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DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0119]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 13 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) 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 up to 2 years in interstate commerce.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2015-0119 using any of the following methods:

- Federal eRulemaking Portal: Go to 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 or Courier: 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 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 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: In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as

described in the system records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, or via email at fmcsamedical@dot.gov, or by letter to 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 up to 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 allow the Agency to renew exemptions at the end of the 2-year period. The 13 individuals listed in this notice have 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 CMV 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 that 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 recovered fully 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.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your

submission. To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number “FMCSA-2015-0119” and click the search button. When the new screen appears, click on the blue “Comment Now!” button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number “FMCSA-2015-0119” and click “Search.” Next, click “Open Docket Folder” and you will find all documents and comments related to the proposed rulemaking.

SUMMARY OF APPLICATIONS

Christopher Wayne Beaver

Mr. Beaver is a 45 year-old driver in Pennsylvania. He has a history of a single seizure and has remained seizure free since April 2014. He takes anti-seizure medication with the dosage and frequency remaining the same since July 2014. If granted the

exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Beaver receiving an exemption.

Daniel Gerald Bretz, Jr.

Mr. Bretz is a 40 year-old driver in Pennsylvania. He has a history of a seizure disorder and has remained seizure free since 2011. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Bretz receiving an exemption.

Kenneth Lee Brown

Mr. Brown is a 63 year-old class A CDL holder in Wyoming. He has a history of seizure prior to a meningioma resection in 2003. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Brown receiving an exemption.

Douglas Ray Burkhardt

Mr. Burkhardt is a 54 year-old class B CDL holder in South Dakota. He has a history of a seizure disorder and has remained seizure free since 1991. He takes anti-seizure medication with the dosage and frequency remaining the same since September 2013. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Burkhardt receiving an exemption.

Patrick P. Griffis, Sr.

Mr. Griffis is a 60 year-old driver in Mississippi. He has a history of two seizures and has remained seizure free since February 2015. He takes anti-seizure medication

with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Griffis receiving an exemption.

Curtis Alan Hartman

Mr. Hartman is a 50 year-old class B CDL holder in Maryland. He has a history of epilepsy and has remained seizure free since 1997. He takes anti-seizure medication with the dosage and frequency remaining the same since 2002. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Hartman receiving an exemption.

Wendell Frank Headley, Jr.

Mr. Headley is a 31 year-old driver in Missouri. He has a history of a seizure disorder and has remained seizure free since 2007. He takes anti-seizure medication with the dosage and frequency remaining the same since 2010. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Headley receiving an exemption.

Gregory L. Hrutkay

Mr. Hrutkay is a 66 year-old class A CDL holder in driver in Pennsylvania. He has a history of a seizure disorder and has remained seizure free since 2005. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Hrutkay receiving an exemption.

Trever Bryant Jacobson

Mr. Jacobson is a 33 year-old driver in North Dakota. He has a history of a single seizure prior to benign brain tumor removal in 2012. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Jacobson receiving an exemption.

Michael William Ketchum, Sr.

Mr. Ketchum is a 60 year-old driver in Michigan. He has a history of a single seizure in 1972. He takes anti-seizure medication with the dosage and frequency remaining the same since 2004. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Ketchum receiving an exemption.

Marion Franklin Legg, Jr.

Mr. Legg is a 60 year-old driver in Maryland. He has a history of a single unprovoked seizure in October 2011. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Legg receiving an exemption.

Alvin Clarence Strite

Mr. Strite is a 55 year-old class A CDL holder in Pennsylvania. He has a history of a seizure disorder and has remained seizure free since 2007. He takes anti-seizure medication with the dosage and frequency remaining the same since September 2013. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Strite receiving an exemption.

Thomas B. Vivirito

Mr. Vivirito is a 31 year-old class B CDL holder in Pennsylvania. He has a history of a single unprovoked seizure in 2008. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Vivirito receiving an 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: November 5, 2015.

Larry W. Minor,
Associate Administrator for Policy.

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