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Issued On: July 8, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–16680 Filed 7–11–13; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0355; FMCSA–2011–0389, FMCSA–2012–0050, FMCSA–2012–0094, FMCSA 2012–0294]

### 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 24 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 24 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 July 12, 2013. The exemptions expire on July 13, 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 24 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.

#### 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.

<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.

<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.

*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. Stable means no changes in medication, dosage, or frequency of medication administration. 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 anti-seizure 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 24 individuals. Under current FMCSA regulations, all of the 24 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. All but one of the 24 drivers receiving an exemption currently take anti-seizure medication. For these 24 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.

In addition to evaluating the medical status of each applicant, FMCSA evaluated the crash and violation data for the 24 drivers, some of whom currently drive a CMV in intrastate commerce. The Commercial Driver's License Information System (CDLIS) and the FMCSA Motor Carrier Management Information System (MCMIS) were searched for crash and violation data on the 24 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 CMV drivers.

FMCSA published a notice of receipt of application and requested public comment during a 30 day public comment period in a **Federal Register** 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-2008-0355*

On December 10, 2008, FMCSA published a notice of receipt of exemption applications and requested public comment on 15 individuals (Docket number FMCSA-2008-0355). The comment period ended on January 10, 2009. Seven commenters responded to the **Federal Register** notice. A discussion of the comments is presented later in this document. FMCSA has determined that one of these applicants should be granted an exemption. The Agency will issue a decision on the other drivers at a later date.

*Prince Austin Jr.* Mr. Austin is a 55-year-old intrastate driver in Ohio. Mr. Austin should be granted an exemption because he meets the MEP criteria of being seizure-free 8 years in May 2013. He was diagnosed with epilepsy in 1974. He has remained on anti-seizure medication with the dose and frequency

remaining the same for the last eight years. His personal physician states that he and Mr. Austin's treating neurologist are supportive of the exemption. Mr. Austin has no recent entries in CDLIS or MCMIS.

*Docket #FMCSA-2011-0389*

On April 5, 2011, FMCSA published a notice of receipt of exemption applications and requested public comment on 8 individuals (Docket number FMCSA-2011-0094). The comment period ended on May 5, 2011. Seven commenters responded to the **Federal Register** notice. A discussion of the comments is presented later in this document. FMCSA has determined that one of these applicants should be granted an exemption. The Agency will issue a decision on the other drivers at a later date.

*Frank Cekovic.* Mr. Cekovic is 45-year-old intrastate CMV driver in the state of Pennsylvania. Mr. Cekovic should be granted an exemption because he meets the MEP criteria of having no diagnosis of epilepsy and being seizure-free four years as of April 2013. He was diagnosed with a seizure disorder in January 2009 and placed on the anti-seizure medication Keppra at that time. His treating physician states that he is compliant with his medication regimen and that his risk of a recurrent seizure is very low. The CMV that he operates is a "bucket truck" for a power and light company, and Mr. Cekovic states that the maximum distance he drives between job sites is no more than 20 miles per day. He has 2 minor speeding entries on CDLIS, one each in 2009 and 2010, and no entries in MCMIS.

*Docket #FMCSA-2011-0389*

On January 5, 2012, FMCSA published a notice of receipt of exemption applications and requested public comment on 15 individuals (Docket number FMCSA-2011-0389). The comment period ended on February 5, 2012. Seven commenters responded to the **Federal Register** notice. A discussion of the comments is presented later in this document. FMCSA has determined that four of the applicants should be granted an exemption. The Agency will issue a decision on the other drivers at a later date.

*Joseph D'Angelo.* Mr. D'Angelo is a 56-year-old CMV driver in New York. Mr. D'Angelo should be granted an exemption because he meets the MEP criteria by having no seizures for the last 43 years, and being on a stable medication regimen for over 10 years. He experienced a single seizure at age 14 in 1970. Mr. D'Angelo 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 43 years. He has no entries in CDLIS or MCMIS.

