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**FOR FURTHER INFORMATION CONTACT:** Tyneka Thomas ARM-105, (202) 267-7626, FAA, Office of Rulemaking, 800 Independence Ave. SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Dated: Issued in Washington, DC, on January 9, 2013.

**Lirio Liu,**

*Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA-2012-1212.

*Petitioner:* Uwe Goehl.

*Section of 14 CFR Affected:* 14 CFR 61.109(j)(4).

*Description of Relief Sought:* The relief sought would allow Uwe Goehl to meet solo flight requirements for the issuance of a weight-shift-control aircraft rating in an aircraft registered in a foreign state, conducted outside the United States, with an authorized instructor on board.

[FR Doc. 2013-00606 Filed 1-14-13; 8:45 am]

**BILLING CODE** 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2006-24278, FMCSA-2006-25854, FMCSA-2008-0355, FMCSA 2010-0203, FMCSA-2011-0089]

### Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate commercial motor vehicle (CMV) drivers have “no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.” The regulation and the associated advisory criteria published in the Code of Federal Regulations as the “Instructions for Performing and Recording Physical Examinations” have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they have had one

or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner. The Agency concluded that granting exemptions for these CMV drivers will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions. FMCSA grants exemptions that will allow these 22 individuals to operate CMVs in interstate commerce for a 2-year period. The exemptions preempt State laws and regulations and may be renewed.

**DATES:** The exemptions are effective January 15, 2013. The exemptions expire on January 15, 2015.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Division Chief, Physical Qualifications, Office of Medical Programs, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-224, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

### SUPPLEMENTARY INFORMATION:

#### A. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>.

*Docket:* For access to the docket to read background documents or comments, go to <http://www.regulations.gov> and/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., e.t., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of DOT’s dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT’s complete Privacy Act Statement in the **Federal Register** (73 FR 3316, January 17, 2008). This statement is also available at <http://Docketinfo.dot.gov>.

#### B. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the safety regulations for a 2-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 statute also allows the

Agency to renew exemptions at the end of the 2-year period.

FMCSA grants 22 individuals an exemption from the regulatory requirement in § 391.41(b)(8) allowing individuals who take anti-seizure medication to operate CMVs in interstate commerce for a 2-year period. The Agency’s decision on these exemption applications is based on an individualized assessment of each applicant’s medical information, including the root cause of the respective seizure(s); the length of time elapsed since the individual’s last seizure; and each individual’s treatment regimen. In addition, the Agency reviewed the applicant’s driving record found in the CDLIS,<sup>1</sup> for CDL holders, and interstate and intrastate inspections recorded in MCMIS.<sup>2</sup> The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers covered by the exemptions have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

In reaching the decision to grant these exemption requests, the Agency considered both current medical literature and information and the 2007 recommendations of the Agency’s Medical Expert Panel (MEP). The Agency previously gathered evidence for potential changes to the regulation by conducting a comprehensive review of scientific literature that was compiled into the “*Evidence Report on Seizure Disorders and Commercial Vehicle Driving*” (*Evidence Report*) [CD-ROM HD TL230.3 .E95 2007]. The Agency then convened a panel of medical experts in the field of neurology (MEP) on May 14–15, 2007, to review 49 CFR 391.41(b)(8) and the advisory criteria regarding individuals who have experienced a seizure, and the 2007 *Evidence Report*. The *Evidence Report* and the MEP recommendations are published on-line at <http://www.fmcsa.dot.gov/rules-regulations/topics/mep/mep-reports.htm>, under Seizure Disorders, and are in the docket for this notice.

<sup>1</sup> *Commercial Driver License Information System* (CDLIS) is an information system that allows the exchange of commercial driver licensing information among all the States. CDLIS includes the databases of fifty-one licensing jurisdictions and the CDLIS Central Site, all connected by a telecommunications network.

<sup>2</sup> *Motor Carrier Management Information System* (MCMIS) is an information system that captures data from field offices through SAFETYNET, CAPRI, and other sources. It is a source for FMCSA inspection, crash, compliance review, safety audit, and registration data.

### MEP Criteria for Evaluation

On October 15, 2007, the MEP issued the following recommended criteria for evaluating whether an individual with epilepsy or a seizure disorder should be allowed to operate a CMV.<sup>3</sup> The MEP recommendations are included in an appendix at the end of this notice and in each of the previously published dockets.

**Epilepsy diagnosis.** If there is an *epilepsy diagnosis*, the applicant should be seizure-free for *8 years, on or off medication*. If the individual is taking anti-seizure medication(s), the plan for medication should be stable for *2 years*. Stable means no changes in medication, dosage, or frequency of medication administration. Recertification for drivers with an epilepsy diagnosis should be performed every year.

**Single unprovoked seizure.** If there is a *single unprovoked seizure* (i.e., there is no known trigger for the seizure), the individual should be seizure-free for *4 years, on or off medication*. If the individual is taking anti-seizure medication(s), the plan for medication should be stable for *2 years*. Recertification for drivers with a single unprovoked seizure should be performed every 2 years.

**Single provoked seizure.** If there is a *single provoked seizure* (i.e., there is a known reason for the seizure), the Agency should consider specific criteria that fall into the following two categories: low-risk factors for recurrence and moderate-to-high risk factors for recurrence.

- **Examples of low-risk factors for recurrence** include seizures that were caused by a medication; by non-penetrating head injury with loss of consciousness less than or equal to 30 minutes; by a brief loss of consciousness not likely to recur while driving; by metabolic derangement not likely to recur; and by alcohol or illicit drug withdrawal.

- **Examples of moderate-to-high-risk factors for recurrence** include seizures caused by non-penetrating head injury with loss of consciousness or amnesia greater than 30 minutes, or penetrating head injury; intracerebral hemorrhage associated with a stroke or trauma; infections; intracranial hemorrhage; post-operative complications from brain surgery with significant brain hemorrhage; brain tumor; or stroke.

The MEP report indicates individuals with moderate to high-risk conditions

should not be certified. Drivers with a history of a single provoked seizure with low risk factors for recurrence should be recertified every year.

