

obtaining an exemption from the vision requirements (71 FR 32183; 71 FR 41310; 72 FR 12666; 72 FR 25831; 73 FR 61925; 74 FR 11988; 74 FR 15586; 74 FR 21427; 75 FR 54958; 75 FR 70078; 76 FR 9856 76 FR 17481; 76 FR 17483; 76 FR 20076; 76 FR 21796; 76 FR 28125). Each of these 15 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

#### Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by May 24, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 15 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would

otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: April 12, 2013.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0106]

#### 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 10 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 May 24, 2013.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2013-0106- using any of the following methods:

- Federal eRulemaking Portal: Go to <http://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: 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 <http://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 <http://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:** Anyone may search the electronic form of all comments received into any of our 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, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316; January 17, 2008). This information is also available at <http://Docketinfo.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Elaine Papp, Chief, Medical Programs Division, (202) 366-4001, or via email at [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), or by letter 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

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption 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 statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 10 individuals listed in this notice have recently requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate CMVs in intrastate commerce. The advisory criteria indicate that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause which 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. Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate 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 anti-seizure medication for a 5-year period or more.

## Summary of Applications

### *Steven L. Gordon*

Mr. Gordon is a 57 year-old CMV driver in Montana. He has a history of seizures as a result of a head injury in 1986 and his last seizure was in 2005. He takes anti-seizure medication with the dosage and frequency remaining the same for over 7 years. If granted the exemption, he would like to drive a tractor trailer. His physician states he is supportive of Mr. Gordon receiving an exemption to operate a CMV.

### *Kevin A. Jandreau*

Mr. Jandreau is a 46 year-old Class A CMV driver in Maine. He has a diagnosis of seizure disorder. He has remained seizure free for at least 15 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 15 years. If granted the exemption, he would like to drive a tractor trailer.

### *Jason C. Kirkham*

Mr. Kirkham is a 39 year-old CMV driver in Wisconsin. He has a history of seizures and has remained seizure free for 17 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 17 years. If granted the exemption, he would like to drive straight trucks, cranes, or heavy equipment. His physician states he is supportive of Mr. Kirkham receiving an exemption.

### *James M. Kivett, Jr.*

Mr. Kivett is a 49 year-old CMV driver in Ohio. He has a history of seizures due to a brain tumor, which was removed in 2005. He has remained seizure free for more than 1 year. He takes anti-seizure medication. If granted the exemption, he would like to drive a tractor trailer. His physician states he is supportive of Mr. Kivett returning to work as a commercial driver after 3 months.

### *William P. Lago*

Mr. Lago is a 26 year-old driver in Massachusetts. He has a diagnosis of epilepsy and has remained seizure free for 8 years. He takes anti-seizure medication with the dosage and frequency remaining the same since June 2010. If granted the exemption, he would like to drive a dump truck.

### *Michael K. Lail*

Mr. Lail is a 54 year-old CMV driver in North Carolina. He had a single post-traumatic seizure 46 years ago and has remained seizure free since that time. Mr. Lail has not taken anti-seizure medication since July 2012. If granted the exemption, he would like to drive a

tractor trailer. His physician states he is supportive of Mr. Lail receiving an exemption.

### *Verbon T. Latta*

Mr. Latta is a 43 year-old driver in Alabama. He has had 2 seizures, both in May of 2007, 13 days apart while on a new medication following back surgery. He has remained seizure free since that time. He takes anti-seizure medication with the dosage and frequency remaining the same for 6 years. If granted the exemption, he would like to drive a tractor trailer.

### *Jeffrey P. Moore*

Mr. Moore is a 36 year-old driver in New York. He has a diagnosis of seizure disorder and his last seizure was in July of 1999. He has remained seizure free since that time. He takes anti-seizure medication with the dosage and frequency remaining the same for over 12 years. If granted the exemption, he would like to drive a box truck or van.

### *Michael E. Righter*

Mr. Righter is a 38 year-old driver in Pennsylvania. Mr. Righter has a diagnosis of seizure disorder and his last seizure was in March of 1987. He has remained seizure free since that time. He takes anti-seizure medication with the dosage and frequency remaining the same for over 20 years. If granted the exemption, he would like to drive a Class B truck with air brakes.

### *Douglas S. Slagel*

Mr. Slagel is a 48 year-old CMV driver in Ohio. Mr. Slagel has a diagnosis of seizure disorder and his last seizure was in 1977. He has remained seizure free since that time. He takes anti-seizure medication with the dosage and frequency remaining the same for over 20 years. If granted the exemption, he would like to a Class B truck with air brakes. His physician is supportive of Mr. Slagel receiving his exemption.

## Request for Comments

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

Issued on: April 9, 2013.

### **Larry W. Minor,**

*Associate Administrator for Policy.*

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