*Ricki Gutermann.* Mr. Gutermann is a 46-year-old intrastate CMV driver in Wisconsin. Mr. Gutermann should be granted an exemption because he meets the MEP criteria by having no seizures for the last 15 years, and being on a stable medication regimen for 15 years. He previously held a CDL and drove a truck for Mobil Oil. He was involved in a non-job related motor vehicle accident and sustained a traumatic head injury. He was prescribed anti-seizure medication and had two seizures in 1998 while physicians were adjusting his medication. His last seizure was July 1998. His physician states he is taking the same medication, with dose and frequency remaining the same for 15 years and states he believes it is appropriate to allow Mr. Gutermann to be recertified to drive commercial vehicles. Mr. Gutermann has no entries in CDLIS or MCMIS.

*David Kietzman.* Mr. Kietzman is a 50-year-old intrastate CMV driver in Wisconsin. Mr. Kietzman should be granted an exemption because he meets the MEP criteria by having no diagnosis of epilepsy, having been seizure-free for over four years and on a stable medication regimen for over four years. In December 2007 he underwent surgery for a right parietal vascular formation. His physician states this brain abnormality was the cause of his seizures. He has remained on the same anti-seizure medication since December 2007, with the dose and frequency remaining the same since October 2008. His last seizure was October 2008. His physician states he is neurologically normal. His current employer states he has been an intrastate semi-tractor trailer driver for them since 1991 and has proven to be a safe, competent and conscientious driver. Mr. Kietzman has no entries in CDLIS or MCMIS.

*Joseph Kogut.* Mr. Kogut is a 54-year-old intrastate CMV driver in North Carolina. Mr. Kogut should be granted an exemption because he meets the MEP criteria by having no seizures for the last 30 years and being on a stable medication regimen for 30 years. In 1982 he was involved in a motor vehicle accident and sustained a head injury. Following the accident, he had a single seizure. He has been seizure-free for over 30 years. He takes the same anti-seizure medication with the dose and frequency remaining the same for 30 years. His physician states he believes Mr. Kogut should be allowed to drive CMV's. Mr. Kogut has one entry from

CDLIS for failure to obey a traffic signal in 1999.

*Docket #FMCSA-2012-0050.*

On February 29, 2012, FMCSA published a notice of receipt of exemption applications and requested public comments on five individuals (Docket number FMCSA-2012-0050). The comment period ended on March 30, 2012. No comments were received. Of the five applicants, FMCSA determined that the following three individuals should be granted an exemption. The Agency will issue a decision on the other drivers at a later date.

*Todd Brock.* Mr. Brock is a 54-year-old driver in Colorado. Mr. Brock should be granted an exemption because he meets the MEP criteria by having no seizures for the last 10 years, and being on a stable medication regimen, with dose and frequency remaining the same for 4 years. He previously drove delivery trucks. He was diagnosed with a seizure disorder in 2003. He takes the same anti-seizure medication with dose and frequency remaining the same for 4 years. He will return to driving package trucks in interstate commerce. Mr. Brock has no entries in CDLIS or MCMIS.

*Diana Mugford.* Ms. Mugford is a 44-year-old intrastate CMV driver in Vermont. Ms. Mugford should be granted an exemption because she meets the MEP criteria by having no 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 complex partial seizures and takes anti-seizure medication. She has remained seizure-free for 9 years, having her last seizure in 2004. She takes the same anti-seizure medication with the dose and frequency remaining the same for 9 years. Her physician endorses her receiving the exemption. She has two CDLIS entries, one for a CMV accident with property damage in 2011 and a speeding violation in 2004. Ms. Mugford has no entries in MCMIS.

*James Wiggins.* Mr. Wiggins is a 57-year-old intrastate CMV driver in Florida. Mr. Wiggins should be granted an exemption because he meets the MEP criteria by 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 had a single seizure in March 2008 and was diagnosed with a brain tumor. He had the brain tumor removed in April 2008 and has remained seizure-free for over 4 years. He takes anti-seizure medication with the dose and frequency remaining the same for 4 years. Mr.

Wiggins has no entries in CDLIS or MCMIS.

*Docket # FMCSA-2012-0094*

On January 15, 2013, FMCSA published a notice of receipt of exemption applications and requested public comment on 14 individuals (Docket number FMCSA-2012-0094). The comment period ended on February 15, 2013. FMCSA received 16 comments. A discussion of the comments is presented later in this document. Of the 14 applicants, FMCSA determined that the following seven individuals should be granted an exemption. The Agency will issue a decision on the other drivers at a later date.

