

**Authority:** 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Amend § 7.51 by adding paragraph (d) to read as follows:

**§ 7.51 Curecanti Recreation Area.**

\* \* \* \* \*

(d) *Personal Watercraft (PWC)*. PWC may operate within Curecanti National Recreation Area in the following designated areas and under the following conditions:

(1) PWC may operate and land on Blue Mesa Reservoir between Beaver Creek and Blue Mesa dam.

(2) PWC must operate at “flat wake” speeds within Blue Mesa Reservoir in the following areas upstream of designated buoys:

(i) Soap Creek arm at approximate longitude 107°8’9” N latitude 38°30’16” W.

(ii) West Elk arm at approximate longitude 107°16’45” N latitude 38°29’43” W.

(iii) Cebolla arm at approximate longitude 107°12’16” N latitude 38°27’37” W.

(iv) Lake Fork arm at approximate longitude 107°18’19” N latitude 38°27’2” W.

(3) PWC must operate at “flat wake” speeds in the following areas:

(i) Within 100’ of shoreline inside Dry Creek cove.

(ii) Within 500’ of shoreline along old highway 50 and Bay of Chickens.

(iii) At Elk Creek and Lake Fork marinas.

(iv) At Iola, Steven’s Creek, and Ponderosa boat launch areas.

(v) From Lake city bridge east to Beaver’s Creek.

(vi) Within 100’ of shoreline adjacent to Steven’s Creek campground.

(4) PWC may be launched from the following launch ramps:

(i) Elk Creek Marina.

(ii) Lake Fork Marina.

(iii) Iola.

(iv) Steven’s Creek.

(v) Ponderosa.

(5) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: March 8, 2006.

**Paul Hoffman,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 391**

[Docket No. FMCSA–2005–23151]

**RIN 2126–AA95**

**Qualifications of Drivers; Diabetes Standard**

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

**ACTION:** Advance notice of proposed rulemaking (ANPRM); request for comments.

**SUMMARY:** FMCSA announces that it is considering whether to amend its medical qualifications standards to allow the operation of commercial motor vehicles (CMVs) in interstate commerce by drivers with insulin-treated diabetes mellitus (ITDM) whose physical conditions are adequate to allow them to operate safely and without deleterious effects on their health. At present, drivers with ITDM are required to obtain exemptions before operating CMVs. Upon completion of this rulemaking, drivers with ITDM might not be required to apply for exemptions from the current rule prohibiting such drivers from operating in interstate commerce. However, unless and until the agency changes the current standard in this rulemaking, drivers with ITDM are prohibited from operating CMVs in interstate commerce, unless such individuals have exemptions from FMCSA. Any action to revise the current standard would be made in conformity with the changes in FMCSA’s existing authority to establish, review and revise physical and medical qualification standards for drivers made by the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), which added, among other changes, a requirement that the standards be developed with the assistance of expert medical advice.

**DATES:** You must submit comments concerning this ANPRM on or before June 15, 2006.

**ADDRESSES:** You may submit comments to the DOT Docket Management System Number in the heading of this document by any of the following methods. Do not submit the same comments by more than one method. However, in order to allow effective public participation in this rulemaking before the comment period deadline, the Agency encourages use of the Web site that is listed first. It will provide the most efficient and

timely method of receiving and processing your comments.

• *The Web site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

• *Fax:* 1–202–493–2251.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

• *Hand Delivery:* 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.

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the organization name and docket number or Regulatory Identification Number for this regulatory action. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Refer to the Privacy Act heading for further information. If addressing a specific request for comments in this ANPRM, *please clearly identify the related section heading or question number* for each topic addressed in your comments.

*Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to 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.

*Private Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>.

Comments received after the comment closing date will be included in the docket and the agency will consider late comments to the extent practicable. FMCSA may, however, issue a notice of proposed rulemaking at any time after the close of the comment period.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, FMCSA, 400

Seventh Street, SW., Room 8301, Washington, DC 20590; (202) 366-4001. **SUPPLEMENTARY INFORMATION:** Copies or abstracts of all documents referenced in this notice are in the docket for this rulemaking: FMCSA-2005-23151.

