

## II. Background

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 also 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 physical qualification standard for drivers regarding epilepsy found in 49 CFR 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.

The seven individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

## III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

## IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the seven

applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The seven drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of June 10, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

John D. Archer (MO)  
 Brian Brown (PA)  
 Marvin Fender (CO)  
 Daniel Gast (KS)  
 Denton Hinehline (WA)  
 Steve Hunsaker (ID)  
 Bryan R. Jones (PA)

The drivers were included in docket number FMCSA-2010-0203, FMCSA-2011-0089, FMCSA-2014-0213, FMCSA-2015-0115, FMCSA-2016-0007, FMCSA-2018-0057, or FMCSA-2019-0027. Their exemptions are applicable as of June 10, 2023 and will expire on June 10, 2025.

## V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (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 § 390.5; 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. The exemption will be rescinded if: (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 before it was 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).

## 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 on its evaluation of the seven exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

*Associate Administrator for Policy.*

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**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket No. FTA-2023-0010]

### National Public Transportation Safety Plan

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Notice of availability of proposed National Public Transportation Safety Plan; request for comments.

**SUMMARY:** The Federal Transit Administration (FTA) invites public comment on a proposed update to the National Public Transportation Safety Plan (National Safety Plan). The proposed National Safety Plan would rescind and replace the plan that FTA published in January 2017. This new version of the National Safety Plan, like the version before it, is intended to guide the national effort to manage safety risk in our nation's public transportation systems. It lays out a performance-based approach to reduce

<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>.

injuries and fatalities on transit systems under FTA's safety jurisdiction. This proposed update to the plan also supports the USDOT's long-term goal of reaching zero fatalities on America's roadways, as presented in the January 2022 National Roadway Safety Strategy, by adding safety performance criteria for vehicular collisions and providing voluntary standards for bus transit. Pursuant to the Bipartisan Infrastructure Law, the proposed update to the plan also establishes performance measures for Public Transportation Agency Safety Plan (PTASP) risk reduction programs.

**DATES:** Comments should be filed by July 31, 2023. FTA will consider comments received after that date to the extent practicable.

**ADDRESSES:** You may send comments, identified by docket number FTA-2023-0010, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for sending comments.
- *Fax:* (202) 493-2251.
- *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/Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

*Instructions:* All submissions received must include the agency name and docket number (FTA-2023-0010). All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> or the street address listed above.

**FOR FURTHER INFORMATION CONTACT:** For program matters, contact Arnebya Belton, Office of Transit Safety and Oversight, 202-366-7546 or [arnebya.belton@dot.gov](mailto:arnebya.belton@dot.gov). For legal matters, contact Emily Jessup, Office of Chief Counsel, 202-366-8907 or [emily.jessup@dot.gov](mailto:emily.jessup@dot.gov). Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** This notice provides a summary of the

proposed update to the National Safety Plan. The National Safety Plan itself is not included in this notice; instead, the proposed update to the plan is posted in the docket for this notice. FTA seeks public comment on this proposed National Safety Plan.

### Background and Overview

Congress first directed FTA to create and implement a National Public Transportation Safety Plan (National Safety Plan) under the Moving Ahead for Progress in the 21st Century (MAP-21) Act, which authorized a new Public Transportation Safety Program (Safety Program) at 49 U.S.C. 5329 (Pub. L. 112-141). The Safety Program was reauthorized by the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114-94) and again by the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117-58).

On February 5, 2016, FTA first published a **Federal Register** notice (81 FR 6372) seeking comment on a proposed National Safety Plan. FTA conducted a number of public outreach sessions and a webinar series related to the proposed National Safety Plan and the PTASP notice of proposed rulemaking that also was published in the **Federal Register** on February 5, 2016 (81 FR 6343). Subsequently, FTA published a summary of the final changes to the National Safety Plan and responses to comments in the **Federal Register** (82 FR 5628) and published the finalized plan to the docket and on FTA's website.