### Medical Review Board Recommendations and Agency Decision

FMCSA presented the MEP's findings and the *Evidence Report* to the Medical Review Board (MRB) for consideration. The MRB reviewed and considered the 2007 "Seizure Disorders and Commercial Driver Safety" evidence report and the 2007 MEP recommendations. The MRB recommended maintaining the current advisory criteria, which provide that "drivers with a history of epilepsy/seizures off anti-seizure medication and seizure-free for 10 years may be qualified to drive a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off antiseizure medication for a 5 year period or more" [Advisory criteria to 49 CFR 391.43(f)].

The Agency acknowledges the MRB's position on the issue but believes relevant current medical evidence supports a less conservative approach. The medical advisory criteria for epilepsy and other seizure or loss of consciousness episodes was based on the 1988 "Conference on Neurological Disorders and Commercial Drivers" (NITS Accession No. PB89-158950/AS). A copy of the report can be found in the docket referenced in this notice.

The MRB's recommendation treats all drivers who have experienced a seizure the same, regardless of individual medical conditions and circumstances. In addition, the recommendation to continue prohibiting drivers who are taking anti-seizure medication from operating a CMV in interstate commerce does not consider a driver's actual seizure history and time since the last seizure. The Agency has decided to use the 2007 MEP recommendations as the basis for evaluating applications for an exemption from the seizure regulation on an individual, case-by-case basis.

### C. Exemptions

Following individualized assessments of the exemption applications, including a review of detailed follow-up information requested from each applicant, FMCSA is granting exemptions from 49 CFR 391.41(b)(8) to 22 individuals. Under current FMCSA regulations, all of the 22 drivers receiving exemptions from 49 CFR 391.41(b)(8) would have been considered physically qualified to drive a CMV in interstate commerce except

that they presently take or have recently stopped taking anti-seizure medication. Twenty of the twenty-two drivers receiving an exemption currently take anti-seizure medication. For these 22 drivers, the primary obstacle to medical qualification was the FMCSA Advisory Criteria for Medical Examiners, based on the 1988 "Conference on Neurological Disorders and Commercial Drivers," stating that a driver should be off anti-seizure medication in order to drive in interstate commerce. In fact, the Advisory Criterion has little if anything to do with the actual risk of a seizure and more to do with assumptions about individuals who are taking anti-seizure medication.

Of the 22 drivers being granted an exemption, only two individuals have an actual diagnosis of epilepsy. In each of these cases, the treating physician's rationale in diagnosing epilepsy is unclear, as the individual experienced only a single seizure. The two drivers diagnosed with epilepsy both have been seizure-free for more than 21 years. Of the other twenty drivers, 5 have been seizure-free for more than 20 years and 15 for more than 4 years. Seven of the total 20 drivers have had one provoked or unprovoked seizure from a head injury, a medical procedure, or other known cause.

In addition to evaluating the medical status of each applicant, FMCSA evaluated the crash and violation data for the 22 drivers, some of whom currently drive a CMV in intrastate commerce. The Commercial Drivers License Information System (CDLIS) and the FMCSA Motor Carrier Management Information System (MCMIS) were searched for crash and violation data on the 22 applicants. The CDLIS and MCMIS systems had records on 13 of the applicants. The crash and violation history on each individual driver is listed in his or her biographical profile.

These exemptions are contingent on the driver maintaining a stable treatment regimen and remaining seizure-free during the 2-year exemption period. The exempted drivers must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free. The driver must undergo an annual medical examination by a medical examiner, as defined by 49 CFR 390.5, following the FMCSA's regulations for the physical qualifications for commercial motor vehicle drivers.

FMCSA published a notice of receipt of application and requested public comment during a 30 day public comment period in a *Federal Register*

<sup>3</sup>Engel, J., Fisher, R.S., Krauss, G.L., Krumholz, A., and Quigg, M.S., "Expert Panel Recommendations: Seizure Disorders and Commercial Motor Vehicle Driver Safety," FMCSA, October 15, 2007.

notice for each of the applicants. A short summary of the applicants' qualifications follows. A discussion of the comments received follows in section D. Comments. For those applicants who were denied an exemption, a notice will be published at a later date.

*Docket # FMCSA-2006-24278*

On October 13, 2006, FMCSA published a notice of receipt of exemption applications and requested public comment on four individuals (71 FR 60606; Docket number FMCSA-2006-24278). The comment period ended on November 13, 2006. Eight commenters responded to the **Federal Register** notice. A discussion of the comments is presented later in this document. FMCSA has determined that Wayne C. Sorenson, one of the applicants, should be granted an exemption. The Agency will issue a decision on the other drivers at a later date.

*Wayne C. Sorenson.* Mr. Sorenson is an intrastate CMV driver in Minnesota. Mr. Sorenson should be granted an exemption because he meets the MEP criteria of having no diagnosis of epilepsy, no seizures for the last 4 years, and being on a stable medication regimen for longer than 2 years. He first experienced seizures 17 years ago while sleeping, which were the result of an adverse reaction to medication. He has remained on a stable anti-seizure medication plan and has not had a seizure in 16 years. Mr. Sorenson states that he has no other diagnosed conditions, physical or psychological impairment, and no history of strength, sensory, or coordination impairment that would interfere with safe driving. Mr. Sorenson believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free for 16 years. Mr. Sorenson's driving record indicates an administrative loss of privileges for a period of 45 days in the state of Minnesota during 1994. He has no entries in MCMIS.

*Docket # FMCSA-2006-25854*

On August 9, 2007, FMCSA published a notice of receipt of exemption applications and requested public comments on nine individuals (72 FR 44916; Docket number FMCSA-2006-24854). The comment period ended on September 10, 2007. Five comments were received. A discussion of the comments is presented later in this document. Of the nine applicants, FMCSA determined that the following four individuals should be granted an

exemption. The Agency will issue a decision on the other drivers at a later date.

*David L. Basso.* Mr. Basso is an intrastate CMV driver in Ohio who delivers to local grocery and convenience stores. Mr. Basso should be granted an exemption because he meets the MEP criteria of having a diagnosis of epilepsy, no seizures for the last 8 years, and being on a stable medication regimen for longer than 2 years. He states that he has a clinical diagnosis of epilepsy. His doctor certified that he has been seizure-free since 1990 on his current dose of medication. Mr. Basso believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free since 1990. He has no entries in CDLIS or MCMIS.

