

deterioration of their safety record. However, should this occur, FMCSA would take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA would immediately revoke the exemption for failure to comply with its terms and conditions.

Issued on: February 13, 2019.

Larry W. Minor,

Associate Administrator for Policy.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0213; FMCSA-2015-0323]

#### 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 renew exemptions for 12 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 continue to operate CMVs in interstate commerce.

**DATES:** Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below.

**FOR FURTHER INFORMATION CONTACT:** Ms. 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., ET, 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:

### I. Public Participation

#### A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2014-0213; FMCSA-2015-0323, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

#### 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.dot.gov/privacy](http://www.dot.gov/privacy).

### II. Background

On November 20, 2018, FMCSA published a notice announcing its decision to renew exemptions for 12 individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (83 FR 56683). The public comment period ended on December 20, 2018, and no comments were received.

As stated in the previous notice, FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions 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).

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 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.]

### III. Discussion of Comments

FMCSA received no comments in this proceeding.

### IV. Conclusion

Based on its evaluation of the 12 renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8).

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of September and are discussed below. As of September 9, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (83 FR 58683):

Mark D. Anderson (NC)  
Jeremy N. Bradford (AL)  
Jeffrey B. Green (CA)  
Stephen M. Harmon (WV)  
Donald A. Horst (MD)  
Kyle P. Loney (WA)  
Leigh P. Mallory (VT)  
Raymond VanDeMark (NJ)

The drivers were included in docket number FMCSA-2015-0323. Their exemptions are applicable as of September 9, 2018, and will expire on September 9, 2020.

As of September 16, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (83 FR 58683):

Lee H. Anderson (MA)  
Gary A. Combs, Jr. (KY)  
Roland K. Mezger (PA)  
Robert Thomas, Jr. (NC)

The drivers were included in docket number FMCSA-2014-0213. Their exemptions are applicable as of September 16, 2018, and will expire on September 16, 2020.

In accordance with 49 U.S.C. 31315, each exemption will be valid for two 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 and 31315.

Issued on: February 13, 2019.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2001-9800]

#### Qualifications of Drivers; Exemption Applications; Diabetes; Withdrawal of Notices of Final Disposition

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

**ACTION:** Notice of withdrawal of 2003 and 2005 final disposition notices for the diabetes exemption program.

**SUMMARY:** FMCSA withdraws its September 3, 2003, notice concerning exemptions for certain individuals with insulin-treated diabetes mellitus (ITDM) and its November 8, 2005, revision. This action is in response to the Qualifications of Drivers; Diabetes Standard final rule, published on September 19, 2018, which revised the physical qualifications standard for ITDM individuals who wish to operate commercial motor vehicles (CMVs) in interstate commerce. The revised standard allows certified medical examiners, in consultation with the treating clinician, to evaluate and determine whether to grant an ITDM individual a medical examiner's certificate (MEC) to drive a CMV in interstate commerce. FMCSA has determined, therefore, that an exemption program for ITDM individuals is no longer necessary.

**DATES:** This notice is applicable February 21, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine Hydock, Chief, Medical Programs Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, by telephone at (202) 366-4001, or by email at [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov). If you have questions on viewing material in the docket, contact Docket Services, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

Since 1970, 49 CFR 391.41(b)(3) prohibited ITDM individuals from operating CMVs. On September 3, 2003, FMCSA announced that the Agency would begin authorizing exemptions from 49 CFR 391.41(b)(3) for certain ITDM individuals (68 FR 52441). Section 31315(b)(2) of 49 U.S.C. allows the Agency to grant exemptions for a 2-year period and to renew them at the end of the period.<sup>1</sup> The 2003 notice of final disposition outlined the requirements for ITDM individuals to apply for an exemption, and the considerations FMCSA would apply in determining whether to grant such applications in accordance with the statute and the provisions of 49 CFR part 381, subpart C. It addressed the requirements to renew exemptions and the considerations that would be used by the Agency to determine whether to renew an exemption once issued. It also set out the circumstances that would require revocation of an exemption.

In response to the enactment of section 4129(a) through (c) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144, 1742, Aug. 10, 2005), the Agency revised certain considerations for such exemptions on November 8, 2005 (70 FR 67777).

On September 19, 2018, the Agency published a final rule revising the physical qualification standard for operators of CMVs with ITDM (83 FR 47486). As of September 19, 2018, there were 4,719 ITDM drivers who held Federal diabetes exemptions. While the exemption program provides a pathway to medical certification for ITDM individuals who otherwise meet the physical qualifications standards of 49 CFR 391.41(b), the amended diabetes standard provides a less burdensome approach that emphasizes individualized assessment and utilizes the treating clinician of the ITDM individual to assist the certified medical examiner in making the certification determination. Detailed explanations of the process for complying with the new physical qualification requirements are included in the preamble to the final rule published on September 19, 2018.

#### II. Transition From Exemption Program to the New Standard

The withdrawal of the 2003 and 2005 program notices is applicable February

<sup>1</sup> At the time, the statute limited exemptions to 2 years. The statute was subsequently amended to allow exemptions for up to 5 years, but, as a practical matter, diabetes exemptions have been limited to 2 years.

21, 2019. Individuals could begin the process of obtaining MECs following the new streamlined process on November 19, 2018.

#### A. Existing Diabetes Exemption Holders

Diabetes exemptions under the program are issued for 2 years, but exemption holders must be medically certified by a certified medical examiner and issued an MEC annually. Any MEC that was obtained under an exemption and was in effect when the final rule became effective on November 19, 2018, will remain in effect until the MEC expires or is replaced by an MEC issued under the new standard. Prior to its expiration, a new MEC must be issued under the new standard to operate a CMV. FMCSA will direct certified medical examiners to cease issuing MECs under the exemption program on or after the date of this withdrawal notice.

Beginning November 19, 2018, exemption holders could begin the process of obtaining certification under the new standard. This requires being evaluated by a treating clinician who must complete an Insulin-Treated Diabetes Mellitus Assessment Form, MCSA-5870, which is available on the Agency's website, and then obtaining a medical certification examination by a certified medical examiner. Existing diabetes exemption holders should have adequate time to comply with the provisions of the final rule before their current MECs expire. Obtaining certification under the new standard should be much less burdensome in terms of both time and resources than the lengthy process of applying for and maintaining an exemption.

#### B. State Driver Licensing Agencies and Variances

When an ITDM individual obtains an MEC under the new standard, it will not be necessary for the certified medical examiner to indicate on the MEC that certification is made consistent with the terms of an exemption (unless other exemptions are involved) because a diabetes exemption is no longer required to operate a CMV. Therefore, in the case of an ITDM individual holding a commercial driver's license or a commercial learner's permit, it will not be necessary for a State Driver Licensing Agency to receive and post the information about such a medical variance on the individual's Commercial Driver's License Information System (CDLIS) record (see 49 CFR 383.73(o)).