Pursuant to 49 U.S.C. 5329(b), the National Safety Plan includes several elements intended to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53. The Bipartisan Infrastructure Law adds new elements that must be included in the National Safety Plan, including:

- Safety performance measures related to the PTASP safety risk reduction program;
- In consultation with the Secretary of Health and Human Services, precautionary and reactive actions required to ensure public and personnel safety and health during an emergency; and
- Consideration, where appropriate, of performance-based and risk-based methodologies.

The Bipartisan Infrastructure Law also requires that the minimum safety performance standards for public transportation vehicles used in revenue operations take into consideration, to the extent practicable, innovations in driver assistance technologies and

driver protection infrastructure, where appropriate, and a reduction in visibility impairments that contribute to pedestrian fatalities.

This proposed update continues to mature FTA's National Public Transportation Safety Program and addresses new requirements in the Bipartisan Infrastructure Law to further advance transit safety.

The proposed National Safety Plan is organized into the following three chapters:

*Chapter I Keeping Safety the Top Priority:* Chapter I presents FTA's safety vision, strategic objectives, and an overview of FTA's National Public Transportation Safety Program; and provides high-level safety performance data related to FTA safety priorities.

*Chapter II Safety Performance Criteria:* Chapter II defines safety performance measures for transit agencies required to establish and implement Agency Safety Plans under FTA's PTASP regulation.

*Chapter III Voluntary Minimum Safety Standards:* Chapter III provides voluntary minimum safety performance standards for public transportation vehicles used in revenue operations and voluntary minimum safety standards to ensure the safe operation of public transportation systems, as well as recommended practices that may support the transit industry in assessing and mitigating safety risk and help improve safety performance.

FTA is considering the development of mandatory standards for Rail Transit Roadway Worker Protection and Transit Worker Fitness for Duty through rulemaking that may supersede the voluntary minimum safety standards and recommended practices identified in Category A of Chapter III.

### Voluntary Safety Standards and Recommended Practices

The proposed National Safety Plan includes an updated list of voluntary minimum safety standards and recommended practices to support mitigation of safety risk and to improve safety performance. The list in the proposed National Safety Plan includes new categories beyond those included in the 2017 version of plan, such as transit worker safety, pedestrian and bicyclist safety, rail grade crossing safety, tunnel ventilation, and fire safety. The proposed list is more comprehensive than the list in 2017, incorporating the large number of voluntary minimum safety standards and recommended practices issued and identified in the intervening years. The proposed list is also organized into a greater number of discrete categories to

facilitate understanding. Pursuant to the Bipartisan Infrastructure Law, the proposed National Safety Plan also includes precautionary and reactive actions to ensure public and personnel safety and health during an emergency. FTA coordinated with the Department of Health and Human Services on the list of such recommended actions.

#### Safety Performance Measures

Under FTA's PTASP regulation, transit agencies must set performance targets based on the safety performance measures established in the National Safety Plan (49 CFR 673.11(a)(3)). The 2017 version of the National Safety Plan identified seven performance measures to support PTASP performance target setting. The proposed update to the National Safety Plan increases the number of these measures from seven to 14. The proposed seven new performance measures are: Collision Rate, Pedestrian Collision Rate, Vehicular Collision Rate, Transit Worker Fatality Rate, Transit Worker Injury Rate, Assaults on Transit Workers, and Rate of Assaults on Transit Workers. These additions are consistent with the Bipartisan Infrastructure Law's increased focus on bus collisions and transit worker safety.