### Legal Basis for the Rulemaking

FMCSA has authority (delegated from the Secretary of Transportation (Secretary) by 49 CFR 1.73) to establish the minimum qualifications, including medical and physical qualifications, for drivers of CMVs operated in interstate commerce. 49 U.S.C. 31136(a)(3) and 31502(b). As amended by section 4116(b) of SAFETEA-LU, (Pub. L. 109-59, 119 Stat. 1728, Aug. 10, 2005), section 31136(a)(3) requires that, at a minimum, safety regulations shall ensure that the physical conditions of operators of CMVs adequately enable them to operate the vehicles safely and that the periodic physical examinations required of such operators are performed by medical examiners who have received training in physical and medical examination standards.

These new provisions added by SAFETEA-LU are clearly intended to ensure that the Federal Motor Carrier Safety Regulations ("FMCSRs") contain physical qualification standards that reflect the advice of the agency's newly authorized Medical Review Board and Chief Medical Examiner. 49 U.S.C. 31149(a) and (b).<sup>1</sup> Under new section 31149(c), the Agency, with the advice of the board and the chief medical examiner, is directed to "establish, review and revise \* \* \* medical standards for operators of commercial motor vehicles that will ensure that the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely." The purpose of these provisions in section 31149 is to ensure that the physical and medical qualifications standards for CMV drivers reflect up-to-date, expert medical advice drawn from "expertise in a variety of medical specialties relevant to the driver fitness requirements." 49 U.S.C. 31149(a)(2) and House Conf. Report No. 109-203 (July 28, 2005) at 990.

In addition to the statutory factors that are specific to the physical qualifications of CMV drivers, FMCSA must also consider another factor. Any physical and medical qualifications it

establishes or revises must ensure, at a minimum, that "the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of operators" as required by 49 U.S.C. 31136(a)(4) and *Public Citizen et al. v. Federal Motor Carrier Safety Administration*, 374 F.3d 1209, 1216 (D.C. Cir. 2004). The D.C. Circuit noted, in that case however, that it was not "suggest[ing] that the statute requires the agency to protect driver health to the exclusion of those other factors [i.e., the costs and benefits of the rule], only that the agency must consider it." *Id.* at 1217 (emphasis in original). In order to properly consider this factor in developing physical qualifications standards the agency must consider both (1) the effect of driver health on the safety of commercial motor vehicle operations; and (2) the effect of such operations on driver health.

Finally, before prescribing any regulations, FMCSA must also consider their "costs and benefits" 49 U.S.C. 31136(c)(2)(A) and 31502(d). Those factors are also discussed in the Rulemaking Analysis section.

### History of Federal Regulation of Drivers With Insulin-Treated Diabetes Mellitus

Beginning in 1940, under the Interstate Commerce Commission's Motor Carrier Safety Regulations (4 FR 2294, June 7, 1939, effective date January 1, 1940), CMV drivers have been subject to urine glucose tests as part of medical examinations for determining whether a person is physically qualified to drive in interstate or foreign commerce. Starting in 1971 (35 FR 6458, April 22, 1970, effective date January 1, 1971), the Federal Highway Administration (FHWA) (the predecessor to FMCSA) established the current standard for drivers with ITDM. This standard states 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). FHWA established the standard, in consultation with medical advisers, mainly because several crash studies indicated that drivers with ITDM had higher rates of crashes compared to the general driving population.