*Dorothy Pokornowski.* Ms. Pokornowski is an intrastate CMV driver in Minnesota. Ms. Pokornowski should be granted an exemption because she meets the MEP criteria of having a diagnosis of epilepsy, no seizures for the last 8 years, and being on a stable medication regimen for longer than 2 years. She was diagnosed with epilepsy at age 22. Her doctor certified that she has been stable, with no seizure activity on medication, since 1985. Her doctor stated that her anti-seizure medication was changed in 2006 due to concerns about certain adverse side effects. Ms. Pokornowski has seizure-free driving experience for the past 26 years. FMCSA believes that she would reach a level of safety that is equivalent to the level of safety obtained by complying with the regulation because she continues to take her medication as directed by her doctor and gets her blood levels checked every year. She has one listing in CDLIS for a seat belt infraction not involving a CMV in 1997 and one possible injury crash, non-CMV in 2010. She has no entries in MCMIS.

*Brian J. Porter.* Mr. Porter is an intrastate CMV driver in Pennsylvania. Mr. Porter should be granted an exemption because he meets the MEP criteria of having no diagnosis of epilepsy, no seizures for the last 4 years, and being on a stable medication regimen for longer than 2 years. Mr. Porter states that he has been driving on the east coast for approximately 14 years. His neurologist states that he had a history of seizures but has not had any in the past 25 years. He is currently taking anti-seizure medication. Mr. Porter believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free for 25 years. Mr.

Porter's CDLIS record indicates that he has 3 speeding violations (1999, all non-CMV) and 2 erratic (unsafe) lane changes (1982, 2005), both non-CMV. He has an illegal possession of alcohol, non-CMV, in 1989. He has no entries in MCMIS.

*Michael W. Thomas.* Mr. Thomas is an intrastate CMV driver in Kansas. Mr. Thomas should be granted an exemption because he meets the MEP criteria of having no diagnosis of epilepsy, no seizures for the last 4 years, and being on a stable medication regimen for longer than 2 years. He was diagnosed with a seizure disorder in 1987. His doctor certified he has been seizure-free for over 20 years. He is currently taking an anti-seizure medication. His doctor certified that he is compliant with his treatment and can safely operate any CMV he is qualified to drive. Mr. Thomas has a state waiver from Kansas, and has been crash-free throughout his 12 year commercial driving career. Mr. Thomas believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free for over 20 years through stringent medical compliance using the same medication and dosage. He has no entries in CDLIS or MCMIS.

*Docket # FMCSA-2008-0355*

On December 10, 2008, FMCSA published a notice of receipt of exemption applications and requested public comment on 15 individuals (73 FR 75165; Docket number FMCSA-2008-0355). The comment period ended on January 9, 2009. FMCSA received five comments. A discussion of the comments is presented later in this document. Of the 15 applicants, FMCSA determined that the following six individuals should be granted an exemption. The Agency will issue a decision on the other drivers at a later date.

*Daniel Forth.* Mr. Forth is an intrastate CMV driver in New York. Mr. Forth should be granted an exemption because he meets the MEP criteria of having no diagnosis of epilepsy, no seizures for the last 4 years, and being on a stable medication regimen for longer than 2 years. He was diagnosed with a seizure disorder in 1979, and is currently taking an anti-seizure medication. His doctor certified that he has been seizure-free for 31 years on his current dose of medication. Mr. Forth believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has maintained medication control and has

remained seizure-free for 31 years. His CDLIS record indicates a signaling violation in 1992 (vehicle unknown) and a possible injury crash (vehicle unknown) in 1991. He has no entries in MCMIS. The Agency would like to publish a correction to the 2008 notice. Mr. Forth was published as having been seizure-free for 27 years with his current dose of medications; however, he has maintained good medication control and been seizure-free for 31 years.

*Garry A. Gantle.* Mr. Gantle is an intrastate CMV driver in Florida. Mr. Gantle should be granted an exemption because he meets the MEP criteria of having no diagnosis of epilepsy, no seizures for the last 4 years, and being on a stable medication regimen for longer than 2 years. He was diagnosed with a seizure disorder due to a head injury, not epilepsy, in 1980. He had two seizures in 2000, related to another medical condition, not epilepsy. In 2006, his anti-seizure medication was changed. His neurologist certified that his seizure disorder is well controlled. Mr. Gantle believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free on anti-seizure medication for 11 years. He has no entries in CDLIS or MCMIS.

*Steve L. Hunsaker.* Mr. Hunsaker is an intrastate CMV driver in Idaho. Mr. Hunsaker should be granted an exemption because he meets the MEP criteria of having a diagnosis of nocturnal seizures, no seizures for the last 4 years, and being on a stable medication regimen for longer than 2 years. He has a history of nocturnal seizures and is currently taking an anti-seizure medication. His doctor certified that he has been seizure-free for 22 years on his current dose of medication. Mr. Hunsaker believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has maintained good medication control and has remained seizure-free for 22 years. He has no entries in CDLIS or MCMIS.

*Shane Klementis.* Mr. Klementis is an intrastate CMV driver in New York. Mr. Klementis should be granted an exemption because he meets the MEP criteria of having no diagnosis of epilepsy, no seizures for the last 4 years, and being on stable medication for longer than 2 years. He was diagnosed with a seizure in 1982 and is currently taking an anti-seizure medication. His neurologist certified that his seizure disorder is well controlled. Mr. Klementis believes that he would achieve a level of safety that is

equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free on anti-seizure medication for 21 years. His MCMIS record lists one inspection infraction in 2009. He has no entries in CDLIS.

*Scott M. Rohlinger.* Mr. Rohlinger is an intrastate driver in Wisconsin. Mr. Rohlinger should be granted an exemption because he meets the MEP criteria of having no diagnosis of epilepsy, no seizures for the last 4 years, and has been off medication for 4 years. He was diagnosed with seizure disorder in 1987 and took anti-seizure medication for 20 years. He discontinued his medication in 2007. Mr. Rohlinger was involved in a motor vehicle crash that was linked to a possible seizure episode 24 years ago. His doctor certified that there were no seizure experiences prior to or following the event. Mr. Rohlinger believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free for 24 years. His doctor certified that he may never have experienced a seizure. His CDLIS record lists one property damage crash in 2007 (non-CMV). He has no entries in MCMIS.