*Salvatore Gerard Adamita.* Mr. Adamita is a 46-year-old intrastate CMV driver in Florida. Mr. Adamita should be granted an exemption because he meets the MEP criteria by 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 has a history of epilepsy and has had two seizures in his lifetime; the last seizure was in 1992. He has remained seizure free for 20 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 20 years. He would like to drive straight trucks or single tractor trailer trucks. His physician states he is supportive of Mr. Adamita receiving an exemption and Mr. Adamita states he feels he would operate a vehicle at the same safety level as someone who did not require an exemption. Mr. Adamita has no entries in CDLIS or MCMIS.

*John W. Boerth.* Mr. Boerth is a 61-year-old intrastate CMV driver in Wisconsin. Mr. Boerth should be granted an exemption because he meets the MEP criteria by 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 had brain surgery in 2002 and has since had 2 seizures, one in 2002 and the last seizure was June 2003. He takes anti-seizure medication with the dosage and frequency remaining the same for over 10 years. He would like to drive vehicles from one-half ton vans to 18,000 pound straight trucks in interstate commerce. Mr. Boerth has no entries in CDLIS or MCMIS.

*Michael C. Breitbach.* Mr. Breitbach is a 57-year-old intrastate CMV driver in Iowa. Mr. Breitbach should be granted an exemption because he meets the MEP criteria by 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 two nocturnal seizures in

his lifetime; the last seizure was in 2002. He has remained seizure free for 11 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 5 years. He would like to drive tractor trailer trucks. His physician states he is supportive of Mr. Breitbach receiving an exemption. Mr. Breitbach has one CDLIS entry with a non-injury crash in 2011 and no entries in MCMIS.

*Timothy Grant Edwards.* Mr. Edwards is a 25-year-old intrastate CMV driver in Tennessee. Mr. Edwards should be granted an exemption because he meets the MEP criteria by 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 diagnosis of complex partial seizures. His last seizure was in 1992. He has remained seizure free for 20 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 10 years. He would like to drive a service truck for his employer that weighs more than 10,000 pounds, but less than 26,000 pounds, in interstate commerce. Mr. Edwards has no entries in CDLIS or MCMIS.

*James Gorniak.* Mr. Gorniak is a 49-year-old intrastate CMV driver in Wisconsin. Mr. Gorniak should be granted an exemption because he meets the MEP criteria by having no diagnosis of epilepsy, no seizures for the last 4 years, and has been off of anti-seizure medication for over 5 years. Mr. Gorniak had a single seizure in January 2007. It was discovered he had a brain tumor which was then removed. He was given anti-seizure medication for a short time after the surgery, but has been off the medication for 6 years and has remained seizure free since 2007. His physician states he is supportive of him receiving the exemption. He would like to return to driving tractor trailers in interstate commerce. Mr. Gorniak has no entries in CDLIS or MCMIS.

*Brian Hanson.* Mr. Hanson is a 54-year-old intrastate driver in Oregon. Mr. Hanson should be granted an exemption because he meets the MEP criteria by having a diagnosis of epilepsy, no seizures for the last 8 years, and being on a stable medication regimen for longer than 2 years. Mr. Hanson has a diagnosis of epilepsy and his last seizure was in April 2004. He has been off of anti-seizure medication for 7 years. He has remained seizure free for 9 years. He would like to attend truck driving school and drive tractor trailers with his wife, as she is a long-haul driver. His physician found him fit has no concerns regarding his driving a CMV. Mr. Hanson has no entries in CDLIS or MCMIS.

*Robert J. Mooney.* Mr. Mooney is a 51-year-old intrastate CMV driver in Ohio. Mr. Mooney should be granted an exemption because he meets the MEP criteria by 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 diagnosis of seizure disorder and his last seizure was in 1981. He has remained seizure free for over 30 years. He takes anti-seizure medication with the dosage and frequency remaining the same for over 20 years. He would like to drive 18-passenger buses in interstate commerce. He has entries in CDLIS for 2009 and 2010 for non-injury (property damage) motor vehicle crashes and a 2009 improper turn violation. Mr. Mooney has no entries in MCMIS.

