



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2023-0032]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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 15 individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) 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 control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA-2023-0032 using any of the following methods:

- Federal eRulemaking Portal: Go to www.regulations.gov/, insert the docket number (FMCSA-2023-0032) 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, 20590-0001 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, 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. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-2023-0032), 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/docket?D=FMCSA-2023-0032. 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. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number (FMCSA-2023-0032) 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 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. 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

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 statutes also allow 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 15 individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). 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 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 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

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>.

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

Jeffrey Baker

Jeffrey Baker is a 36-year-old class CM1 license holder in California. They have a history of epilepsy and have been seizure free since February 2015. They take anti-seizure medication with the dosage and frequency remaining the same since February 2015. Their physician states that they are supportive of Jeffrey Baker receiving an exemption.

Robert Bennett

Robert Bennett is a 37-year-old class AM commercial driver's license holder in New York. They have a history of focal epilepsy and have been seizure free since January 2014. They take anti-seizure medication with the dosage and frequency remaining the same since January 2014. Their physician states that they are supportive of Robert Bennett receiving an exemption.

Karl Bohmuller

Karl Bohmuller is a 24-year-old class C license holder in North Carolina. They have a history of generalized idiopathic epilepsy and have been seizure free since October 2012. They take anti-seizure medication with the dosage and frequency remaining the same since 2012. Their physician states that they are supportive of Karl Bohmuller receiving an exemption.

David Brown

David Brown is a 69-year-old class E license holder in Florida. They have a history of seizure disorder and have been seizure free since 2003. They take anti-seizure

medication with the dosage and frequency remaining the same since 2018. Their physician states that they are supportive of David Brown receiving an exemption.

John Carroll

John Carroll is a 35-year-old class 3 license holder in Hawaii. They have a history of epilepsy and have been seizure free since 2007. They take anti-seizure medication with the dosage and frequency remaining the same since January 2007. Their physician states that they are supportive of John Carroll receiving an exemption.

Jean Daza

Jean Daza is a 55-year-old class D license holder in New Jersey. They have a history of focal epilepsy and have been seizure free since July 2013. They take anti-seizure medication with the dosage and frequency remaining the same since April 2014. Their physician states that they are supportive of Jean Daza receiving an exemption.

Jerrid Hielscher

Jerrid Hielscher is a 41-year-old class A license holder in South Dakota. They have a history of seizures and have been seizure free since April 1999. They take anti-seizure medication with the dosage and frequency remaining the same since April 1999. Their physician states that they are supportive of Jerrid Hielscher receiving an exemption.

Brandon Kirby

Brandon Kirby is a 23-year-old class D license holder in Connecticut. They have a history of seizures and have been seizure free since 2012. They take anti-seizure medication with the dosage and frequency remaining the same since 2012. Their physician states that they are supportive of Brandon Kirby receiving an exemption.

Alexander Kumm

Alexander Kumm is a 47-year-old class D license holder in Illinois. They have a history of idiopathic generalized 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 Alexander Kumm receiving an exemption.

Armando Leandry

Armando Leandry is a 41-year-old class D license holder in New Jersey. They have a history of epilepsy and have been seizure free since 2014. They take anti-seizure medication with the dosage and frequency remaining the same since October 2016. Their physician states that they are supportive of Armando Leandry receiving an exemption.

Nicholas Liebe

Nicholas Liebe is a 28-year-old class D license holder in Wisconsin. They have a history of complex partial epileptic seizure and have been seizure free since 2013. They take anti-seizure medication with the dosage and frequency remaining the same since 2020. Their physician states that they are supportive of Nicholas Liebe receiving an exemption.

Sheldon Martin

Sheldon Martin is a 40-year-old class A license holder in New York. They have a history of idiopathic generalized epilepsy and have been seizure free since July 2008. They take anti-seizure medication with the dosage and frequency remaining the same since January 2013. Their physician states that they are supportive of Sheldon Martin receiving an exemption.

Robert Moseler

Robert Moseler is a 65-year-old class C chauffeur license holder in Michigan. They have a history of seizure disorder and have been seizure free since 1996. They take anti-seizure medication with the dosage and frequency remaining the same since 1996. Their physician states that they are supportive of Robert Moseler receiving an exemption.

Tammy Snyder

Tammy Snyder is a 51-year-old class A license holder in North Carolina. They have a history of an unprovoked seizure and have been seizure free since July 2013. They take anti-seizure medication with the dosage and frequency remaining the same since March 2021. Their physician states that they are supportive of Tammy Snyder receiving an exemption.

Michael Urbshot

Michael Urbshot is a 38-year-old class 23 license holder in Hawaii. They have a history of partial complex seizures and have been seizure free since 2012. They take anti-seizure medication with the dosage and frequency remaining the same since 2009. Their physician states that they are supportive of Michael Urbshot 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.