied by” is designed to include a clinical diagnosis of a cardiovascular disease (1) which is accompanied by symptoms of syncope, dyspnea, collapse or congestive cardiac failure; and/or (2) which is likely to cause syncope, dyspnea, collapse, or congestive cardiac failure.

It is the intent of the Federal Motor Carrier Safety Regulations to render unqualified, a driver who has a current cardiovascular disease which is accompanied by and/or likely to cause symptoms of syncope, dyspnea, collapse, or congestive cardiac failure. However, the subjective decision of whether the nature and severity of an individual’s condition will likely cause symptoms of cardiovascular insufficiency is on an individual basis and qualification rests with the medical examiner and the motor carrier.

In the case of persons with ICDs, the underlying condition for which the ICD was implanted places the individual at high risk for syncope (a transient loss of consciousness) or other unpredictable events known to result in gradual or sudden incapacitation. ICDs may discharge, which could result in loss of ability to safely control a CMV. See the Evidence Report on “Cardiovascular Disease and Commercial Motor Vehicle Driver Safety,” April 2007.<sup>2</sup> A focused research report entitled “Implantable Cardioverter Defibrillators and the Impact of a Shock on a Patient When Deployed,” completed for the FMCSA in December 2014, indicates that the available scientific data on persons with ICDs and CMV driving does not support that persons with ICDs who operate CMVs are able to meet an equal or greater level of safety and upholds the findings of the April 2007 report. Copies of the April 2007 report and the December 2014 report are included in the docket for this notice.

**Discussion of Public Comments**

On November 27, 2015, FMCSA published in a **Federal Register** Notice the names of 7 individuals seeking ICD exemption and requested public comment. The public comment period closed on December 28, 2015. A total of 13 commenters responded to the notice. Each of the comments was favorable towards the applicants continuing to drive CMV’s with ICD’s. Commenters believed that the individuals seeking exemptions were responsible drivers who had safe professional driving and work histories and believed that their medical conditions did not present safety concerns. One anonymous physician encouraged the FMCSA to accommodate individuals with ICD’s that have never deployed or that have not deployed in many years by developing an exception to the general rule that would still protect public safety.

**FMCSA’s Response**

FMCSA acknowledges the commenters’ reports of safe driving histories and concerns for the driving careers of the applicants. Based on the available medical literature cited above, however, FMCSA believes that a driver with an ICD is at risk for incapacitation if the device discharges. This risk is combined with the risks associated with the underlying cardiovascular condition for which the ICD has been implanted as a primary or secondary preventive measure.

<sup>2</sup> Now available at [http://ntl.bts.gov/lib/30000/30100/30123/Final\\_CVD\\_Evidence\\_Report\\_v2.pdf](http://ntl.bts.gov/lib/30000/30100/30123/Final_CVD_Evidence_Report_v2.pdf).

<sup>1</sup> 49 U.S.C. 31315(b), as amended by section 5206(a) of the FAST Act, Pub. L. 114–94, div. A, title V, 129 Stat. 1537 (Dec. 4, 2015).

## Conclusion

FMCSA evaluated the 7 individual exemption requests on their merits, available data from Evidence Reports and Medical Expert Panel opinions on the impact of ICDs on Commercial Motor Vehicle driving, and the public comments received. The Agency has determined that the available medical literature and data does not support a conclusion that granting these exemptions would achieve a level of safety equivalent to or greater than the level of safety maintained without the exemptions. Each applicant has, prior to this notice, received a letter of final disposition on his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4).

The following 7 applicants are denied exemptions from the cardiovascular standard. Ellis James Benson, Jon Carey, Martin Carter, Carl Jeglum, William Kastner, Mark Todd Smith, Andre Williams.

Issued on: April 28, 2016.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2016-10875 Filed 5-6-16; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0329]

### Qualification of Drivers; Application for Exemptions; Hearing

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

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

**SUMMARY:** FMCSA announces receipt of applications from 30 individuals for an exemption from the hearing requirement to operate commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before June 8, 2016.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2015-0329 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the

on-line instructions for submitting comments.

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

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

**Instructions:** Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

**Docket:** For access to the docket to read background documents or comments, go to <http://www.regulations.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 Federal Docket Management System (FDMS) 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 acknowledgement page that appears after submitting comments on-line.

**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](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-113, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

### SUPPLEMENTARY INFORMATION:

#### I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) 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 30 individuals listed in this notice have recently requested such an exemption from the hearing requirement in 49 CFR 391.41(b)(11), which applies to drivers of CMVs in interstate commerce. 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 hearing found in 49 CFR 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 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

#### II. Qualifications of Applicants

*James E. Adams*

Mr. Adams, age 44, holds an operator's license in Georgia.

*Ronald Bagby*

Mr. Bagby, age 66, holds an operator's license in Missouri.

*Robert Barnett*

Mr. Barnett, age 66, holds an operator's license in Michigan.

*Jason A. Beutal*

Mr. Beutal, age 39, holds an operator's license in Wisconsin.

*Benjamin Bottoms*

Mr. Bottoms, age 37, holds an operator's license in Virginia.

*Edward Broecker*

Mr. Broecker, age 54, holds an operator's license in California.

*John Brown*

Mr. Brown, age 59, holds a class A CDL in Minnesota.