*Docket # FMCSA-2012-0294*

On January 15, 2013, FMCSA published a notice of receipt of exemption applications and requested comments from the public on nine individuals (Docket number FMCSA-2012-0294). The comment period ended on February 15, 2013. FMCSA received eight comments, including three duplicate comments. A discussion of the comments is presented later in this document. Of the nine applicants, FMCSA determined that the following seven individuals should be granted an exemption. The Agency will issue a decision on the other drivers at a later date.

*Patrick Andreasen.* Mr. Andreasen is a 55-year-old Class C driver in Pennsylvania. Mr. Andreasen should be granted an exemption because he meets the MEP criteria by 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 has a diagnosis of epilepsy and his last seizure was in 1982. He has remained seizure free for 30 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 20 years. He would like to drive a 15-passenger bus. His physician states he is strongly supportive of Mr. Andreasen receiving an exemption and Mr. Andreasen states he feels he would operate a vehicle at the same safety level as someone who did not require an exemption. Mr. Andreasen has no entries in CDLIS or MCMIS.

*Samuel D. Beverly Jr.* Mr. Beverly is a 47-year-old driver in Virginia. Mr. Beverly should be granted an exemption because he meets the MEP criteria by 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 and his last seizure was in

1995. He takes anti-seizure medication with the dosage and frequency remaining the same for over 17 years. He would like to drive a dump truck. Mr. Beverly's physician states he is highly supportive of Mr. Beverly receiving an exemption. Mr. Beverly has one entry in CDLIS for speeding in 2010 and no entries in MCMIS.

*Craig Bugella.* Mr. Bugella is a 46-year-old intrastate CMV driver in Wisconsin. Mr. Bugella should be granted an exemption because he meets the MEP criteria by 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 complex partial and generalized seizures. He has remained seizure free for 11 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 11 years. He would like to drive bucket trucks and Derrick diggers. His physician states he is extremely confident Mr. Bugella can operate CMVs in interstate commerce. Mr. Bugella has no entries in CDLIS or MCMIS.

*Eric Hilmer.* Mr. Hilmer is a 37-year-old driver in Wisconsin. Mr. Hilmer should be granted an exemption because he meets the MEP criteria by 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 generalized seizure disorder as a child. His last seizure in October 2007, following a closed head injury and at that time, he was not taking anti-seizure medication prior to that event, his last seizure had been at age 17. He takes anti-seizure medication with the dosage and frequency remaining the same for 6 years. He would like to drive CMVs. His physician is supportive of Mr. Hilmer being granted an exemption. Mr. Hilmer has no entries in CDLIS or MCMIS.

*Tye Dale Moore.* Mr. Moore is a 47-year-old driver in Indiana. Mr. Moore should be granted an exemption because he meets the MEP criteria by 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 diagnosis of seizure disorder and has remained seizure free for more than 28 years; his last seizure was May 1984. He takes anti-seizure medication with the dosage and frequency remaining the same for 18 years. He would like to drive tractor trailers in interstate commerce. His physician states he is supportive of Mr. Moore receiving an exemption. Mr. Moore has no entries in CDLIS or MCMIS.

*Robert Spencer.* Mr. Spencer is a 30-year-old driver in Florida. Mr. Spencer

should be granted an exemption because he meets the MEP criteria by having no diagnosis of epilepsy and being on a stable medication regimen for longer than 2 years. He will be seizure-free for 4 years in April 2013. He has a diagnosis of seizure disorder and his last seizure was in April 2009. He takes anti-seizure medication with the dosage and frequency remaining the same for 4 years. He would like to drive a delivery van under 26,000 pounds. His physician is supportive of Mr. Spencer being granted an exemption. Mr. Spencer has no entries in CDLIS or MCMIS.

*Brian J. Wiggins.* Mr. Wiggins is a 52-year-old driver in Idaho. Mr. Wiggins should be granted an exemption because he meets the MEP criteria by 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 has a diagnosis of seizure disorder and his last seizure was in 1996. This seizure was the result of his physician taking him off of his anti-seizure medication. He has remained seizure free for 16 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 16 years. He is a diesel mechanic and will be driving Class 6, 7, and 8 trucks for diagnosis and repair purposes. His physician is supportive of Mr. Wiggins being granted an exemption. Mr. Wiggins has no entries in CDLIS or MCMIS.

