

- Efficient Project Reviews for Environmental Decisionmaking, 23 U.S.C. 139
- Environmental Impact and Related Procedures, 23 CFR part 771
- Planning and Environmental Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- Programmatic Mitigation Plans, 23 U.S.C. 169, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135

#### Hazardous Materials Management

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k
- Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9671–9675

#### Historic and Cultural Resources

- Archeological Resources Protection Act of 1979, 16 U.S.C. 470(aa)–(mm)
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013; 18 U.S.C. 1170
- Preservation of Historical and Archeological Data, 54 U.S.C. 312501–312508
- Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306108

#### Noise

- Noise regulations in 23 CFR part 772
- Noise Control Act of 1972, 42 U.S.C. 4901–4918

#### Parklands and Other Special Land Uses

- Land and Water Conservation Fund (LWCF) Act, 54 U.S.C. 200302–200310
- Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138, 49 U.S.C. 303 and implementing regulations at 23 CFR part 774

#### Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209

#### Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251–1387
- Section 319, 33 U.S.C. 1329
- Section 401, 33 U.S.C. 1341
- Section 402, 33 U.S.C. 1342
- Section 404, 33 U.S.C. 1344
- Emergency Wetlands Resources Act, 16 U.S.C. 3901 and 3921
- Flood Disaster Protection Act, 42 U.S.C. 4001–4130

- Mitigation of Impacts to Wetlands and Natural Habitat, 23 CFR part 777
- Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. 401, 403, and 408
- Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–26
- Wetlands Mitigation, 23 U.S.C. 119(g)
- Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287

#### Wildlife

- Anadromous Fish Conservation Act, 16 U.S.C. 757a–757f
- Bald and Golden Eagle Protection Act, as amended, 16 U.S.C. 668–668c
- Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801–1891d
- Marine Mammal Protection Act, 16 U.S.C. 1361–1423h
- Migratory Bird Treaty Act, 16 U.S.C. 703–712
- Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1536.

The proposed renewal MOU would allow ADOT to continue to act in the place of FHWA in carrying out the environmental review-related functions described above, except with respect to government-to-government consultations with federally recognized Indian Tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian Tribes, which is required under some of the listed laws and E.O.s. The ADOT will continue to handle routine consultations with the Tribes and understands that a Tribe has the right to direct consultation with FHWA upon request. The ADOT also may assist FHWA with formal consultations, with consent of a Tribe, but FHWA remains responsible for the consultation. The ADOT also will not assume FHWA's responsibilities for conformity determinations required under section 176 of the Clean Air Act (42 U.S.C. 7506) or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

The MOU content reflects ADOT's desire to continue its participation in the Program. The FHWA and ADOT have agreed to modify some of the provisions in the MOU to, among other things: clarify the categories of projects excluded from assignment; designate a Senior Agency Official at ADOT consistent with 40 CFR 1508.1(dd); remove auditing requirements; revise

monitoring requirements; update record retention requirements; provide for enhanced reporting to FHWA on issues including environmental justice analysis and associated mitigation, where applicable; revise provisions related to data and information requests; and revise provisions related to FHWA-initiated withdrawal of assigned projects.

A copy of the proposed renewal MOU and renewal package may be viewed on the DOT DMS Docket, as described above, or may be obtained by contacting FHWA or the State at the addresses provided above. A copy also may be viewed on ADOT's website at <https://azdot.gov/business/environmental-planning-ce-assignment-and-nepa-assignment>. The FHWA Arizona Division, in consultation with FHWA Headquarters, will consider the comments submitted when making its decision on the proposed MOU revision. Any final renewal MOU approved by FHWA may include changes based on comments and consultations relating to the proposed renewal MOU and will be made publicly available.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

*Authority:* 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR 771.101–139; 23 CFR 773.115; 40 CFR 1507.3; and 49 CFR 1.85.

**Shailen P. Bhatt,**

*Administrator, Federal Highway Administration.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0003]

#### Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillator (ICD)

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

**ACTION:** Notice of denials.

**SUMMARY:** FMCSA announces its decision to deny the applications from two individuals treated with an Implantable Cardioverter Defibrillator (ICD) who requested an exemption from the Federal Motor Carrier Safety

Regulations (FMCSRs) prohibiting operation of a commercial motor vehicle (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 (transient loss of consciousness), dyspnea (shortness of breath), collapse, or congestive heart failure.

**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](mailto:fmcsamedical@dot.gov). 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 materials in 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-2024-0003) 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 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 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. 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 (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**

On February 28, 2024, FMCSA published a notice announcing receipt of applications from two individuals treated with ICDs and requested

comments from the public (89 FR 14734). The 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 ended on March 29, 2024, and no comments were received.

FMCSA has evaluated the eligibility of the applicants and concluded that granting an exemption 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 § 391.41(b)(4). A summary of each applicant's medical history related to their ICD exemption request was discussed in the **Federal Register** notice (89 FR 14734) and will not be repeated here.

The Agency's decision regarding this exemption application is based on information from the Cardiovascular Medical Advisory Criteria, an April 2007 evidence report titled "Cardiovascular Disease and Commercial Motor Vehicle Driver Safety,"<sup>1</sup> and a December 2014 focused research report titled "Implantable Cardioverter Defibrillators and the Impact of a Shock in a Patient When Deployed." Copies of these 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.<sup>2</sup> The advisory criteria for § 391.41(b)(4) indicates that coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not medically disqualifying. ICDs are disqualifying due to risk of syncope.

### **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(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 Agency's decision regarding these exemption applications is based on an individualized assessment of the applicants' medical information, available medical and scientific data concerning ICDs, and any relevant 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 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. The December 2014 focused research report referenced previously upholds the findings of the April 2007 report and 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.

### **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 an exemption from the physical qualification standards in § 391.41(b)(4):

Brenda Smith (MS); and Ofer Zacks (CA).

The applicants have, prior to this notice, received a letter of final disposition regarding their exemption request. The decision letter fully outlined the basis for the denial and constitute final action by the Agency. The names of these individuals published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4).

**Larry W. Minor,**

*Associate Administrator for Policy.*

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**BILLING CODE 4910-EX-P**

<sup>1</sup> The report is available on the internet at <https://rosap.nhtl.bts.gov/view/dot/16462>.

<sup>2</sup> These criteria may be found in 49 CFR part 391, Appendix A to Part 391—Medical Advisory Criteria, section D. *Cardiovascular: § 391.41(b)(4)*, paragraph 4, 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>.