

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

[Docket No. FMCSA–2014–0212; FMCSA–2017–0253; FMCSA–2020–0049; FMCSA–2021–0025]

**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 renew exemptions for five 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 continue to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on August 13, 2023. The exemptions expire on August 13, 2025.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4001, [fmcsamedical@dot.gov](mailto: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](http://www.regulations.gov). Insert the docket number (FMCSA–2014–0212, FMCSA–2017–0253, FMCSA–2020–0049, or FMCSA–2021–0025) 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 request. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://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.

**I. Background**

On August 3, 2023, FMCSA published a notice announcing its decision to renew exemptions for five individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (88 FR 51393). The public comment period ended on September 5, 2023, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions 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 criteria<sup>1</sup> to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

**II. Discussion of Comments**

FMCSA received no comments in this proceeding.

**III. Conclusion**

Based on its evaluation of the five renewal exemption applications, FMCSA announces its decision to

exempt the following drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8).

As of August 13, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following five individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (88 FR 51393):

Diego DaSilva (MA)  
Jaime Dougherty (MN)  
Jeffrey Douglass (ME)  
Christopher Nonnenkamp (MO)  
Angel Velez-Cruz (NJ)

The drivers were included in docket number FMCSA–2014–0212, FMCSA–2017–0253, FMCSA–2020–0049, or FMCSA–2021–0025. Their exemptions were applicable as of August 13, 2023 and will expire on August 13, 2025.

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(e) and 31315(b).

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2023–20149 Filed 9–18–23; 8:45 am]

**BILLING CODE 4910–EX–P**

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

[Docket No. FMCSA–2023–0035]

**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 21 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

<sup>1</sup> 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>.

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 September 10, 2023. The exemptions expire on September 10, 2025.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, (202) 366-4001, [fmcsamedical@dot.gov](mailto: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](http://www.regulations.gov). Insert the docket number, (FMCSA-2023-0035) 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](http://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 August 3, 2023, FMCSA published a notice announcing receipt of applications from 21 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 51395). The public comment period

ended on September 5, 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 criteria<sup>1</sup> 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 August 3, 2023, **Federal Register** notice (88 FR 51396) and will not be repeated in this notice.

These 21 applicants have been seizure-free over a range of 50 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).

### 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.

<sup>1</sup> 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>.

## 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 21 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:

Ashley Aucion (LA)  
Colby Banks (NC)  
Christopher Beaver (PA)  
Emil Bigler (UT)  
Timothy Brinkman (NE)  
Alexander Carestia (NC)  
Kelly Craft (MN)  
Nathan Gager (MN)  
Kenneth Gradoville (NE)  
Winterhawk Hunter (NV)  
Donald Huntley (OH)  
Samuel Isenberg (PA)  
Thomas Kepler (MO)  
Brian Manning (NJ)  
Devin McKain (IN)  
Jacob McNally (CT)  
Chris McNamara (NH)  
Joseph Pitts (SC)  
Joshua Ross (DE)  
Shawn Springer (MN)  
Ryan Webb (MI)

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.*

[FR Doc. 2023-20153 Filed 9-18-23; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA-2018-0041]

### Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated July 1, 2023, the Port Authority Trans-Hudson Corporation

(PATH) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 214 (Railroad Workplace Safety). The relevant Docket Number is FRA-2018-0041.

Specifically, PATH requests continued relief from the definition of “fouling a track” found in 49 CFR 214.7, *Definitions*, at certain locations within PATH’s tunnel system if certain conditions are met. PATH seeks the waiver to allow tunnel bench walls to be considered a “place of safety” under § 214.329, *Train approach warning*, for the safety and efficiency of roadway maintenance procedures at those locations. When train approach warning or foul time is used as a method of protection, roadway workers may move to a previously arranged place of safety designated as a “Clearance Area.” PATH states that its “physical structure and track configurations within the tunnel system provide many locations where it is physically impossible to clear outside four feet of the near rail.” PATH adds that “the historical use and safety record of bench walls as a place of clearance for close to half of a century without incident show that, under certain conditions, they can be used as a place of safety within the four-foot fouling envelope.” In support of its request, PATH notes that “there have been no known issues raised upon issuance of the waiver and no reported failures of compliance found during inspections.”

A copy of the petition, as well as any written communications concerning the petition, is available for review online at [www.regulations.gov](http://www.regulations.gov).

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Communications received by November 20, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of [www.regulations.gov](http://www.regulations.gov).

Issued in Washington, DC.

**John Karl Alexy,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2023-20202 Filed 9-18-23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA-2000-7257, Notice No. 94]

### Railroad Safety Advisory Committee; Notice of Meeting

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of public meeting.

**SUMMARY:** FRA announces the sixty-fifth meeting of the Railroad Safety Advisory Committee (RSAC), a Federal advisory committee that provides advice and recommendations to FRA on railroad safety matters through a consensus process. This meeting of the RSAC will focus on efforts made regarding potential safety improvements related to the February 3, 2023, Norfolk Southern freight train derailment in East Palestine, Ohio.

**DATES:** The RSAC meeting is scheduled for Thursday, October 26, 2023. The meeting will commence at 9:30 a.m. and will adjourn by 4:30 p.m. (all times Eastern Daylight Time). Requests to submit written materials to be reviewed during the meeting must be received by October 16, 2023. Requests for accommodations because of a disability must be received by October 16, 2023.

**ADDRESSES:** The RSAC meeting will be held at the National Association of Home Builders, located at 1201 15th Street NW, Washington, DC 20005. A final agenda will be posted on the RSAC