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Title 49 —Transportation

Subtitle B —Other Regulations Relating to Transportation

Chapter III —Federal Motor Carrier Safety Administration, Department of Transportation

Subchapter B —Federal Motor Carrier Safety Regulations

Part 391 —Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

Subpart E —Physical Qualifications and Examinations

Authority: 49 U.S.C. 504, 508, 31133, 31136, 31149, 31502; sec. 4007(b), Pub. L. 102-240, 105 Stat. 1914, 2152; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677; sec. 215, Pub. L. 106-159, 113 Stat. 1748, 1767; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; secs. 5403 and 5524, Pub. L. 114-94, 129 Stat. 1312, 1548, 1560; sec. 2, Pub. L. 115-105, 131 Stat. 2263; and 49 CFR 1.87.

Source: 35 FR 6460, Apr. 22, 1970, unless otherwise noted.

Editorial Note: Nomenclature changes to part 391 appear at 66 FR 49874, Oct. 1, 2001.

§ 391.47 Resolution of conflicts of medical evaluation.

- (a) **Applications.** Applications for determination of a driver's medical qualifications under standards in this part will only be accepted if they conform to the requirements of this section.
- (b) **Content.** Applications will be accepted for consideration only if the following conditions are met.
 - (1) The application must contain the name and address of the driver, motor carrier, and all medical examiners and medical specialists involved in the proceeding.
 - (2) The applicant must submit proof that there is a disagreement between the medical examiner for the driver and the medical examiner for the motor carrier concerning the driver's qualifications.
 - (3) The applicant must submit a copy of an opinion and report including results of all tests of an impartial medical specialist in the field in which the medical conflict arose. The specialist should be one agreed to by the motor carrier and the driver.
 - (i) In cases where the driver refuses to agree on a specialist and the applicant is the motor carrier, the applicant must submit a statement of his/her agreement to submit the matter to an impartial medical specialist in the field, proof that he/she has requested the driver to submit to the medical specialist, and the response, if any, of the driver to his/her request.
 - (ii) In cases where the motor carrier refuses to agree on a medical specialist, the driver must submit an opinion and test results of an impartial medical specialist, proof that he/she has requested the motor carrier to agree to submit the matter to the medical specialist and the response, if any, of the motor carrier to his/her request.
 - (4) The applicant must include a statement explaining in detail why the decision of the medical specialist identified in paragraph (b)(3) of this section, is unacceptable.
 - (5) The applicant must submit proof that the medical specialist mentioned in paragraph (b)(3) of this section was provided, prior to his/her determination, the medical history of the driver and an agreed-upon statement of the work the driver performs.
 - (6) The applicant must submit the medical history and statement of work provided to the medical specialist under paragraph (b)(5) of this section.

- (7) The applicant must submit all medical records and statements of the medical examiners and medical specialists who have given opinions on the driver's qualifications.
- (8) The applicant must submit a description and a copy of all written and documentary evidence upon which the party making application relies in the form set out in 49 CFR 386.37.
- (9) The application must be accompanied by a statement of the driver that he/she intends to drive in interstate commerce not subject to the commercial zone exemption or a statement of the carrier that he/she has used or intends to use the driver for such work.
- (10) The applicant must submit three copies of the application and all records.
- (c) **Information.** FMCSA may request further information from the applicant if he/she determines that a decision cannot be made on the evidence submitted. If the applicant fails to submit the information requested, FMCSA may refuse to issue a determination.
- (d)
 - (1) **Action.** Upon receiving a satisfactory application FMCSA shall notify the parties (the driver, motor carrier, or any other interested party) that the application has been accepted and that a determination will be made. A copy of all evidence received shall be attached to the notice.
 - (2) **Reply.** Any party may submit a reply to the notification within 15 days after service. Such reply must be accompanied by all evidence the party wants FMCSA to consider in making his/her determination. Evidence submitted should include all medical records and test results upon which the party relies.
 - (3) **Parties.** A party for the purposes of this section includes the motor carrier and the driver, or anyone else submitting an application.
- (e) **Petitions to review, burden of proof.** The driver or motor carrier may petition to review the FMCSA's determination. Such petition must be submitted in accordance with § 386.13(a) of this chapter. The burden of proof in such a proceeding is on the petitioner.
- (f) **Status of driver.** Once an application is submitted to FMCSA, the driver shall be deemed disqualified until such time as FMCSA makes a determination, or until FMCSA orders otherwise.

[42 FR 18081, Apr. 5, 1977, as amended at 42 FR 53966, Oct. 4, 1977; 60 FR 38746, July 28, 1995; 66 FR 49874, Oct. 1, 2001; 78 FR 58483, Sept. 24, 2013; 80 FR 59075, Oct. 1, 2015; 86 FR 57074, Oct. 14, 2021; 88 FR 80192, Nov. 17, 2023]