FHWA then became engaged in several activities to address the issue of drivers with ITDM and CMV operation. On March 28, 1977, FHWA published an ANPRM to solicit comments on the standard for drivers with ITDM (42 FR 16452). It terminated the rulemaking in November 1977 without amending the standard, after determining that the

more substantive comments and the literature cited in the ANPRM supported the prohibition against the operation of CMVs by drivers with ITDM because of highway safety concerns (42 FR 57488). On November 25, 1987, the agency published a new ANPRM (52 FR 45204) requesting comments on petitions from two individuals and the American Diabetes Association to eliminate the blanket prohibition against drivers with ITDM and to grant waivers on a case-by-case basis.

In September 1987, the Conference on Diabetic Disorders and Commercial Drivers was held to review the drivers with ITDM standard in light of advances in the care of individuals with ITDM. Conference participants (physicians, scientists, Federal officials and representatives from the motor carrier industry) recommended that some drivers with ITDM could be qualified to drive depending upon insulin use and under certain conditions (e.g., absence of recurrent hypoglycemia, safe driving record) (FHWA, Conference on Diabetic Disorders and Commercial Drivers; Final Report, 1988). Following the conference, FHWA published a Notice of Proposed Rulemaking (55 FR 41028, Oct. 5, 1990) requesting comments on a proposal to revise the drivers with ITDM standard to allow individuals with ITDM to operate CMVs and sponsored a 1990 risk assessment that estimated various levels of crashes among drivers with ITDM depending upon the severity of hypoglycemia (Federal Highway Administration, *Insulin-using Commercial Motor Vehicle Drivers*, 1992). The level of crashes of drivers with ITDM was similar to that of drivers without diabetes mellitus. FHWA published a Notice of Intent to Issue Waivers on October 21, 1992 (57 FR 48011). This led to the July 29, 1993 waiver program (58 FR 40690), including the waiver requirements that a driver with ITDM have a three-year safe driving record while using insulin and regular medical examinations by a board-certified or board-eligible endocrinologist.

The diabetes waiver program was terminated in 1996 in response to a ruling from the U.S. Court of Appeals for the District of Columbia Circuit. In *Advocates for Highway and Auto Safety v. FHWA*, 28 F.3d 1288 (D.C. Cir. 1994), the court held that the *vision waiver* program was not consistent with the statutory standard that required that a waiver be "consistent with the safe operation of commercial motor vehicles." 28 F.3d at 1293 (quoting former 49 U.S.C. App. 2505(f)). Although the decision initially affected

<sup>1</sup> New section 31149, added by section 4116(a) of SAFETEA-LU, becomes effective on August 10, 2006, in accordance with section 4116(f), 119 Stat. 1728, (Aug. 10, 2005) (set out as a note to 49 U.S.C. 31149). However, FMCSA has already announced the establishment of the Medical Review Board under the Federal Advisory Committee Act. 70 FR 57642 (Oct. 3, 2005).

only the vision waiver program, it had an impact on the diabetes program because of the similar approach used to determine driver eligibility. Those drivers holding waivers at the program's termination were allowed to continue to operate CMVs in interstate commerce under the grandfather provisions of 49 CFR 391.64.

In 1998, section 4018 of the Transportation Equity Act for the 21st Century, Public Law 105-178, 112 Stat. 413-4 (TEA-21) (set out as a note to 49 U.S.C. 31305) directed the Secretary to determine the feasibility to develop "a practicable and cost-effective screening, operating and monitoring protocol" for allowing drivers with ITDM to operate CMVs in interstate commerce "that would ensure a level of safety equal to or greater than that achieved with the current prohibition on individuals with insulin treated diabetes mellitus driving such vehicles." As directed by section 4018, FHWA compiled and evaluated the available research and information. It assembled a panel of medical experts in the treatment of diabetes to investigate and report on the issues concerned with the treatment, medical screening and monitoring of ITDM individuals in the context of operating CMVs. FMCSA then submitted to Congress in July 2000 a report entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin Treated Diabetes Mellitus to Operate Commercial Motor Vehicles in Interstate Commerce as Directed by the Transportation Equity Act for the 21st Century," (TEA-21 Report to Congress). The motor carrier regulatory functions of the FHWA were transferred to the FMCSA in the Motor Carrier Safety Improvement Act of 1999, Public Law 106-159, 113 Stat. 1748, Dec. 9, 1999. The Report to Congress concluded that it is feasible to establish a safe and practicable protocol with three components that would allow some drivers with ITDM to operate CMVs. The three components included screening of qualified drivers, establishing operational requirements ensuring proper disease management by such drivers, and monitoring of safe driving behavior and proper disease management. For a detailed discussion of the report's findings and conclusions, refer to the notice published at 66 FR 39548 (July 31, 2001). The TEA-21 Report to Congress can be accessed in the docket in the heading of this notice FMCSA-2005-23151, item 1, in the DOT Docket Management System at: <http://dmses.dot.gov/docimages/p64/139973.tif>; or [http://dmses.dot.gov/docimages/pdf71/139973\\_web.pdf](http://dmses.dot.gov/docimages/pdf71/139973_web.pdf); or

