

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration**

[Docket No. FMCSA–2023–0032]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 15 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) 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 exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on May 24, 2023. The exemptions expire on May 24, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, fmcsamedical@dot.gov. Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:**I. Public Participation***A. Viewing Comments*

To view comments go to www.regulations.gov. Insert the docket number, (FMCSA–2023–0032) in the keyword box and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov. As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Background

On April 19, 2023, FMCSA published a notice announcing receipt of applications from 15 individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (88 FR 24261). The public comment period ended on May 19, 2023, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 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.

In addition to the regulations, FMCSA has published advisory criteria¹ to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-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 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the 2007 recommendations of the Agency's Medical Expert Panel. The Agency conducted an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. A summary of each applicant's seizure history was discussed in the April 19, 2023, **Federal Register** notice (88 FR 24261) and will not be repeated in this notice.

These 15 applicants have been seizure-free over a range of 27 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last 2 years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in § 391.41(b)(8) would likely achieve a level of safety equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

¹ These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5T; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 15 exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition in § 391.41(b)(8), subject to the requirements cited above:

Jeffrey Baker (CA)
Robert Bennett (NY)
Karl Bohmuller (NC)
David Brown (FL)
John Carroll (HI)
Jean Daza (NJ)
Jerrid Hielscher (SD)
Brandon Kirby (CT)
Alexander Kumm (IL)
Armando Leandry (NJ)
Nicholas Liebe (WI)
Sheldon Martin (NY)
Robert Moseler (MI)
Tammy Snyder (NC)
Michael Urbshot (HI)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date 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, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket Number: DOT-OST-2023-0097]

Rural and Tribal Assistance Pilot Program

AGENCY: Build America Bureau, Department of Transportation.

ACTION: Notice of funding opportunity (NOFO), assistance listing #20.943.

SUMMARY: The Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law or BIL, created the Rural and Tribal Assistance Pilot Program (the Program) to provide early-stage development assistance for rural and tribal infrastructure projects. The Program will award grants for either the hiring of staff or the procurement of expert firms to provide financial, technical, and legal assistance; assistance with development-phase activities; and information regarding innovative financing best practices and case studies. Entities eligible for award include rural local governments or political subdivisions, states, Tribes, and the Department of Hawaiian Home Lands. The Build America Bureau (Bureau) will administer the Program. This Notice of Funding Opportunity (NOFO) makes \$3.4 million available for awards under the Program. Assistance will be provided in the form of direct monetary grants for recipients to hire staff or procure advisory assistance. Procurements for and contracts with grantee-contracted advisors procured for

this award must comply with the requirements set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as further described below.

SUPPLEMENTARY INFORMATION: Each section of this notice contains information and instructions relevant to the application process for the Program. All applicants should read this notice in its entirety so that they have the information they need to submit eligible applications.

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A. Program Description

The Infrastructure Investment and Jobs Act (Pub. L. 117-58) is a generational investment in the nation's transportation system. Section 21205 of Division B of the BIL (Rural and Tribal Infrastructure Advancement) creates a pilot program to provide grants to fund financial, technical, and legal assistance to states and rural and tribal communities. The grants are intended to augment organizational capacity in communities that may not have resources available to evaluate and develop projects that qualify for federal funding and financing programs.

This notice makes available a total of \$3.4 million of funding for the first round of the Program, which is composed of funding appropriated for both Fiscal Years 2022 and 2023. Individual awards are expected to range from \$150,000 up to the statutory limit of either \$320,000 for FY 2022 funds or \$360,000 for FY 2023 funds.¹ There is no local funding match required to participate in this Program.

The following is a sample list of tasks that would be eligible to be funded through the Program. This list is intended to serve as an example, and is not all-inclusive:

Financial services	Technical services	Legal services
Revenue forecasting Economic assessments and cost-benefit analyses Value for money analysis and procurement options	Project planning Feasibility studies Environmental review and permitting	Statutory and regulatory framework analysis Drafting and negotiation of concession agreements Drafting and negotiation of interagency agreements

¹ The BIL limits awards to any individual state to 20% of available funds for a single fiscal year. Therefore, the Department may make awards of up

to \$320,000 with FY 2022 funds and up to \$360,000 with FY 2023 funds. See additional information in

Section B below regarding the maximum award amount.