



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2011-0089; FMCSA-2011-0389; FMCSA-2012-0050; FMCSA-2012-0094; FMCSA-2013-0106; FMCSA-2013-0108; FMCSA-2013-0109].

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 24 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: Elaine M. Papp, R.N., Chief of the Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Room W64-224, Department of Transportation, 1200 New Jersey Avenue, S.E., 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 24 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. 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). 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/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.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

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.

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 driver was listed previously in Federal Register Notice FMCSA–2011-0089 published April 05, 2011:*

Darren Keith – Mr. Keith has a history of a seizure disorder. His last seizure was in 2009. He will have been seizure-free for 8 years, as required by the MEP guidelines, in 2017. He may reapply at that time.

- *The following drivers were listed previously in Federal Register Notice FMCSA-2011-0389 published January 05, 2012:*

Christopher Boddie – Mr. Boddie has a history of a seizure in 2011. He does not meet the exemption criteria at this time.

Roger Corvasce – We were unable to contact Mr. Corvasce by phone or mail to ascertain his status.

Michael Drake – Mr. Drake has a history of epilepsy. His last seizure was in 2009. He

will have been seizure-free for 8 years, as required by the MEP guidelines, in 2017. He may reapply at that time.

Virgil Godbey – We were unable to contact Mr. Godbey by phone or mail to ascertain his status.

Glen Hogan – Mr. Hogan withdrew his request for a seizure exemption.

Jordan Hyster – Mr. Hyster has a diagnosis of epilepsy, and his last seizure was 2009. He will have been seizure-free for 8 years, as required by the MEP guidelines, in 2017. He may reapply at that time.

Phillip McLain – Mr. McLain withdrew his request for a seizure exemption.

Mark Smith – Mr. Smith has a history of a seizure disorder. His last seizure was in 2010. He will have been seizure-free for 8 years, as required by the MEP guidelines, in 2018. He may reapply at that time.

Cheryl Woskie – We were unable to contact Ms. Woskie by phone mail to ascertain her status.

- *The following drivers were listed previously in Federal Register Notice FMCSA-2012-0050 published on February 29, 2012:*

Darren Carroll – Mr. Carroll has a history of a seizure in 2011. He does not meet the exemption criteria at this time.

Charles Johnson – Mr. Johnson has a history of a seizure disorder. His last seizure was in 2011. He will have been seizure-free for 8 years, as required by the MEP guidelines, in 2019. He may reapply at that time.

- *The following drivers were listed previously in Federal Register Notice FMCSA-2012-0094 published on January 15, 2013:*

Sonja Cottle – Ms. Cottle does not require an exemption from the epilepsy and seizure standard because she does not have a history of seizure and is not taking anti-seizure medication.

Jeffrey Davis – Mr. Davis has a history of a seizure in 2011. He does not meet the exemption criteria at this time.

Juan Flores – Mr. Flores has a history of a seizure disorder. His last seizure was in 2011. He will have been seizure-free for 8 years, as required by the MEP guidelines, in 2019. He may reapply at that time.

Glenn Gervais – Mr. Gervais has a history of a seizure in 2011. He does not meet the exemption criteria at this time.

Daryl Goodman – We were unable to contact Mr. Goodman by phone or mail to ascertain his status.

Gary Osley – We were unable to contact Mr. Osley by phone or mail to ascertain his status.

- *The following driver was listed previously in Federal Register Notice FMCSA–2013-0106 published on April 24, 2013:*

James Kivett – Mr. Kivett has a history of a seizure in 2011. He does not meet the exemption criteria at this time.

- *The following driver was listed previously in Federal Register Notice FMCSA–2013-0108 published on September 16, 2013:*

Paul Kane – Mr. Kane has a diagnosis of epilepsy, and his last seizure was 2009. He will have been seizure-free for 8 years, as required by the MEP guidelines, in 2017. He may reapply at that time.

- *The following drivers were listed previously in Federal Register Notice FMCSA–2013-0109 published on November 13, 2013:*

Montie Bullis – Mr. Bullis has a diagnosis of a seizure disorder, and his last seizure was in 2009. He will have been seizure-free for 8 years, as required by the MEP guidelines, in 2017. He may reapply at that time.

Rick Cote – Mr. Cote has a diagnosis of epilepsy, and his last seizure was in 2009. He will have been seizure-free for 8 years, as required by the MEP guidelines, in 2017. He may reapply at that time.

Barry Von Gulner – Mr. Von Gulner has a diagnosis of probable epilepsy, and his last seizure was in 2008. He will have been seizure-free for 8 years, as required by the MEP guidelines, in 2016. He may reapply at that time.

John Welch – Mr. Welch has a diagnosis of epilepsy, and his last seizure was in 2000. He discontinued his anti-seizure medication in 2009. He will have been stable, off of anti-seizure medication for 8 years, as required by the MEP guidelines, in 2017.

Issued on: September 23, 2014

Larry W. Minor
Associate Administrator for Policy

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