

Nebraska, for a distance of about 30 miles. Existing US-30 is a two-lane rural highway generally serving east-west vehicle traffic. Alternatives under consideration include: (1) Taking no action; (2) reconstruction of US-30 on existing alignment; and (3) providing a four-lane highway on new alignment.

A conflict resolution effort has been initiated to help resolve issues surrounding potential roadway alignments. An Advisory Panel made up of stakeholders has been formed to advise the decision-making authorities. Local citizen input is provided for through contact with panel representatives, or agency contacts.

Agency scoping and a public scoping/information meetings were held previously during preparation of an Environmental Assessment (EA) for this project. A Draft EIS will be prepared and a public hearing will be held. Public notice will be given for any additional information meetings and the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Nebraska Department of Roads at the address provided.

(Catalog of Federal Domestic Assistance Project Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: August 26, 2005.

Edward W. Kosola,

Realty/Environmental Officer, Nebraska Division, Federal Highway Administration, Lincoln, Nebraska.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2005-20721]

Qualification of Drivers; Exemption Applications; Diabetes

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt four individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM)

from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to qualify as drivers of CMVs in interstate commerce.

DATES: The exemptions are effective September 2, 2005. The exemptions expire on September 3, 2007.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Office of Bus and Truck Standards and Operations, (202) 366-4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: <http://dmses.dot.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> and/or Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at <http://dms.dot.gov>.

Background

Authority To Grant Exemptions

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105-178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide FMCSA with authority to grant exemptions from its safety regulations. On December 8, 1998, the Federal Highway Administration's Office of Motor Carriers, the predecessor to FMCSA, published an interim final rule implementing section 4007 (63 FR 67600). On August 20, 2004, FMCSA published a Final Rule (69 FR 51589) on this subject. By this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR part 381).

The agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The agency must also

provide an opportunity for public comment on the request.

The agency must then examine the safety analyses and the public comments, and determine whether the exemption would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation (49 CFR 381.305). The Agency's decision must be published in the **Federal Register** (49 CFR 381.315(b)). If the agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption, and the regulatory provision or provisions from which an exemption is being granted. The notice must also specify the effective period of the exemption (up to two years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Establishment of FMCSA's Diabetes Exemption Program

FMCSA published a notice of intent to issue exemptions to drivers with ITDM on July 31, 2001 (66 FR 39548). On September 3, 2003, the agency published a notice of final disposition announcing its decision to issue exemptions to certain insulin-using diabetic drivers of CMVs from the diabetes mellitus prohibition under 49 CFR 391.41(b)(3). [68 FR 5241] The notice of final disposition explained that in considering exemptions, FMCSA must ensure that the issuance of diabetes exemptions will not be contrary to the public interest and that the exemption achieves an acceptable level of safety. The agency indicated it will only grant exemptions to insulin-using diabetic drivers that meet the eligibility criteria provided in its notice of final disposition.

Because FMCSA established eligibility criteria for use in determining whether the granting of a diabetes exemption would achieve the requisite level of safety, the agency only publishes for public comment, the names of exemption applicants that satisfy the eligibility requirements, based upon the information provided by the applicant. Applicants that do not meet the requirements are notified by letter that their applications are denied and the agency periodically publishes the names of those individuals to satisfy the statutory requirement for disclosing such information to the public.

On May 5, 2005, FMCSA published a notice of receipt of diabetes exemption applications from five individuals, and requested comments from the public (70

FR 20721). The five individuals are: Gerald E. Huelle, Lee R. Kumm, Mitchell L. Pullen, Charles E. Wheat, Sr. and Steven R. Zoller. The public comment period closed on June 6, 2005. Five comments were received, and fully considered by FMCSA in reaching the final decision to grant the exemptions.

FMCSA has evaluated the eligibility criteria of the five applications and made a determination that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3). One applicant, Charles E. Wheat, notified FMCSA that he has discontinued use of insulin and withdrew his application for an exemption.