*John B. Yates.* Mr. Yates is an intrastate CMV driver in West Virginia. Mr. Yates should be granted an exemption because he meets the MEP criteria of having no diagnosis of epilepsy, no seizures for the last 4 years, and being on stable medication for longer than 2 years. He has a history of seizures, diagnosed in 1976, and is currently taking an anti-seizure medication. According to his neurologist, his last seizure was in 1982. Mr. Yates believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has not had a seizure in 29 years while on medication. His CDLIS record indicates 2 charges of negligent driving not involving a CMV (1990, 1985) and one speeding violation in 1988 (non-CMV). He has no entries in MCMIS.

#### *Docket # FMCSA-2010-0203*

On July 2, 2010, FMCSA published a notice of receipt of exemption applications and requested comments from the public on 17 individuals (75 FR 38599; Docket number FMCSA-2010-0203). The comment period ended on August 2, 2010. FMCSA received 6 comments. A discussion of the comments is presented later in this document. Of the 17 applicants, FMCSA determined that the following eight

individuals should be granted an exemption. The Agency will issue a decision on the other drivers at a later date.

*Bruce B. Baum.* Mr. Baum is an intrastate CMV driver in New Mexico. Mr. Baum should be granted an exemption because he meets the MEP criteria of having no diagnosis of epilepsy, no seizures for the last 4 years, and being on a stable medication regimen for longer than 2 years. He experienced a single episode of a seizure in 1999 and is currently taking an anti-seizure medication. His neurologist states that he has been seizure-free since 2002. Mr. Baum believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free and compliant on medication for 7 years. He has no entries in CDLIS or MCMIS.

*Todd A. Davis.* Mr. Davis is an intrastate CMV driver in Wisconsin. Mr. Davis should be granted an exemption because he meets the MEP criteria of having no diagnosis of epilepsy, no seizures for the last 4 years, and being on a stable medication regimen for longer than 2 years. He experienced a complex partial seizure in 2007 and is currently taking an anti-seizure medication. His neurologist certified that Mr. Davis has been seizure free for 4 years. Mr. Davis believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free and compliant with medication since 2007. He has one 2010 CDLIS violation involving a non-injury crash with non-CMV operation indicated. He has no entries in MCMIS.

*James Dyer.* Mr. Dyer is an intrastate CMV driver in Texas. Mr. Dyer should be granted an exemption because he meets the MEP criteria of having no diagnosis of epilepsy, no seizures for the last 4 years, and being on no anti-seizure medication regimen for longer than 2 years. He experienced a single seizure-like event in 2008. He has been off medication for 3 years. His neurologist certified that Mr. Dyer has been seizure-free for 4 years. Mr. Dyer believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free since 2008. He has no entries in CDLIS or MCMIS.

*Christian E. Henry.* Mr. Henry is an intrastate CMV driver in Pennsylvania. Mr. Henry should be granted an exemption because he meets the MEP criteria of having no diagnosis of

epilepsy, no seizures for the last 4 years, and being on a stable medication regimen for longer than 2 years. He has a history of seizures during medical procedures when he was a juvenile. His doctor states that he has been seizure-free for 13-plus years on his current dose of medication and is stable to drive. Mr. Henry believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free since 1998, has a safe driving record, and he is compliant with his medication. He has no entries in CDLIS or MCMIS.

*Henrietta M. Ketcham.* Ms. Ketcham is an intrastate CMV driver in New York. Ms. Ketcham should be granted an exemption because she meets the MEP criteria of not having a diagnosis of epilepsy, no seizures for the last 4 years, and being on a stable medication regimen for longer than 2 years. She has a history of seizure disorder dating to 1992. She experienced her last seizure in 2001 and is currently taking an anti-seizure medication. Her doctor states that she has been seizure-free for 10 years on her current dose of medication and remains stable. Ms. Ketcham believes that she would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because she has maintained good medication control and has remained seizure-free for 10 years. During 1990, she had one violation listed in CDLIS for failing to obey a traffic control device (non-CMV) and two possible injury crashes (vehicle unknown). She has no entries in MCMIS.

*Joseph A. Suhy.* Mr. Suhy is an intrastate CMV driver in Pennsylvania. Mr. Suhy should be granted an exemption because he meets the MEP criteria of not having a diagnosis of epilepsy, no seizures for the last 4 years, and being on a stable medication regimen for longer than 2 years. He was diagnosed with a seizure disorder after a head injury in 1986. His last seizure was in 1991 and at the time he was on an anti-seizure medication. His anti-seizure medication was changed in 1991. He remains on this medication to date. His doctor states that he has been seizure-free for 20 years. Mr. Suhy believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free and is compliant with treatment. He has no entries in CDLIS or MCMIS.

*Paul C. Warren.* Mr. Warren is an intrastate CMV driver in Maine. Mr.

Warren should be granted an exemption because he meets the MEP criteria of not having a diagnosis of epilepsy, no seizures for the last 4 years, and being on a stable medication regimen for longer than 2 years. He was originally diagnosed with epilepsy in 2000. He experienced his last seizure in 2002 and is currently taking an anti-seizure medication. His neurologist states that he has been seizure-free for 9 years and is compliant with treatment. Mr. Warren believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has a history of safe driving in CMVs and has remained seizure-free for 9 years.

The Agency would like to publish a correction to the July 2, 2010, notice. Mr. Warren was described as having been diagnosed with epilepsy. His actual diagnosis is one of partial complex seizures and he qualifies for an exemption based on having the seizure-free period of 4 years recommended by the MEP. He has no entries in CDLIS or MCMIS.

*Brian H. Wetzel.* Mr. Wetzel is an intrastate CMV driver in Missouri. Mr. Wetzel should be granted an exemption because he meets the MEP criteria of not having a diagnosis of epilepsy, no seizures for the last 4 years, and being on a stable medication regimen for longer than 2 years. He was diagnosed with a seizure disorder after brain surgery in 1976. He experienced his last seizure in 1995 and is currently taking an anti-seizure medication. His neurologist's medical opinion is that he has been seizure-free for 16 years and is safe to drive. Mr. Wetzel believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has been seizure free for 16 years and is compliant with treatment. He has no entries in CDLIS or MCMIS.

