

satisfied the entry conditions for obtaining an exemption from the vision requirements (66 FR 17743; 66 FR 33990; 68 FR 35772; 70 FR 17504; 70 FR 30997; 70 FR 33937; 71 FR 14566; 71 FR 30227; 72 FR 12666; 72 FR 25831; 72 FR 27624; 72 FR 32705; 73 FR 27014; 74 FR 19270; 74 FR 26461; 74 FR 26464; 74 FR 34630; 75 FR 50799; 75 FR 72863; 76 FR 2190; 76 FR 17481; 76 FR 25766; 76 FR 28125; 76 FR 29022; 76 FR 34135; 76 FR 37168; 76 FR 37173; 76 FR 37885; 76 FR 44082; 78 FR 10251; 78 FR 20379; 78 FR 24300; 78 FR 34140; 78 FR 37270; 78 FR 51268; 78 FR 51269; 78 FR 57679). Each of these 23 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.

IV. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2001–9258; FMCSA–2005–20560; FMCSA–2006–24015; FMCSA–2007–27333; FMCSA–2009–0121; FMCSA–2010–0354; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0102; FMCSA–2013–0021), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. 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 email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and put the docket number, “FMCSA–2001–

9258; FMCSA–2005–20560; FMCSA–2006–24015; FMCSA–2007–27333; FMCSA–2009–0121; FMCSA–2010–0354; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0102; FMCSA–2013–0021” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. 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. FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> and in the search box insert the docket number, “FMCSA–2001–9258; FMCSA–2005–20560; FMCSA–2006–24015; FMCSA–2007–27333; FMCSA–2009–0121; FMCSA–2010–0354; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0102; FMCSA–2013–0021” in the “Keyword” box and click “Search.” Next, click “Open Docket Folder” button choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: June 17, 2015.

Larry W. Minor,

Associate Administrator for Policy.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0115]

Denial of Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of denial of applications for seizure exemptions.

SUMMARY: FMCSA announces the denial of 8 individuals' applications for exemptions from the rule prohibiting 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) from operating CMVs in interstate commerce. The reason for each of the denials is listed after the individual's name.

FOR FURTHER INFORMATION CONTACT:

Charles A. Horan, III, Director, Office of Carrier, Driver and Vehicle Safety, (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 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 8 individuals listed in this notice have requested an exemption from the epilepsy and seizure disorder standard 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 qualified physically 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.

In order to make an evidence-based decision, FMCSA conducted a comprehensive review of scientific literature and convened a panel of medical experts in the field of neurology to evaluate key questions regarding seizure and anti-seizure medication related to the safe operation of a CMV. Previously, the Agency gathered evidence for decision making concerning potential changes to the regulation by conducting a comprehensive review of scientific literature that was compiled into a report entitled, “*Evidence Report on Seizure Disorders and Commercial Vehicle Driving*” (*Evidence Report*) [CD-ROM HD TL230.3 .E95 2007]. The Agency then convened a MEP in the

field of neurology 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/medical/driver-medical-requirements/driver-medical-fitness-duty> under reports and are in the docket for this notice. In reaching the determination to grant or deny exemption requests for individuals who have experienced a seizure, the Agency considered both current medical literature and information and the 2007 recommendations of the Agency's Medical Expert Panel (MEP).

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.¹ The MEP recommendations are included in an appendix at the end of this notice and in each of the previously published dockets.

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

Single unprovoked seizure. If there is a *single unprovoked seizure* (i.e., there is no known trigger for the seizure), the individual should be seizure-free for *4 years, on or off medication*. If the individual is taking anti-seizure medication(s), the plan for medication should be stable for *2 years*. 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; or 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 that 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 current relevant 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 of Neurological Disorders and Commercial Driving" (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. The disposition of applications announced in this notice applies the 2007 MEP recommendations.

Denials and Reasons

- *The following drivers were listed previously in Federal Register Notice FMCSA-2015-0115* published on May 8, 2015:

Henry A. Freiburger—Mr. Freiburger has a history of epilepsy. His last seizure was in 2002. His anti-seizure medication was discontinued for a brief period in 2014. He does not meet the MEP guidelines at this time.

Timothy K. Jameson—Mr. Jameson has a history of epilepsy. His last seizure was in 2010. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Matthew J. Murphy—Mr. Murphy has a history of seizure disorder. His last seizure was in 2013. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

David Joe Patterson—Mr. Patterson underwent a craniotomy for aneurysm in 1988, has no history of seizure or loss of consciousness and has never taken anti-seizure medication since 1988. He does not meet the MEP guidelines at this time.

Charles E. Sprenger—Mr. Sprenger has a history of seizure related to a brain tumor. The tumor was removed in 2008. He discontinued his anti-seizure medication in 2013. He does not meet the MEP guidelines at this time.

Michael E. Tuttle—Mr. Tuttle has a history of epilepsy. His last seizure was February 2008. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Mohammad S. Warrad—Mr. Warrad has a history of seizures. His last seizure was in 1999. His anti-seizure medication was changed in March 2014. He does not meet the MEP guidelines at this time.

Tyler David Williams—Mr. Williams has a history of epilepsy. His last seizure was in 2009. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

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Larry W. Minor,

Associate Administrator for Policy.

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¹ 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.