Diabetes Mellitus and Driving Experience of the Applicants

The agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that: A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some insulin-treated diabetic drivers to operate CMVs is feasible. The September 3, 2003, notice of final disposition provides the protocol for allowing such drivers to operate CMVs in interstate commerce.

These four applicants have had ITDM for 4 to 37 years. These applicants report no more than one hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified the driver's demonstrated willingness to properly monitor and manage their diabetes. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The four applicants have driven CMVs with their ITDM for careers ranging from 4 to 37 years. While possessing a valid commercial driver's license (CDL) or non-CDL to operate a CMV, they have been authorized to drive in intrastate commerce, even though their ITDM disqualifies them from driving in interstate commerce. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. These applicants satisfied testing standards for their State of residence. In the past 3 years, one of the drivers has had a conviction for a traffic violation (speeding), and no crashes were reported.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the May 5, 2005, notice (70 FR 23904). Because there were no docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here.

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, as well as driving records and experience with ITDM. To qualify for an exemption from the diabetes standard, FMCSA requires verifiable evidence that he or she has driven a commercial vehicle safely with ITDM for 3 years.

The applicants' intrastate driving experience and history provide an adequate basis for validating their ability to drive safely in interstate commerce. Consequently, FMCSA finds that exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption. The agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to Gerald E. Huelle, Lee R. Kumm, Mitchell L. Pullen and Steven R. Zoller.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document.

Discussion of Comments

FMCSA received five comments in this proceeding. The comments were considered and are discussed below.

Medical Requirements and Documentation

Two physicians and one professional medical society commented on specific issues relative to medical requirements for diabetes exemption applicants.

(1) Dr. Brahman Levy, M.D. commented on the importance of ascertaining the level of glucose control, such as with glycosylated hemoglobin (HgbA1c) levels, and asked how co-morbid medical conditions, (e.g., hypertension, obesity) would be considered in the application evaluation process.

FMCSA requires each applicant for a diabetes exemption to submit two measures of HgbA1c, to confirm the endocrinologist's report of applicant ability to adequately control blood glucose levels. Each applicant is required to submit documentation by an endocrinologist who has conducted a complete medical examination. The applicant must also submit documentation from an examining physician stating he or she has no other disqualifying conditions, including diabetes-related complications.

(2) Dr. Daniel E. Jimenez, M.D. asked for detailed medical information about each of the applicants, and information about the type of driving performed (e.g., intracity, intrastate, interstate). Dr. Jimenez opposes granting exemptions to drivers with ITDM in general, because (1) the demands of commercial driving make it difficult to maintain vigilance over meal schedules and types of food to eat; (2) these drivers may have demonstrated non-compliance (with treatment, health regimen), and (3) drivers with ITDM are likely to have co-morbid conditions.

FMCSA has examined detailed medical information about each of the applicants as specified in the notice of final disposition announcing FMCSA's decision to issue exemptions to certain insulin-using diabetic drivers published September 3, 2003 (68 FR 52441), but has not included the details in the notice of applications in accordance with the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191, also known as HIPAA) (45 CFR 160.102). This is the citation for the implementing regulations listed by the United States Department of Health and Human Services. The issue of comorbidity is addressed in previous discussion (refer to Levy comments).

(3) The American College of Occupational and Environmental

Medicine (ACOEM) states that (1) the medical documentation of each applicant should be reviewed by a physician who understands the safety risks inherent in commercial operations or the criteria for the evaluation should be included in the summary of each driver's qualifications published in the **Federal Register** and (2) additional medical testing and evaluation is merited (e.g., exercise stress test, cardiac and renal function assessment).

In response to ACOEM's first comment, the notice of final disposition published on September 3, 2003 (68 FR 52441), requires each applicant to be examined by an endocrinologist who performs a complete medical examination, including a comprehensive evaluation of the applicant's medical history and current status, and evaluation by an ophthalmologist or optometrist. As indicated previously, all applicant health data were not published in accordance with HIPPA. Close monitoring of these drivers with ITDM by an endocrinologist and other medical specialists, as well as physical qualification by a medical examiner, are required.