#### *Docket # FMCSA-2011-0089*

On April 5, 2011, FMCSA published a notice of receipt of exemption applications from 8 individuals, and requested comments from the public (76 FR18822). The comment period ended on May 5, 2011. FMCSA received two comments. A discussion of the comments is presented later in this document. Of the 8 applicants published, the following 3 individuals are being granted an exemption. The Agency will issue a decision on the other drivers at a later date.

*Donald Schutz.* Mr. Schutz is an intrastate CMV driver in Ohio. Mr. Schutz should be granted an exemption since he meets the MEP criteria and would achieve a level of safety that is

equivalent to the level of safety obtained by complying with the regulation. He has remained seizure-free for 9 years and has been on anti-seizure medication since 2002. He states that he was diagnosed with a brain tumor in 2002 and that he suffered a seizure due to a tumor in July of that year. He had brain surgery in November 2002 and the tumor was successfully removed. Mr. Schutz has been taking anti-seizure medication since that time and has had no further seizures. He has his medication levels checked often by blood tests and remains compliant with his regimen. Mr. Schutz's CDLIS report shows a non-CMV inability-to-control violation in 2002. He has no entries in MCMIS.

*Robin L. Sherwood.* Mr. Sherwood is an intrastate CMV driver in Idaho. Mr. Sherwood should be granted an exemption. He would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation. He has remained seizure-free since 1997 and is compliant with his medication regimen for seizures. He states that he had a seizure caused by a brain tumor in 1997 and that the tumor was successfully removed during the same year. Mr. Sherwood has taken anti-seizure medication since 1997 with no further seizure activity. His doctor supports Mr. Sherwood's application for exemption because of his successful surgery and medication compliance. His CDLIS report states that he has a non-CMV speeding violation in 1991. He has no entries in MCMIS.

*Frank Eveland.* Mr. Eveland is an intrastate CMV driver in Wisconsin. Mr. Eveland should be granted an exemption. He meets the MEP criteria and has remained seizure-free for 8 years. He has been on anti-seizure medication since 2003. He was diagnosed with one unprovoked seizure in 2003 and placed on anti-seizure medication at that time. His physician states that Mr. Eveland has had no further seizures and that his medication level is checked regularly by blood tests. The doctor states that Mr. Eveland is safe to operate a motor vehicle and that he is compliant with his medication. Mr. Eveland believes he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has maintained good medication control and has remained seizure-free for 8 years. Mr. Eveland's CDLIS report states that he has a property damage/non-injury crash in 2011, a non-CMV violation. He has no entries in MCMIS.

## D. Comments

In response to the five notices, FMCSA received 26 different comments. Comments that relate specifically to applicants other than the ones covered in this notice will be addressed in a subsequent notice of denial of application.

### *Individual Assessment of Applicants for Exemption*

On behalf of the Epilepsy Foundation, Brien J. Smith, MD, urged the establishment of a thorough science-based process in reviewing exemption requests, including consideration of each individual's level of risk to public safety (FMCSA-2004-24278-0012). The Epilepsy Foundation expressed concern that the current standard creates a "blanket exclusion for persons with a history of recurrent seizures, without distinction as to the type of seizure." The Epilepsy Foundation asserted that the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. (ADA), and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 701, et seq. (Rehabilitation Act), prohibit blanket exclusions and require individualized assessments of fitness and risk. Based on more recent medical knowledge and strides in treatment of epilepsy, it called on FMCSA to eliminate its blanket disqualification of persons with epilepsy seeking licenses to operate a CMV. The Foundation recommended that FMCSA establish new guidelines for licensing commercial drivers and give greater weight to the exemption, including documentation on an individual's medication compliance posture and the absence of other precipitating conditions.

**FMCSA Response:** FMCSA notes that the ADA permits the establishment of regulations concerning minimum levels of physical qualifications for CMV drivers, which may be tantamount to blanket exclusions.<sup>4</sup> Notwithstanding

<sup>4</sup> The Conference Report specifically emphasized that the ADA is not meant to "override any legitimate medical standards established by Federal, State or local law, or by employers for applicants for safety or security positions, if the medical standards are consistent with [the ADA]." See Conference Report on S.933, Americans with Disabilities Act: Joint Explanatory Statement of the Committee of Conference, H.R. Rep. No. 596, 101st Cong., 2d Sess. at 59 (1990), reprinted in 136 Cong. Rec. H 4582, 4597 (Daily ed. July 12, 1990). In *Albertson's Inc. v. Kirkingburg*, 527 U.S. 555, (1999), the Supreme Court recognized that federal safety rules may limit application of the ADA as a matter of law, citing the Senate Labor and Human Resources Committee report on the ADA, which stated that a "person with a disability applying for or currently holding a job subject to [Department of Transportation standards for drivers] must be able to satisfy these physical qualifications standards in order to be considered a qualified individual with a disability under [the ADA]." 527 U.S. at 573.

the minimum qualification requirements, FMCSA agrees with the Epilepsy Foundation that the general exemption process for CMV drivers with disabilities allows FMCSA to consider new developments in medicines or adaptations that reduce significantly the safety risk created by certain medical conditions. While FMCSA is not initiating a new exemption program, similar to the Agency's vision and diabetes exemption programs, we are acknowledging advances in treatment of individuals who have experienced a seizure.

The Agency conducted a comprehensive literature review and convened a panel of medical experts in epilepsy and neurology to address key questions and make recommendations concerning new guidelines for CMV drivers. FMCSA is conducting individualized case assessments of persons seeking an exemption from § 391.41(b)(8). The Agency seeks to assess safety risks, medical history, and compliance to determine whether there is a likelihood the individual will experience a seizure while operating a CMV in interstate commerce on or off medication. The goal is to ensure a minimal safety risk to the driver or the travelling public.

### *No Exemptions for Epilepsy*

Dr. Merris T. Young, MD, stated, "I personally and professionally feel that any allowance of individuals diagnosed with epilepsy to operate such potentially dangerous equipment before such updated medical information is available is unacceptable, because it would place the public health and safety and significantly increased risk" (FMCSA-2006-24278-0007).

**FMCSA Response:** The Agency believes that evaluating each individual's medical history on a case-by-case basis and investigating the past driving/violation record ensures an acceptable level of safety for a driver who has not experienced a seizure for an extended period of time. Drivers, who have been seizure-free, on or off medication for at least four years, pose a minimal risk to public safety. The Agency considered the 2007 *Evidence Report* and the 2007 MEP Recommendations to determine the driver's level of risk for recurrence of seizure. The Agency believes this data and information addresses Dr. Young's concerns.