*Timothy M. Zahratka.* Mr. Zahratka is a 38-year-old driver in Minnesota. He suffered a penetrating head injury in 1993 and developed a seizure disorder following the injury. He was taking anti-seizure medications with good control until his treating physician changed his medication to a generic in 2008. His last seizure was in August 2008 and his medication was changed. He has remained seizure-free for over 4 years. He takes anti-seizure medication with the dosage and frequency remaining the same for over 4 years. He would like to drive a single axle dump truck. His physician states he is supportive of Mr. Zahratka being granted an exemption. Mr. Zahratka has no entries in CDLIS or MCMIS.

#### D. Comments

In response to the five notices, FMCSA received 35 comments, including several duplicate 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.

#### *Medical Expert Panel's Criteria is Too Liberal*

Natalie Hartenbaum, MD, states that she believes the MEP's criteria for granting exemptions from the epilepsy standard is too liberal and that not all of the applicants in the notice would meet those criteria. She further states that the MEP's criteria is based on faulty assumptions and an inadequate understanding of the commercial driver medical certification process. She notes that the MEP addressing the seizure topic lacked an Occupational Physician. It is her expressed belief that the Panel's assessment did not take into consideration the commercial drivers who have long periods of time behind the wheel and that some anti-seizure medications have a high risk of cognitive impairment with prolonged use. Dr. Hartenbaum notes that the treating physician is most often not the provider conducting the medical certification exam and is not legally obligated in more than 7 states to report a driver they feel would be a safety risk. She urges FMCSA to again review current literature and ensure it is reassessed, addressing the Medical Review Board's comments.

*FMCSA Response:* FMCSA acknowledges Dr. Hartenbaum's concerns. Dr. Hartenbaum is correct in stating that not all of the applicants in the notice will meet the criteria. FMCSA is required to publish all applicants in the **Federal Register** for 30-day public comment, regardless of whether they meet the criteria. Each applicant is considered on a case-by-case basis. 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. FMCSA will only consider granting an exemption to those applicants who meet the criteria indicated above in this notice on a case-by-case basis.

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 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 and the traveling public.

*Concerns From the Previous Medical Review Board Members*

The comments are authored by five previous MRB members who constituted the MRB at the time the subject of seizures was addressed by FMCSA. The group notes several concerns. They state that the Seizure Evidence Report did not include a summary of the basic incidence and prevalence rates of seizures and epilepsy and failed to include what they felt were relevant studies. They also state that the report used graphs that omitted available data points to extrapolate risks over time. These former MRB members note that while they felt most of the evidence reports they examined during their tenure were excellent, the report on seizures had notable weaknesses.

In further comment, the group notes that they had previously requested that FMCSA include an occupational physician and/or physicians with occupational medicine expertise. They note that the seizure MEP did not have an expert in occupational medicine, relied almost exclusively on the Evidence Report and included two members they felt held bias in favor of loosening the limitations on those with seizures. They alleged several errors in the Evidence Report.

The former MRB members recommend, after reviewing the Evidence Report and hearing the MEP's recommendations, maintaining the previous criteria. The group states that FMCSA has represented that the MRB recommended treating all drivers the same, and they strongly state that this is not what the MRB concluded. They conclude their comments with recognizing the work of the MEP, but note the extrapolation of risk after a seizure to zero was scientifically unsound. The MRB calculated that the 2% risk, recommended by the MEP, translated to a 40-fold increased risk of crash, which was not tolerable.

*FMCSA Response:* The Agency acknowledges the five former MRB members' comments. The MRB members advocated the continued use of the Agency's advisory criteria recommending the 10-year seizure-free/off medication period for driving a CMV which were 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 this 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 4 to more than 20 years. The Agency believes that a driver who has not experienced a seizure for such extended periods should not be precluded from driving a CMV in interstate commerce solely 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 solely 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 the former MRB members' 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. 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 what advice and which of the MRB's recommendations to adopt. 49 U.S.C. 31149(a)(1) and (c)(1). The Agency does not believe it was the Congress's intent that the MRB serve as a medical certification review board for each individual seeking an exemption.