Americans With Disabilities Act

The American Diabetes Association expressed concerns about the application process for the exemption program. The American Diabetes Association also alleged discrimination against drivers with ITDM.

FMCSA has developed a plan and initiated numerous improvements in the application process for exemption program applicants, including the initiation of work on web-based solutions to streamline the application process and work on re-evaluating the eligibility and monitoring criteria. FMCSA notes that the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005: A Legacy for Users (SAFETEA-LU) provides specific changes to the driving requirement for interstate operators with ITDM. These changes eliminate the three-year CMV driving requirement and significantly reduce the required time for management of the diabetic condition with insulin treatment.

FMCSA's exemption process supports drivers with ITDM who seek to operate in interstate commerce. In addition, the FMCSRs are not contrary to the Americans with Disabilities Act (ADA) of 1990. The mandates of the ADA do not require that FMCSA alter the driver qualification requirements contained in 49 CFR Part 391. The Senate report on the ADA, submitted by its Committee on

Labor and Human Resources, included the following explanation:

With respect to covered entities subject to rules promulgated by the Department of Transportation regarding physical qualifications for drivers of certain classifications of motor vehicles, it is the Committee's intent that a person with a disability applying for or currently holding a job subject to these standards must be able to satisfy these physical qualification standards in order to be considered a qualified individual with a disability under Title I of this legislation. S. Rep. 101-116, at 27 (1989).

Ability To Predict Safety Outcomes

The Advocates for Highway and Auto Safety (Advocates) oppose granting exemptions to drivers with ITDM. Major areas of concern include: (1) Past driving history is not a predictor for future safe driving capability, (2) reliance upon previous three-year driving record is an inaccurate screening criterion, and (3) concern is significant about individual driver ability to monitor individual blood sugar while operating commercial (particularly long-haul) vehicles.

In response to the first two comments, the agency considers previous driving experience to be an appropriate means for predicting future performance, and monitors the driving record through the Commercial Driver's License Information System (CDLIS). CDLIS is a computer system linked to individual databases maintained by the 51 jurisdictions in the United States. In response to the third comment, the agency relies on the expert medical opinion of the endocrinologist and the medical examiner, who are required to analyze individual ability to control and manage the diabetic condition, including the individual ability and willingness of the driver to monitor blood glucose level on an ongoing basis.

Advocates also referred to comments filed with docket no. FMCSA-2001-9800-121 regarding the establishment of the Federal diabetes exemption program. The agency responded to these comments in its September 3, 2003, notice of final determination announcing the establishment of the Federal diabetes exemption program.

Conclusion

After considering the comments to the docket and based upon its evaluation of the four exemption applications, the FMCSA exempts Gerald E. Huelle, Lee R. Kumm, Mitchell L. Pullen, and Steven R. Zoller from the diabetes requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for two years unless revoked earlier by the FMCSA. The exemption will be revoked 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. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

FMCSA notes that Section 4129 of SAFETEA-LU requires the agency to initiate a rulemaking within 90 days of enactment to amend the Federal physical qualifications rules for truck and bus drivers to allow individuals who use insulin to treat their diabetes to operate CMVs in interstate commerce. Therefore, FMCSA will initiate a rulemaking to revise its safety regulations to allow certain insulin-treated diabetic drivers to operate CMVs in interstate commerce.

The new rule would allow health care professionals to make individual determinations about insulin-treated diabetics' ability to safely operate a CMV in interstate commerce, based on guidelines established by the agency, through a public notice-and-comment rulemaking process. Upon completion of the rulemaking required by section 4129, diabetic drivers would no longer be required to apply for, or renew exemptions to operate CMVs in interstate commerce. Until the agency issues a Final Rule, however, insulin-treated diabetic drivers must continue to apply for exemptions from FMCSA, and request renewals of such exemptions in a timely manner.

Issued on: August 29, 2005.

Warren E. Hoemann,

Deputy Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2005-21685]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From PINOVA

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