



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Office of
Legal Counsel

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Dockets Operations
U.S. Department of Transportation
1200 New Jersey Avenue SE
West Building, Ground Floor
Room W12-140
Washington, DC 20590-0001

Re: EEOC Comment Regarding Federal Motor Carrier Safety Administration's Medical Qualification Requirements (Docket No. FMCSA-2021-0066; OMB No. 2126-0006)

Dear Department of Transportation Docket Manager:

The U.S. Equal Employment Opportunity Commission (EEOC) submits these comments for the Department of Transportation, Federal Motor Carrier Safety Administration's (FMCSA's) consideration concerning its Medical Qualification Requirements information collection request, published in the Federal Register on May 6, 2021.¹

The EEOC enforces the federal laws that prohibit employment discrimination, including laws that prohibit discrimination on the basis of disability.² Among other things, these laws restrict

¹ Department of Transportation, Federal Motor Carrier Safety Administration, Agency Information Collection Activities; Renewal of an Approved Information Collection: Medical Qualification Requirements, 86 Fed. Reg. 24,433 (May 6, 2021).

These comments are based on the forms available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202007-2126-001. Despite requests, EEOC was unable to obtain copies of the documents published for comment this review cycle.

² Titles I and V of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., and Sections 501 and 505 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 705, 791, prohibit employment discrimination on the basis of disability. Other EEOC-enforced laws prohibit discrimination on the bases of race, color, religion, sex, national origin, age, and genetic information. See Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 et seq.; the Equal Pay Act of 1963, 29 U.S.C. § 206(d); and Title II of the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff et seq. All EEOC-enforced laws also prohibit retaliation for filing a charge or complaint of employment discrimination, participating in an employment discrimination proceeding, or reasonably opposing such discrimination. 42 U.S.C. § 2000e-3(a); 29 U.S.C. § 623(d); 29 U.S.C. § 791(f) (incorporating, among

the circumstances under which employers may request or disclose medical information from applicants and employees. The EEOC also coordinates and leads the federal government's efforts to eradicate employment discrimination.³

As explained below in greater detail, we recommend that FMCSA narrow the scope of medical information requested on Form MCSA-5875, Medical Examination Report Form, to focus on medical conditions and medications that may interfere, are likely to interfere, or do interfere with individuals' ability to control, drive, or otherwise operate a commercial motor vehicle safely. We also recommend that FMCSA add information regarding the Americans with Disabilities Act of 1990, as amended, and the Rehabilitation Act of 1973, as amended, to the medical requirement information on its website, and ensure that driver exemption program information on its website is current and comprehensive.

I. Recommendations Regarding Breadth of Medical Information Requested on Form MCSA-5875, Medical Examination Report Form

Form MCSA-5875, Medical Examination Report Form, is used to record the results of physical qualification examinations of commercial motor vehicle drivers in interstate commerce who are subject to 49 C.F.R. Part 391.⁴ The form requests a broad range of medical information, including current or past medical conditions or medical issues, surgeries, overnight hospital stays, and broken bones, and current medications, including prescription, over-the-counter, herbal remedies, and diet supplements.⁵

We recommend that FMCSA consider revising the requests for medical information on Form MCSA-5875 to focus on medical conditions and medications that may interfere, are likely to interfere, or do interfere with individuals' ability to control, drive, or otherwise operate a commercial motor vehicle safely. For example, FMCSA's federal motor carrier regulations address a range of potentially disqualifying medical conditions and medications, absent exemption.⁶ We suggest that FMCSA narrow the medical inquiries on Form MCSA-5875 to focus on those conditions and medications. In addition, we suggest that FMCSA consider narrowing the length of time that certain medical issues must be reported. For example, the fact that a respondent, in his or her youth, may have had minor surgery, broken a bone, or spent the night in a hospital may be wholly irrelevant to the respondent's current ability to safely operate a

other provisions, the anti-retaliation provision of the ADA into the Rehabilitation Act); 29 U.S.C. § 215(a)(3); 42 U.S.C. § 2000ff-6(f).

³ Exec. Order No. 12,067, 43 Fed. Reg. 28,967 (June 30, 1978).

⁴ 86 Fed. Reg. at 24,434.

⁵ See Form MCSA-5875, Section 1, pages 1–2 (requesting driver health history).

⁶ See 49 C.F.R. § 391.41 (2021) (addressing physical qualification standards for commercial motor vehicle drivers); FMCSA, *Driver Exemption Programs*, <https://www.fmcsa.dot.gov/medical/driver-medical-requirements/driver-exemption-programs> (last updated May 4, 2021) (addressing driver exemption programs); see also *infra* § II.b in this comment regarding driver exemption program information on FMCSA's website.

commercial motor vehicle. We believe that tailoring the requests for medical information on Form MCSA-5875 will enable Medical Examiners and FMCSA to receive information sufficient to determine whether respondents can safely operate commercial motor vehicles in interstate commerce, while also streamlining the physical examination process and protecting respondents' privacy with respect to unrelated medical histories, conditions, and/or medication.