*No Exemptions for Seizures*

The American College for Occupational and Environmental Medicine (ACOEM) commented that it has special interest sections of physicians working in the transportation industry and familiar with the job requirements of commercial drivers. These comments are from its perspective. ACOEM expresses concern that if a driver were to have a seizure while operating a CMV, fatalities and injuries would likely result. ACOEM states further that the anti-seizure medications can have worrisome side effects and that other departments of transportation continue to disqualify drivers with a history of seizures.

The ACOEM physicians state that, in their opinion, the MEP recommendations are too liberal, that the recommendations were made without considering fully all the available literature, and that the MEP failed to incorporate the risk of medications. They note that seizures may occur after years of seizure-free periods and there are no tests to guarantee that an individual will not have a seizure in the future. They oppose granting any exemption for seizures or epilepsy.

*FMCSA Response:* FMCSA acknowledges the concerns of the ACOEM. FMCSA believes, however, 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." The Agency believes that a driver who has not experienced a seizure in years should not be precluded from driving a CMV in interstate commerce solely because he remains on anti-seizure medication. FMCSA does not preclude drivers with medical conditions other than seizure disorders from operating a CMV in interstate commerce solely because they are taking medication. 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.

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

Duane Napper comments (FMCSA–2011–0389) that he has known David Kietzman for more than 20 years, that Mr. Kietzman takes his job very seriously and that he is careful at all times. He also states he believes Mr. Kietzman should be allowed to drive trucks. Ms. Tana Shallenbanger (FMCSA–2011–0389) comments that Mr. Kietzman is motivated, hauls for their company and that his “safety practices are stellar.” Bart James Gardner and Duane Jon Hegland (FMCSA–2012–0094) both commented that they have worked with James Gorniak for over 15 years and see no reason he should not be able to drive a CMV. David J. Sander (FMCSA–2012–0094) also commented that he has worked with James Gorniak for over 20 years and he was an excellent driver and worker. Anonymous (FMCSA–2012–0094) stated that he is a close friend of James Gorniak and gives an account of Mr. Gorniak’s hospital visit. He states he is supportive of Mr. Gorniak receiving the exemption. Dr. Stephen Tenniswood, DC (FMCSA–2012–0094) states that Mr. Gorniak has been his patient for 15 years and he can accurately attest to his functionality. He states he sees no reason not to allow him to drive a CMV again.

Shannon Hilmer (FMCSA–2012–0294) comments that she believes that “as long as their seizures are under control, they should be able to live out their dream.” Sharon Bugella (FMCSA–2012–0294) says of her husband Craig Bugella, that he has been a lineman for 20 years. She states that he has not had a seizure in over 11 years and that by receiving the exemption he will be able to receive full lineman wages and benefits.

#### **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 24 individuals based on a thorough evaluation of each driver’s qualifications, safety experience, and medical condition. Safety analysis of information relating to these 24 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 interstate CMV industry will gain 24 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 24 drivers for a period of 2 years with annual medical certification required: Prince Austin Jr. (OH); Frank Cekovic (PA); Joseph D’Angelo (NY); Ricki Gutermann (WI); David R. Kietzman (WI); Joseph Kogut (NC); Todd Brock (CO); Diana Mugford (VT); James Wiggins (FL); Salvatore Gerard Adamita (FL); John Boerth (WI); Michael Breitbach (IA); Timothy Grant Edwards (TN); James Gorniak (WI); Brian Hanson (OR); Robert J. Mooney (OH); Patrick Andreasen (PA); Samuel D. Beverly (VA); Craig Bugella (WI); Eric Hilmer (WI); Tye Dale Moore (IN); Robert Spencer (FL); Brian J. Wiggins, (IN), and Timothy M. Zahratka (MN) 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.

Issued on: July 2, 2013.

**Anne S. Ferro,**  
*Administrator.*

[FR Doc. 2013–16686 Filed 7–11–13; 8:45 am]

**BILLING CODE 4910–EX–P**

## **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 final disposition.

**SUMMARY:** FMCSA announces its decision to grant requests from nine 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 nine 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 July 12, 2013. The exemptions expire on July 13, 2015.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Division Chief, Physical Qualifications, Office of Medical Programs, (202) 366–4001, [fmcamedical@dot.gov](mailto:fmcamedical@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>.