### *Concerns About Medical Examiners*

Daniel M. Janiga, MD, a medical director for multiple companies that hire drivers who require medical examiners' certificates, indicated his

concern that drivers may go "doctor shopping" to find a medical examiner who will support their requests for exemptions (FMCSA-2006-24278-0003). Because of the difficulty of managing seizure disorders (for example, medications may lower seizure thresholds) and monitoring drivers, he favored "staying with our current rules/guidelines" until there are evidence-based studies on the effects of "fatigue, medications such as Zyban, physical conditions such as sleep apnea\* \* \*" on lowering seizure thresholds and how they relate to driving accidents.

**FMCSA Response:** The Agency acknowledges Dr. Janiga's concern about drivers who have experienced a seizure, take medication and fail to share that information with their Medical Examiners. Allowing drivers an option for an exemption, especially those who have not experienced a seizure in several years, may decrease the number of drivers who fail to disclose their medical history to the Medical Examiner. The MEP recommendations provide a practical solution to protect both public safety and the drivers, need for employment.

### *Inadequate Basis for the Exemption*

Advocates for Highway and Auto Safety (Advocates) wrote that the Agency's position that some drivers who are seizure free should be granted exemptions is unsupported by "medical research, statistical data, legal decisions, or any published determination by the Secretary of Transportation" (FMCSA-2006-24278-0011). They stated that the underlying rationale for exemptions from the current rule was not based on recent scientific or medical studies and that the Agency had presented no medical or other information on which it can make a determination. In 2006, Advocates recommended waiting until "convincing evidence [was] presented that medical authorities can determine a shorter period is appropriate for some or all persons with seizure histories." In a later comment, Advocates recommended that the Agency update the driver physical and medical qualifications based on current medical norms and science (FMCSA-2006-25854-0005). The FMCSA notes that in requesting public comments for an exemption application, the Agency did not offer opinions or views whether the exemption should be granted or denied.

**FMCSA Response:** The Agency believes the Advocates' concerns were appropriate based on information available to the Agency and the public in 2006. However, the findings of the 2007 comprehensive literature review

and the MEP recommendations provide current information that the Agency considered in making the determination that an exemption would likely achieve a level of safety that is equivalent to or greater than the level achieved without the exemption. The Agency's advisory criteria recommending the 10-year seizure-free/off medication period for driving a CMV was established by a panel of neurologists in 1988. In 2007, the MEP updated the information regarding treatment of seizure disorders and the likelihood of seizure recurrence for a variety of seizure disorders and situations. FMCSA believes that the current research and information supersede the information presented by the panel of neurologists in the 1988, "Conference on Neurological Disorders and Commercial Drivers." Also, the drivers covered by the exemptions have been free of seizures for a period of four years to more than 20 years.

#### *Inadequate Information About Individual Applicants*

Advocates stated that "unless the Agency can document that individual applicants do not pose an increased safety risk when operating a CMV, as compared with persons who have not had a seizure or seizure history, then the Agency cannot grant exemptions" (FMCSA-2006-24278-0011). FMCSA is required by 49 U.S.C. 31315(b)(4) to publish a notice and provide an opportunity for the public to comment on every applicant for an exemption, irrespective of whether the Agency believes the arguments offered by the applicant warrant the granting of an exemption. In fact, the Agency reserves judgement until after the notice and comment period. Advocates commented that "the brief statements presented in the notice for each applicant do not provide the medical evidence based in individualized testing necessary to meet the legal burden for granting exemptions." Advocates wrote that "FMCSA has not developed any means for performing individualized testing."

Advocates stated that two of the applicants were diagnosed with epilepsy and therefore should not be granted an exemption. Advocates also noted difficulties with applicants in two notices including "recent seizure events" and the fact that some drivers continue to take anti-seizure medication: "Thus, they do not meet the current requirements."

Mr. Steven A. Tudor (FMCSA 2006-25854-0003) commented that three drivers did not have their home States listed and that this would preclude their States from knowing about the **Federal Register** listing.

*FMCSA Response:* In response to the Advocates comment regarding medical evidence, FMCSA reviews each individual applicant, assesses the driving record and the individual's medical condition, and determines on a case-by-case basis the driver's risk to public safety. FMCSA is not granting drivers with recent seizure events an exemption based on the MEP recommendations. The Agency has made the decision to use the more current 2007 MEP recommendations to grant exemptions on a case-by-case basis rather than to judge all drivers by the criteria established in the 1988 "Conference on Neurological Disorders and Commercial Drivers" report. The Agency evaluated each individual's medical condition, comparing it to the 2007 MEP. In addition, to ensure the safest roads possible, the Agency researched each individual's driving record. Further, we believe that each driver has shown evidence of compliance with his or her treatment regimen. Thus, we believe that the individuals listed above have a level of safety equivalent to those drivers who do not suffer from a seizure disorder.

The Agency believes, however, that a driver who has not experienced a seizure in years, should not be precluded from driving a CMV in interstate commerce merely because he remains on anti-seizure medication. Generally, the Agency does not preclude drivers with medical conditions, other than seizure disorders, from operating a CMV in interstate commerce merely because they are taking medication. In addition, all drivers must be stable on the medication for 2 years, which is a long enough period of time for the driver and his treating physician to note any adverse reactions to the medication such as excessive drowsiness. As mentioned in the background section, only those drivers meeting the MEP criteria are being granted an exemption.

In response to Advocates' concern about the brevity of FMCSA's statement on each seizure exemption applicant, the Agency does not post all the medical information provided by the drivers. The Agency provides information about the specific medical condition for which the exemption is being sought. FMCSA summarizes the information for the public's view, as we do for the **Federal Register** notices announcing application requests for vision and diabetes exemptions from the rules. FMCSA is consistent in the way that all medical exemptions are handled. We have extensive documentation used to verify that the medical condition for which the exemption is being sought is the only condition to prevent the drivers from

operating a CMV in interstate commerce. The Agency provides a minimal amount of information to announce the exemption request to protect the driver from unnecessary disclosure of personal and medically confidential information.