II. Recommendations Regarding FMCSA Website Information Addressing Medical Requirements and Driver Exemption Programs

a. Medical Requirement Information & Medical Information Confidentiality Under the Americans with Disabilities Act of 1990, as amended, and the Rehabilitation Act of 1973, as amended

FMCSA's website provides a variety of information about medical requirements, including frequently asked questions.⁷ One such question asks whether employers will have access to drivers' medical evaluations.⁸ FMCSA's response states that medical examiners are not required to provide copies of the medical examination report to the employer, but that the agency does not prohibit employers from obtaining copies if the driver agrees.⁹ The response also notes that "[e]mployers must comply with applicable State and Federal laws regarding the privacy and maintenance of employee medical information," citing HIPAA.¹⁰

We recommend that FMCSA amend this response to also reference the Americans with Disabilities Act of 1990, as amended (ADA), and the Rehabilitation Act of 1973, as amended (Rehabilitation Act), as these laws and associated regulations also apply to covered employers' maintenance and disclosure of applicants' and employees' medical information. Specifically, the ADA and the Rehabilitation Act require that employers that lawfully obtain applicants' and employees' medical information treat such information as a "confidential medical record" and maintain it in separate medical files.¹¹ Disclosure of medical information governed by the ADA and the Rehabilitation Act's confidentiality provisions is permitted only in limited circumstances.¹²

⁷ FMCSA, *FAQs: Medical Requirements*, <https://www.fmcsa.dot.gov/faq/Medical-Requirements> (last visited June 15, 2021).

⁸ FMCSA, *FAQs: Medical Requirements, Will my employer have access to my medical evaluation?* <https://www.fmcsa.dot.gov/faq/will-my-employer-have-access-my-medical-evaluation> (last updated Apr. 1, 2014).

⁹ *Id.*

¹⁰ *Id.*

¹¹ 42 U.S.C. §§ 12112(d)(3)(B), (4)(C); 29 C.F.R. §§ 1630.14(b)(1), (c)(1), (d)(4)(i); 29 U.S.C. § 791(f) (incorporating the medical information confidentiality standards of the ADA into the Rehabilitation Act).

¹² See 42 U.S.C. §§ 12112(d)(3)(B), (4)(C) (allowing covered entities to share medical information with supervisors and managers who need to know about an employee's work restrictions and necessary

Revising this response to note the applicability of the ADA and the Rehabilitation Act may help educate applicants, employees, and employers about the legal obligations associated with employers' acquisition, maintenance, and disclosure of applicants' and employees' protected medical information. For example, FMCSA could add the following to the response: "Information about employers' acquisition, maintenance, and disclosure of applicants' and employees' medical information under the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973 is available at <https://www.eeoc.gov/disability-discrimination>."

b. Driver Exemption Program Information

FMCSA's website also includes information about driver exemption programs, which enable drivers who seek to operate commercial motor vehicles in interstate commerce to apply for an exemption from the seizure, vision, and/or hearing standards in FMCSA's federal motor carrier safety regulations.¹³ However, several responses to frequently asked questions do not reference these exemptions, and/or state that certain medical conditions or associated medications are disqualifying, without mentioning applicable driver exemption programs.¹⁴ These responses may discourage drivers with covered medical conditions, such as hearing impairments or epilepsy, or drivers who take related medication, such as anti-seizure medication, from applying for commercial motor vehicle licenses or certification. To prevent any unintended confusion regarding available exemptions, we recommend that FMCSA review and revise as necessary the information on its website about driver exemption programs to ensure that it is comprehensive and up to date.

accommodations, with first aid and safety personnel if an employee's disability might require emergency treatment or assistance in the event of an emergency, and with government officials investigating ADA compliance); 29 C.F.R. §§ 1630.14(b)(1), (c)(1), (d)(4)(i) (same); 29 C.F.R. pt. 1630, App. § 1630.14(b) (allowing disclosure of protected medical information for workers' compensation and insurance purposes); 29 U.S.C. § 791(f) (incorporating the medical information disclosure standards of the ADA into the Rehabilitation Act).

¹³ See FMCSA, *Driver Exemption Programs*, <https://www.fmcsa.dot.gov/medical/driver-medical-requirements/driver-exemption-programs> (last updated May 4, 2021) (describing driver exemption programs and providing exemption applications and medical release forms).

¹⁴ See, e.g., FMCSA, *FAQs: Medical Requirements, What medical conditions disqualify a commercial bus or truck driver?*, <https://www.fmcsa.dot.gov/faq/what-medical-conditions-disqualify-commercial-bus-or-truck-driver> (last updated Apr. 1, 2014) (stating that hearing loss and epilepsy, among other conditions, are medically disqualifying conditions, and failing to indicate that exemptions for these conditions are available); FMCSA, *FAQs: Medical Requirements, Is it possible to get exemptions for some medical conditions?*, <https://www.fmcsa.dot.gov/faq/it-possible-get-exemptions-some-medical-conditions> (last updated Apr. 1, 2014) (referencing exemption programs for vision and insulin-treated diabetes mellitus and certificate programs for drivers with limb impairments, and omitting any reference to exemptions for hearing loss or epilepsy); FMCSA, *FAQs: Medical Requirements, What medications disqualify a CMV driver?*, <https://www.fmcsa.dot.gov/faq/what-medications-disqualify-cmv-driver> (last updated Sept. 18, 2017) (stating that "any anti-seizure medication used for the prevention of seizures is disqualifying," and refraining from addressing driver exemption programs for individuals with epilepsy).

Thank you for your consideration. Should you have any questions, please feel free to contact me at lisa.schnall@eeoc.gov or (202) 921-2664.

Sincerely,

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Office of Legal Counsel
U.S. Equal Employment Opportunity Commission