

insulin for control” (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency’s July 2000 study entitled “A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.” The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 46 applicants have had ITDM over a range of 1 to 42 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the August 10, 2016, **Federal Register** notice and they will not be repeated in this notice.

### III. Discussion of Comments

FMCSA received no comments in this proceeding.

### IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants’ ITDM and vision, and reviewed the treating endocrinologists’ medical opinion related to the ability of

the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

### V. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist’s or optometrist’s report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver’s qualification file, or keep a copy in his/her driver’s qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

### VI. Conclusion

Based upon its evaluation of the 46 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above 49 CFR 391.64(b):

Dale E. Bliss (WI)  
 Charles W. Bobbitt, III (WA)  
 Thomas Buckmaster (FL)  
 Dustin L. Campbell (MD)  
 Keith A. Cederberg (MN)  
 Carlos A. Chapa (TX)  
 David E. Colorado (UT)  
 Francis J. Crawford (NY)  
 James W. Creech (IN)  
 Kirk A. Devitis (NJ)  
 Melinda L. Echols (WA)  
 Justin W. Garriott (WY)  
 David J. Goergen (MN)  
 Pedro L. Gonzalez (MA)  
 Jeffrey K. Hagen (WI)  
 Charles D. Hall (CA)  
 Daniel O. Hawley (IL)  
 Eugene R. Huelskamp (OH)

Dennis S. Hughes (TX)  
 Bonita K. Hunt (NC)  
 John M. Isley (NC)  
 John T. Jameson (MO)  
 Jeffrey A. Kidd (MD)  
 Craig T. Kite (OH)  
 Donald E. Knowles (IA)  
 Kevin E. Lester (VA)  
 Eric T. Maier (CA)  
 Javier Melendez (TX)  
 Brenda L. Mitchell (KY)  
 Terry L. Neiman (PA)  
 Peter Z. Pall (FL)  
 Joaquim Pedro (NY)  
 Vernon Piper (NY)  
 Angelo Renieris (NY)  
 Sean A. Rivera (AZ)  
 Kevin L. Ross (AK)  
 James R. Saucedo (NM)  
 Kevin Stead (NJ)  
 Jacob P. Trommer (OH)  
 Nicholas D. Wall (SD)  
 Tony B. Wetherell (MN)  
 Mark A. Williams (GA)  
 Steven M. Wilson (IL)  
 Don E. Wood, Jr. (TX)  
 Kirk M. Wright (NE)  
 Charles P. Zenns (NY)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years 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 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. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: September 22, 2016.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2016–23652 Filed 9–29–16; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2015–0321]

### Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 22 individuals from

the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (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.” The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

**DATES:** The exemptions were effective on April 11, 2016. The exemptions expire on April 11, 2018.

**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 W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Electronic Access**

You may see all the comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>.

*Docket:* For access to the docket to read background documents or comments, go to <http://www.regulations.gov> and/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.

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

##### **I. Background**

On March 9, 2016, FMCSA published a notice announcing receipt of applications from 31 individuals requesting an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (81 FR 12553). The public comment period ended on April 8, 2016, and three comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to 22 of 31 individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(8). On April 11, 2016 the remaining nine applicants received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial. A notice announcing this decision was published on September 9, 2016 (81 FR 62556).

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 criteria<sup>1</sup> 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.]

##### **II. Discussion of Comments**

FMCSA received three comments in this proceeding. An anonymous commenter and Jake B expressed general support for allowing well controlled individuals with a history of seizures to drive commercially. Deb Carlson of the Minnesota Department of Public Safety expressed support for two applicants included in the notice, Richard Wenner and Dennis Zayic.

##### **III. Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the epilepsy/seizure standard in 49 CFR 391.41(b)(8) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

In reaching the decision to grant these exemption requests, FMCSA considered the 2007 recommendations of the Agency's Medical Expert Panel (MEP).

<sup>1</sup> See [http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391\\_171.a](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-vol15/pdf/CFR-2015-title49-vol15-part391-appA.pdf>.

The January 15, 2013, **Federal Register** notice (78 FR 3069) provides the current MEP recommendations, which is the criteria the Agency uses to grant seizure exemptions.

The Agency's decision regarding these exemption applications is based on an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System (CDLIS) for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System (MCMIS). For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency (SDLA).

These 22 applicants have been seizure-free over a range of 7 to 35 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last two years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially. A summary of each applicant's seizure history was discussed in the March 9, 2016, **Federal Register** notice (81 FR 12553).

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the epilepsy/seizure standard in 49 CFR 391.41(b)(8) is likely to achieve a level of safety equal to that existing without the exemption.

##### **IV. Conditions and Requirements**

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must remain seizure-free and maintain a stable treatment during the two-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 Medical Examiner, as defined by 49 CFR 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.

#### V. 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.

#### VI. Conclusion

Based upon its evaluation of the 22 exemption applications, FMCSA exempts the following drivers from the epilepsy/seizure standard, 49 CFR 391.41(b)(8), subject to the requirements cited above:

Travis Earl Baird (OK)  
 Robert P. Brackett (ME)  
 Brian R. Checkley, Jr. (NJ)  
 James Clark (PA)  
 Kelly Frederick (LA)  
 William Gessner (PA)  
 Jerry L. Henderson (IN)  
 Clarence D. Jones (VA)  
 Preston Romayne Kanagy (TN)  
 James Randall King (CT)  
 Scott A. Lowe (MA)  
 Roger Lynn Neal (MO)  
 Thomas Victor Oconnor (FL)  
 Scott William Reaves (TX)  
 Steven Shirley (UT)  
 Matthew Jack Staley (CO)  
 Michael A. Sypolt (WV)  
 Peter M. Thompson (FL)  
 Mohammad S. Warrad (IA)  
 Richard James Wenner (MN)  
 John Charles Wolfe (PA)  
 Dennis Raymond Zayic (MN)

In accordance with 49 U.S.C. 31315(b)(1), each exemption is valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The individual 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 and 31315.

Issued on: September 23, 2016.

Larry W. Minor,

Associate Administrator for Policy.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0322]

#### Denial of Exemption Applications; Epilepsy and Seizure Disorders

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

**ACTION:** Notice of denial.

**SUMMARY:** FMCSA announces its decision to deny applications from 10 individuals who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting persons with a clinical diagnosis of epilepsy or any other condition that 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.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, [fmcamedical@dot.gov](mailto:fmcamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-224, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

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**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 <http://www.regulations.gov>, as described in the system of records

notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

##### II. Background

On May 9, 2016, FMCSA published a notice announcing receipt of applications from 27 individuals requesting an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a CMV in interstate commerce and requested comments from the public (81 FR 28131). The public comment period closed on June 8, 2016, and three comments were received. One commenter supports granting seizure exemptions in general. One commenter expressed concern for the risk of seizure while driving and the Minnesota Department of Public Safety expressed support for three of the applicants and concern about health issues and the driving record of an applicant Shaen Smith. In response to this comment, Mr. Smith has been seizure-free over 18 years and meets the physical qualification standards to drive commercially. His five-year driving record includes no violations or accidents and the Agency has reviewed his ten-year driving history and concludes that he meets the requisite level of safety to drive commercially within the terms and conditions of his exemption.

FMCSA has evaluated the eligibility of these applicants and concluded that granting 10 of the 27 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)(8). A final notice announcing a decision on the remaining 17 requests will be published at a later date.

##### III. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the Federal epilepsy standard for a renewable two-year period if it finds "such exemption is likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption."

The Agency's decision regarding these exemption applications is based on an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's