In response to Mr. Tudor's comment, FMCSA added the home States to the each driver's biographical statement in this **Federal Register** notice.

#### *MRB Criteria*

Advocates expressed concerns that a coherent policy is needed which addresses medical and physical qualifications of CMV drivers, and urged a review of the current standards by the MRB (FMCSA-2006-25854-0005). Advocates stated that the MRB should be the body that makes the determination.

*FMCSA Response:* FMCSA's MRB is a Federal Advisory Committee whose role is to provide scientific and medical advice to FMCSA on ongoing medical issues, including the identification of appropriate physical qualifications of CMV drivers, medical standards, and educational curriculum for training medical examiners who certify that drivers meet the physical qualification standards and functional tests for drivers with disabilities. The MRB reviews all current FMCSA medical standards and makes recommendations to FMCSA for new science-based standards and guidelines to ensure that drivers operating CMVs in interstate commerce, as defined in 49 CFR 390.5, are physically capable. Thus, the MRB makes recommendations but the Agency is the deciding body, determining which of the MRB's advice and recommendations to adopt, 49 U.S.C. 31149(a)(1) and (c)(1). The Agency does not believe it was Congress's intent that the MRB serve as a medical certification review board for each individual seeking an exemption.

#### *Support for Applicants and the Exemptions*

Lori A. Strom wrote in support of drivers who have been seizure-free for a long time; she cited the 20-year safety record of her husband, a CMV operator with a seizure disorder on seizure medication, as a positive example (FMCSA-2006-25854-0006). Mr. Strom operates under an intrastate exemption granted by the State of California. An anonymous writer (FMCSA-2006-25854-0004) and Mr. V. Ross (FMCSA-2006-25854-0002) both agreed that drivers exhibiting long-term control of their seizure disorders (more than 5 years) should be granted exemptions. Mr. Ross warned against giving

exemptions to drivers who had shown only short-term control. Pamela Stern (FMCSA–2008–0355–0002), Eugene Dobrowolski (FMCSA–2008–0355–0005), and Kelly Dobrowolski (FMCSA–2008–0355–0005) submitted letters in support of driver John M. Dobrowolski's exemption application.

Mr. Michael W. Thomas, a CMV driver, wrote to support fair treatment for drivers with controlled seizure disorders (FMCSA–2010–0203–0002). He also stated that his application for exemption had not been acted on by FMCSA. Mr. Todd Davis wrote in favor of his own application and indicated that he has successfully complied with his current medication regimen since 2007 (FMCSA–2010–0203–0004 and 0006). Frankie Linn Eveland stated, "I believe it is perfectly safe for these individuals to operate a Commercial Vehicle with the current conditions under complete control. It seems to be discrimination if this medical condition needs special conditions" (FMCSA–2010–0203–0007). An anonymous commenter wrote in support of his own application (FMCSA–2010–0203–0003), identifying only that he was an exemption applicant. James Dyer commented about himself that "according to my Neurologist, I experienced a single seizure like event in 2008. I have been seizure-free since and have been off anti-seizure medication since April 2009" (FMCSA–2010–0203–0005).

Two commenters wrote in support of Mr. Robin Sherwood. Joe Helsley commented that he has known Mr. Sherwood for 6 years and was his employer (FMCSA–2011–0089–0002). He stated that Mr. Sherwood is a reliable and responsible truck driver and confirmed that he has never had any seizures while working for him. Mr. Dick Rankins commented that Mr. Sherwood is an exemplary driver, was safe in carrying out his duties, and that he would hire Mr. Sherwood at anytime due to his work and reputation (FMCSA–2011–0089–0003).

*FMCSA Response:* FMCSA acknowledges support for these exemptions. The Agency carefully reviewed all the comments about every individual. Mr. Thomas' application was reviewed and published (72 FR 44916, Aug. 9, 2007); he is granted an exemption in this notice. Mr. Dyer has been seizure free for 4 years and is granted an exemption in this notice. Comments that relate specifically to applicants other than those covered in this notice will be addressed in a subsequent notice.

#### *Concerns About Discrimination and the ADA*

Bonnie (no last name given) wrote that her husband had been discriminated against and terminated by his employer because he has a controlled seizure disorder (FMCSA–2008–0355–0007). She stated the need to rewrite the rule on seizure disorders to eliminate "loopholes" allowing this practice. Doug Foster stated that the current standards for exemption from the seizure rule are too high and that there is no collected data about epilepsy-related crashes (FMCSA–2008–0355–0003). Mr. Foster expressed concern that current rules may violate ADA provisions regarding people with epilepsy or seizure disorders.

*FMCSA Response:* FMCSA believes that the individualized assessment of exemption applicants established by this **Federal Register** notice, using the 2007 MEP Recommendations, addresses the commenters' concerns about discrimination while maintaining an equivalent level of public safety. Regarding comments related to the ADA, we note that in passing the ADA, Congress explicitly recognized that individuals must meet minimum physical qualifications for operating CMVs in interstate commerce. The Agency's current approach, articulated in this **Federal Register** notice, nevertheless meets the spirit of the ADA by conducting an individualized assessment of each exemption applicants' medical history and the concomitant level of safety risk. The Agency's case-by-case review of exemption applicants and its accompanying advisory criteria provides the best assurance of drivers being treated fairly while at the same time addressing public safety concerns. The Agency used the best available data to support the recommendations.

#### **E. Basis for Exemption**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the epilepsy/seizure standard in 49 CFR 391.41(b)(8) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, the Agency's analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

#### *Conclusion*

The Agency is granting exemptions from the epilepsy standard, 49 CFR 391.41(b)(8), to 22 individuals based on a thorough evaluation of each driver's qualifications, safety experience, and medical condition. Safety analysis of information relating to these 22 applicants meets the burden of showing that granting the exemptions would achieve a level of safety that is equivalent to or greater than the level that would be achieved without the exemption. By granting the exemptions, the CMV industry will gain 22 highly trained and experienced drivers. In accordance with 49 U.S.C. 31315, each exemption will be valid for 2 years with annual recertification required unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

FMCSA exempts the following 22 drivers for a period of 2 years with annual medical certification required: Wayne C. Sorenson (MN); David L. Basso (OH); Michael W. Thomas (KS); Garry W. Gantle (FL); Steve L. Hunsaker (ID); John B. Yates (WV); Henrietta M. Ketcham (NY); Joseph A. Suhy (PA); Dorothy Pokornowski (MN); Brian J. Porter (PA); Daniel Forth (NY); Shane Klementis (NY); Scott M. Rohlinger (WI); Bruce B. Baum (NM); Todd A. Davis (WI); James Dyer (TX); Christian E. Henry (PA); Paul C. Warren (ME); Brian H. Wetzel (MO); Donald Schutz (OH); Robin L. Sherwood (ID), and Frank Eveland (WI) from the prohibition of CMV operations by persons with a clinical diagnosis of epilepsy or seizures. If the exemption is still in effect at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

#### **Appendix—MEP Opinion**

The following is an excerpt from the "Expert Panel Recommendations: Seizure Disorders and Commercial Motor Vehicle Driver Safety," presented to FMCSA on October 15, 2007.

