

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.*

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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 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>.

*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(b), 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 nine individuals an exemption from the regulatory requirement in § 391.41(b)(8), to allow these 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 each 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 granted here 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 at 49 CFR 391.41(b)(8) 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 (the 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 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. 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

<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.

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 9 individuals. Under current FMCSA regulations, all of the 9 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 drivers receiving an exemption currently take anti-seizure medication. For these 9 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 Criteria have 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 nine 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 nine 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 the applicant who was denied an exemption, a notice will be published at a later date.

#### *Docket #FMCSA-2013-0106*

On April 24, 2013, FMCSA published a notice of receipt of exemption applications and requested public comment on 10 individuals (Docket number FMCSA-2013-0106). The comment period ended on May 24, 2013. Two commenters responded to the **Federal Register** notice. A discussion of the comments is presented later in this document. FMCSA has determined that nine of these applicants should be granted an exemption. The Agency will issue a decision on the other driver at a later date.

#### 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. Mr. Gordon has no entries in CDLIS or MCMIS within the last 3 years.

#### 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. Mr. Jandreau has no entries in CDLIS or MCMIS within the last 3 years.

#### 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. Mr. Kirkham has no entries in CDLIS or MCMIS within the last 3 years.

#### 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. Mr. Lago has no entries in CDLIS or MCMIS within the last 3 years.

#### 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. Mr. Lail has one entry in CDLIS for an accident in 2012, not involving a CMV, and no entries in MCMIS within the last 3 years.

#### 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. Mr. Latta has no entries in CDLIS or MCMIS within the last 3 years.

#### 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. Mr. Moore has no entries in CDLIS or MCMIS within the last 3 years.

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. Mr. Righter has no entries in CDLIS or MCMIS within the last 3 years.

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 drive a Class B truck with air brakes. His physician is supportive of Mr. Slagel receiving his exemption. Mr. Slagel has 2 entries in CDLIS for speeding, not involving a CMV, and no entries in MCMIS within the last 3 years.

#### D. Comments

In response to the notice, FMCSA received two comments. The one comment specific to these applicants is addressed here. 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.

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

Jennifer Lail comments that her husband Michael Lail had a seizure as a child when he "collided with another kid on the the playground" and has suffered no seizures since. She states that driving is his passion and that he has been driving a truck for the same company since 1988.

#### E. Basis for Exemption

Under 49 U.S.C. 31136(e) and 31315(b), 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 to driving in intrastate commerce.

#### *Conclusion*

The Agency is granting exemptions from the epilepsy standard, 49 CFR 391.41(b)(8), to nine individuals based on a thorough evaluation of each driver's qualifications, safety experience, and medical condition. Safety analysis of information relating to these nine 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 nine highly trained and experienced drivers. In accordance with 49 U.S.C. 31315(b)(1), 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 9 drivers for a period of 2 years with annual medical certification required: Steven Gordon (MT); Kevin Jandreau (ME); Jason Kirkham (WI); William Lago (MA); Michael Lail (NC); Verbon Latta (AL); Jeffrey Moore (NY); Michael Righter (PA); and Douglas Slagel (OH) 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 3, 2013.

**Anne S. Ferro,**

*Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0107]

#### 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 9 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 August 12, 2013.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2013-0107 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