

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 February 27, 2019, FMCSA published a FR notice (84 FR 6463) announcing receipt of applications from seven individuals treated with ICDs and requested comments from the public. These seven individuals requested an exemption from 49 CFR 391.41(b)(4) which prohibits operation of a CMV in interstate commerce by persons with a 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, dyspnea, collapse, or congestive heart failure. The public comment period closed on March 29, 2019, and three comments were received.

FMCSA has evaluated the eligibility of these applicants and concluded that granting these 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)(4). A summary of each applicant's medical history related to their ICD exemption request was discussed in the February 27, 2019, **Federal Register** notice and will not be repeated in this notice.

In reaching the decision to deny these exemption requests, the Agency considered information from the Cardiovascular Medical Advisory Criteria, the April 2007 Evidence Report "Cardiovascular Disease and Commercial Motor Vehicle Driver Safety, a December 2014 focused research report "Implantable Cardioverter Defibrillators and the Impact of a Shock in a Patient When Deployed." Copies of the reports are included in the docket.

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. [Appendix A to Part 391—Medical Advisory Criteria, section D, paragraph 4]. The advisory criteria for 49 CFR 391.41(b)(4) indicates that coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not medically disqualifying. Implantable cardioverter defibrillators are disqualifying due to risk of syncope.

## III. Discussion of Comments

FMCSA received three comments in this proceeding. All three commenters were private citizens in support of granting ICD exemptions to these three individuals.

## IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption if it finds such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption.

The Agency's decision regarding these exemption applications is based on an individualized assessment of each applicant's medical information provided by the applicant, available medical and scientific data concerning ICD's, and public comments received.

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 April 2007 Evidence Report on Cardiovascular Disease and Commercial Motor vehicle Driver Safety, April 2007.<sup>1</sup> A focused research report on Implantable Cardioverter Defibrillators and the Impact of a Shock on a Patient When Deployed completed for the FMCSA 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.

## V. Conclusion

The Agency has determined that the available medical and scientific literature and research provides insufficient data to enable the Agency to conclude that granting these exemptions would achieve a level of safety equivalent to, or greater than, the level of safety maintained without the exemption. Therefore, the following applicants have been denied exemptions from the physical qualification standards in 49 CFR 391.41(b)(4):

Mark Caviola (NY)  
John J. Groff (PA)  
Kevin L. Krueger (NE)  
Michael R. Miller (CA)  
Anthony Saitta (NY)  
William Allen Spivey (NC)

<sup>1</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).

Aaron J. Thomas (GA)

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitutes final action by the Agency. The list published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4).

Issued on: May 29, 2019.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### Hazardous Materials: Notice of Applications for New Special Permits

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of applications for special permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before July 8, 2019.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 3, 2019.  
**Donald P. Burger,**  
*Chief, General Approvals and Permits Branch.*

**SPECIAL PERMITS DATA**

Application No.	Applicant	Regulation(s) affected	Nature of the Special Permits thereof
20879-N .....	AVIALL SERVICES, INC .....	172.200, 172.300, 172.400, 173.159(j), 173.159(j)(3), 173.159(j)(4).	To authorize the transportation in commerce of nickel-cadmium batteries as not subject to the requirements of the HMR. (modes 1, 4, 5).
20881-N .....	ARKEMA INC .....	172.102(c)(7) .....	To authorize the transportation in commerce of certain Class 3 hazardous materials in non-UN portable tanks. (mode 1)
20882-N .....	STANLEY BLACK & DECKER, INC.	173.6(a)(1)(ii), 173.6(d) .....	To authorize the transportation in commerce of lithium ion batteries as materials of trade when each package has a gross mass exceeding 30 kg and the aggregate weight exceeds 200 kg. (mode 1).
20887-N .....	ERA HELICOPTERS, LLC .....	172.101(j) .....	To authorize the transportation of lithium ion batteries aboard a passenger-carrying aircraft operating in a helicopter air ambulance configuration. (mode 5).
20892-N .....	NATURAL CHOICE CORPORATION.	172.200, 172.300, 172.500, 172.400.	To authorize the transportation in commerce of DOT 3AL cylinders with alternate hazard communication. (mode 1).
20893-N .....	DAIMLER AG .....	173.220(d) .....	To authorize the transportation in commerce of untested lithium batteries contained in a flammable liquid powered vehicle. (mode 4).

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**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**Hazardous Materials: Notice of Actions on Special Permits**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of actions on special permit applications.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material

Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

**DATES:** Comments must be received on or before July 8, 2019.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety

Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 03, 2019.

**Donald P. Burger,**  
*Chief, General Approvals and Permits Branch.*

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
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**SPECIAL PERMITS DATA—Granted**

5022-M .....	DEPARTMENT OF DEFENSE (MILITARY SURFACE DEPLOYMENT & DISTRIBUTION COMMAND).	174.84, 174.101(l), 174.112(a), 176.116(e), 176.138(b), 177.834(l)(1).	To modify the special permit to ensure safe testing of all size fuel tanks.
14756-M .....	UNIVATION TECHNOLOGIES, LLC.	173.242(c) .....	To modify the special permit to authorize the 5 year periodic pressure test to be performed pneumatically with nitrogen and to allow party status to the permit.
16461-M .....	CYLINDER SALES AND TESTING, LLC.	172.203(a), 172.301(c), 173.302a(b), 180.205.	To modify the special permit to remove the annual gain control accuracy test and replace it with a onetime check at manufacture.
20651-M .....	ATIEVA USA, INC .....	172.101(j) .....	To modify the special permit to authorize additional packaging.