



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0373]

Qualification of Drivers; Exemption Applications; Narcolepsy

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

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from three individuals for an exemption from the prohibitions against operating a commercial motor vehicle (CMV) in interstate commerce by persons with either a clinical diagnosis of a condition that is likely to cause a loss of consciousness or any loss of ability to operate a CMV safely, [49 CFR 391.41(b)(8)] , or a mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his/her ability to drive a commercial motor vehicle safely, [49 CFR 391.41(b)(9)]. If granted, the exemption would enable these individuals who have been diagnosed with narcolepsy and are receiving medical treatment to operate CMVs for 2 years 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 bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2012-0081 using any of the following methods:

- Federal eRulemaking Portal: Go to www.regulations.gov. Follow the on-line instructions for submitting comments.

- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov, at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 USC 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, as described in the system records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Office of Carrier, Driver and Vehicle Safety, (202) 366-4001, or via email at fmcsamedical@dot.gov, or by letter to FMCSA, Room W64-113, Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** [49 CFR 381.315(a)]. The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency may grant an exemption subject to specified terms and conditions. The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the

effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

FMCSA provides medical advisory criteria in the Medical Examination Report at 49 CFR 391.43 for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate commercial motor vehicles in interstate commerce. The advisory criteria for 49 CFR 391.41(b)(8), indicates 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 medical examiner 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 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 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 fully recovered from that condition, has no existing residual complications, and is not taking anti-seizure medication.

The advisory criteria for 49 CFR 391.41 (b)(9), indicates that a variety of functional disorders can cause drowsiness, dizziness, confusion, weakness or paralysis that may lead

to incoordination, inattention, loss of functional control and susceptibility to accidents while driving.

SUMMARY OF APPLICATIONS

Thomas Skagen

Mr. Skagen is a 53-year-non-CDL holder from Washington. He is route sales representative for a bakery. He was diagnosed with Narcolepsy without cataplexy¹ in 2008. His physician has treated him for 3 years and is supportive of Mr. Skagen's exemption request. He states that Mr. Skagen is treated with Adderall and has a known 3-year history of being very compliant with medical treatment, his Epworth Sleepiness Scale scores remain within normal limits, and he does not fall asleep at any inappropriate times. He has driven a step van (a walk-in or multi-stop truck) since 2005 and says that sleepiness has never been an issue and in 37 years of driving he has never caused an accident. He would like to be granted an exemption in order to obtain a medical certificate to operate in interstate commerce.

Charles "Larry" Peterson

Mr. Charles Larry Peterson is a 56-year old Class A CDL holder in Washington. He is tractor-trailer driver. He was diagnosed with Narcolepsy in 1987 and has been continually treated for this condition since his diagnosis. A November 2014 letter from Mr. Peterson's physician states he is successfully treated with Provigil. He has never known of any traffic incidents, accidents or problems related to his narcolepsy or treatment. In his opinion his narcolepsy is well controlled and he is safe to drive. A November 6 letter from his employer supports Mr. Peterson's request for an exemption.

¹ According to National Institutes of Health, National Institute of Neurological Disorders and Stroke, cataplexy is a sudden loss of muscle tone while the person is awake that leads to feelings of weakness and a loss of voluntary muscle control.

The employer reports that Mr. Peterson has been employed since 2012 and has been an exemplary driver since he was hired. The employer reports there have been no accidents, communication problems, and no questionable performance issues during his employment. Mr. Peterson would like to be granted an exemption to continue to operate in interstate commerce.

Stanley Jandreau

Mr. Jandreau is a 43 year old Class A CDL holder in Maine. A February 2015 letter from his sleep medicine specialists states that Mr. Jandreau has been a patient since 2002 when he was found to have obstructive sleep apnea and narcolepsy with cataplexy. Mr. Jandreau's specialists report that he is stable on therapies for both conditions and his CPAP compliance is acceptable to excellent. He is maintained on Provigil and Zolofl and by all accounts his sleep disorders are stable and well-treated on his current therapeutic regimen. Medication or dosing changes have not been required since [the specialist] took over his care in 2012. His specialists support Mr. Jandreau's petition for exemption based on his condition being stable for quite some time and is not likely to worsen so long as he continues his current therapeutic regimen. Mr. Jandreau would like to be granted an exemption in interstate commerce.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the applications for exemption described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Dated: April 13, 2015.

Larry W. Minor,
Associate Administrator for Policy.

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