In addition to the measures described above, the Bipartisan Infrastructure Law directs FTA to include performance measures for the safety risk reduction program required under 49 U.S.C. 5329(d)(1)(I) in the National Safety Plan. In accordance with 49 U.S.C. 5329(b)(2)(A), the National Safety Plan identifies eight measures required for safety risk reduction programs, which apply to Section 5307 recipients that serve an urbanized area of 200,000 or more: Major Events, Major Events Rate, Collisions, Collisions Rate, Injuries, Injury Rate, Assaults on Transit Workers, and Rate of Assaults on Transit Workers. FTA is proposing these measures as they align with the goals of the safety risk reduction program as described in FTA's PTASP notice of proposed rulemaking, namely reducing the number and rates of safety events and injuries, reducing vehicular and pedestrian safety events involving transit vehicles, and mitigating assaults on transit workers. FTA's proposal to identify Major Events, Major Event Rate, Injuries, and Injury Rate as performance measures addresses the safety risk reduction program goal of reducing the number and rates of safety events and injuries. Similarly, proposing Collisions and Collisions Rate as performance measures addresses the goal of reducing vehicular and pedestrian safety events and the measures of Assaults on Transit

Workers and Rate of Assaults on Transit Workers address the reduction of assaults on transit workers.

Pursuant to the Bipartisan Infrastructure Law, performance targets for the risk reduction program must be set based on a 3-year rolling average of NTD data. FTA recognizes that certain transit agencies may not yet report detailed safety event information to the NTD that corresponds to these performance measures. FTA proposed requirements to address this situation in a Notice of Proposed Rulemaking for the PTASP regulation, which was published in the **Federal Register** on April 26, 2023 (88 FR 25336).

FTA also notes that some of the eight performance measures for the safety risk reduction program overlap with the 14 measures for all agencies subject to the PTASP regulation described above. Section 5307 recipients that serve an urbanized area with a population of 200,000 or more may choose to use the same target for both measures, provided the target for the safety risk reduction program is based on a 3-year rolling average of NTD data.

Performance targets for a risk reduction program at 49 U.S.C. 5329(d)(4) are not required until FTA has finalized the National Safety Plan to include these performance measures. However, nothing precludes an Agency from implementing a risk reduction program in advance and updating it once the performance measures are finalized.

In the National Safety Plan, FTA also proposes that when setting safety performance targets, transit agencies should use the following modal groups: rail, fixed route bus, and non-fixed route bus. This is responsive to 49 U.S.C. 5329(b)(2)(A), which requires FTA to identify safety performance criteria for all modes of public transportation.

After reviewing and responding to the comments received on this proposed National Safety Plan, FTA will issue a final National Safety Plan.

**Nuria I. Fernandez,**  
*Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0057]

#### Czinger Vehicles—Grant of Petition for Temporary Exemption From Certain Requirements of FMVSS No. 205, Glazing Materials

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of grant of petition for temporary exemption.

**SUMMARY:** This notice grants the petition of Czinger Vehicles (Czinger) for a temporary exemption from windshield abrasion resistance requirements in Federal motor vehicle safety standard (FMVSS) No. 205, Glazing materials. The basis for the exemption is that compliance with these requirements would cause substantial economic hardship to a low volume manufacturer that has tried in good faith to comply with the standard. This action follows our publication in the **Federal Register** of a document announcing receipt of Czinger's petition and soliciting public comments. We received no comments on the petition.

**DATES:** The exemption from the windshield abrasion resistance requirements in FMVSS No. 205 is effective from August 1, 2023, through July 31, 2026.

**FOR FURTHER INFORMATION CONTACT:** Callie Roach, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202-366-2992; Fax: 202-366-3820.

**SUPPLEMENTARY INFORMATION:** NHTSA is granting a request from Czinger for a temporary exemption from FMVSS No. 205's abrasion resistance requirements for windshields for its first vehicle model, the 21C. In accordance with statutory and regulatory requirements, NHTSA is granting the petition on the basis that compliance would cause substantial economic hardship to a low volume manufacturer that has tried in good faith to comply with the standard.

#### I. Relevant Legal Authority and Regulations

##### *a. Statutory and Regulatory Requirements for Temporary Exemptions*

NHTSA is responsible for promulgating and enforcing FMVSS designed to improve motor vehicle safety. Generally, a manufacturer may