#### **Recommended Changes to Original Guidelines**

The MEP recommended that FMCSA make substantial changes to the current seizure disorder guidelines. These recommendations were based on a combination of evidence provided by the Evidence Report titled, "Seizure Disorders and Commercial Motor

Vehicle Driver Safety” and other sources. Below we present the recommendations of the MEP and provide justification for these recommendations.

### Guideline 1: Fitness-to-drive certification of individuals with a history of epilepsy

The MEP recommended that the current guidelines pertaining to individuals who have a diagnosis of epilepsy (Appendix A) be replaced with the following:

- A history of epilepsy precludes an individual from obtaining unconditional certification to drive a CMV for the purposes of interstate commerce.
- A history of epilepsy, however, should not unconditionally exclude all individuals from driving a CMV; conditional certification may be possible in some instances.
- An individual with a history of epilepsy may obtain conditional certification (or maintaining certification under conditional status) to drive a CMV if that individual meets the following criteria:
  - Individual must have been seizure free for a minimum of 8 years on or off anti-seizure medication; *AND*
  - If all anti-seizure medications have been stopped, the individual must have been seizure free for a minimum of 8 years from the time of medication cessation; *OR*
  - If still using anti-seizure medication, the individual must have been on a stable medication regimen for a minimum of 2 years.
  - An individual with a history of epilepsy who has been granted conditional certification to drive a CMV must be recertified on an annual basis.

### Guideline 2: Fitness-to-drive certification of individuals with a history of a single unprovoked seizure

The MEP recommended that the current guideline pertaining to individuals who have experienced a single, unprovoked seizure (Appendix A) be replaced with the following guideline:

- A history of experiencing a single unprovoked seizure precludes an individual from obtaining unconditional certification to drive a CMV for the purposes of interstate commerce.
- A history of experiencing a single unprovoked seizure, however, should not unconditionally exclude all individuals from driving a CMV; conditional certification may be possible in some instances.
- An individual with a history of a single, unprovoked seizure may obtain conditional certification (or maintaining certification under conditional status) to drive a CMV if that individual meets the following criteria:
  - Individual must have been seizure free for a minimum of 4 years on or off anti-seizure medication; *AND*
  - If all anti-seizure medications have been stopped, the individual must have been seizure free for a minimum of 4 years from the time of medication cessation; *OR*
  - If still using anti-seizure medication, the individual must have been on a stable medication regimen for a minimum of 2 years.
  - An individual with a history of a single, unprovoked seizure who has been granted

conditional certification to drive a CMV must be recertified on a biennial basis.

### Guideline 3: Fitness-to-drive certification of individuals with a history of a provoked seizure or seizures;

This category of seizure pertains to a provoked seizure. Certification may be allowed if the individual is at low risk for again encountering the factor that precipitated the seizure or of having further seizures. Patients whose seizures are provoked by sleep deprivation, photic or visual pattern stimulation will not be considered for certification under this guideline, since these patients may have underlying epilepsy. Conditional certification of such individuals will be considered according to Guideline 1. The MEP recommended that the current guideline pertaining to individuals who have experienced a symptomatic seizure or seizures (Appendix A) be replaced with the following guideline:

- A history of experiencing a single provoked seizure should not automatically preclude an individual from obtaining unconditional certification to drive a CMV for the purposes of interstate commerce.
- Whether an individual with such a history can be unconditionally certified requires an individual evaluation to ascertain that the individual is at a sufficiently low recurrence risk for again encountering the factor that precipitated the seizure or of having further seizures.
  - Examples of low risk for recurrence include:
    - A lidocaine-induced seizure during a dental appointment.
    - A concussive seizure, loss of consciousness ≤30 minutes, no penetrating injury.
    - A seizure due to syncope not likely to recur while driving.
    - A seizure from an acute metabolic derangement not likely to recur.
    - Drug withdrawal.
    - Conditional certification may be considered for individuals with moderate-to-high risk factors for recurrence provided that the following conditions are met:
      - Individual must have been seizure free for a minimum of 8 years on or off anti-seizure medication; *AND*
      - If all anti-seizure medications have been stopped, the individual must have been seizure free for a minimum of 8 years from the time of medication cessation; *OR*
      - If still using anti-seizure medication, the individual must have been on a stable medication regimen for a minimum of 2 years.
      - An individual with a history of epilepsy who has been granted conditional certification to drive a CMV must be recertified on an annual basis.
      - Examples of seizure-provoking conditions that are at moderate-to-high risk for further seizures, and therefore would weigh against certification, include the following:
        - Head injury with loss of consciousness or amnesia ≥ 30 minutes or penetrating head injury.
        - Intracerebral hemorrhage of any etiology, including stroke and trauma.

- Brain infection: encephalitis, meningitis, abscess, cysticercosis.
- Stroke.
- Intracranial hemorrhage.
- Post-operative brain surgery with significant brain hemorrhage.
- Brain tumor.

Issued on: January 10, 2013.

**William “Bill” Bronrott,**

*Deputy Administrator, for Federal Motor Carrier Safety Administration.*

[FR Doc. 2013–00709 Filed 1–11–13; 4:15 pm]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0094]

### Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

**ACTION:** Notice of applications for exemption, request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 14 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce. The regulation and the associated advisory criteria published in the Code of Federal Regulations as the “Instructions for Performing and Recording Physical Examinations” have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs for 2 years in interstate commerce.

**DATES:** Comments must be received on or before February 14, 2013.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2012–0094—using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.