



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

**[FMCSA Docket No. FMCSA-2020-0053]**

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

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt seven 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 are applicable on April 2, 2021. The exemptions expire on April 2, 2023.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, [fmsamedical@dot.gov](mailto:fmsamedical@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. 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](http://www.regulations.gov). Insert the docket number, FMCSA-2020-0053, 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 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.transportation.gov/privacy](http://www.transportation.gov/privacy).

## **II. Background**

On February 23, 2021, FMCSA published a notice announcing receipt of applications from seven individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (86 FR 11044). The public comment period ended on March 25, 2021, and 19 comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 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 (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

### **III. Discussion of Comments**

FMCSA received 19 comments in this proceeding, one of which was a duplicate. Most of the comments received were either for or against the issuance of exemptions from the epilepsy and seizure disorders prohibition and not in response to the exemption requests from the specific seven applicants for which the Agency requested comments. There were nine comments in support of issuing exemptions from the epilepsy and seizure disorders prohibition. There were eight comments against the issuance of exemptions from the epilepsy and seizure disorders prohibition. The commenters that were against stated it would be a safety risk and danger to everyone on the road to allow these individuals to drive. Several pointed out that a seizure can occur unexpectedly while driving, causing a loss of consciousness, even if the individual is taking their medication as prescribed. In addition, there was one comment that specifically addressed the seven applicants and was only in support of an exemption being granted to Thomas A. Marx because his last seizure was more than 20 years ago. The commenter suggested that another 5-year waiting period be applied to the other six applicants. The commenter stated that at least 15 years of no recorded seizures or complications with epilepsy should be noted before allowing these individuals to operate a CMV. As stated in the February 23, 2021, notice, 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). These

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<sup>1</sup> 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>.

recommendations state that 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. The Agency also conducted 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. Based on this information and the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (78 FR 3069), the Agency believes the drivers in this notice have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

#### **IV. Basis for Exemption Determination**

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 Agency's decision regarding these exemption applications is based on the 2007 recommendations of the Agency's Medical Expert Panel. The Agency conducted 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 for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. A summary of each applicant's seizure history was discussed in the February 23, 2021, *Federal Register* notice (FR 86 11044) and will not be repeated in this notice.

These seven applicants have been seizure-free over a range of 9 to 26 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last 2 years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

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 and seizure disorder prohibition in § 391.41(b)(8) 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 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 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.

## **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 seven exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition, § 391.41(b)(8), subject to the requirements cited above:

Sayed K. Abbed (IL)	Devante Carter (IL)
David R. Frantz (PA)	Brian P. Klein (IN)
Thomas A. Marx (WA)	Jeffrey Smith, Jr. (FL)
Eric R. Smits (WI)	

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.*