on FMCSA's Web site at: <http://www.fmcsa.dot.gov/facts-research/research-technology/publications/medreports.htm>.

As a result of the conclusions found in the TEA-21 Report to Congress, the July 31, 2001 notice proposed to implement those conclusions and recommendations by issuing exemptions from the FMCSRs to allow operations of CMVs by drivers with ITDM. After receiving and considering comments on the proposed use of exemptions to implement the TEA-21 Report to Congress, FMCSA issued a Notice of Final Disposition establishing the procedures and protocols for implementing the exemptions for drivers with ITDM. 68 FR 52441 (September 3, 2003) ("2003 Notice"). In order to obtain an exemption, a CMV driver with ITDM must follow the basic requirements for obtaining an exemption set out in 49 CFR part 381, subpart C. FMCSA may not grant an exemption unless it would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption. 49 U.S.C. 31315 and 49 CFR 381.305(a).

In conformity with the conclusions of the TEA-21 Report to Congress, the 2003 Notice implemented, with a few modifications, the three components of the protocol recommended in the report, to allow drivers with ITDM to be qualified with an exemption from the FMCSRs to operate CMVs. FMCSA published the first notice granting exemptions to four drivers with ITDM on September 2, 2005 (70 FR 52465), after notice and opportunity for public comment on May 5, 2005 (70 FR 23904).

#### **Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)**

Section 4129 of SAFETEA-LU required FMCSA to begin, within 90 days of enactment, to revise the 2003 Notice to allow drivers who use insulin to treat diabetes to operate CMVs in interstate commerce. The revision must provide for individual assessment of drivers with ITDM, and be consistent with the criteria described in section 4018 of TEA-21. Section 4129 required two substantive changes to be made in the exemption process set out in the 2003 Notice.<sup>2</sup>

In order to accomplish these changes within the 90-day time frame established by section 4129, FMCSA made immediate revisions to the

diabetes exemption program established by the 2003 Notice. These revisions by FMCSA were necessary to respond to the specific changes mandated by section 4129(b) and (c). The changes are: (1) Elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

Section 4129(d) also directed FMCSA to ensure that CMV drivers with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. FMCSA concluded that all of the operating, monitoring and medical requirements set out in the 2003 Notice, except as modified, were in compliance with section 4129(d). All of the requirements set out in the 2003 Notice, other than those modified in the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

The changes to the exemption program (*i.e.*, elimination of the requirement for three years of experience and establishment of a specified minimum period of insulin use) became effective upon publication of the November 8, 2005 Notice. As this ANPRM indicates, FMCSA is considering whether to revise the FMCSRs to allow certain drivers with ITDM to operate CMVs in interstate commerce. Unless and until the agency issues a final rule, however, drivers with ITDM must continue to hold exemptions from the application of 49 CFR 391.41(b)(3) to operate in interstate commerce.

#### **Requests for Information and Comments**

FMCSA requests responses to the following questions, as well as comments and data on other issues related to CMV drivers with ITDM who operate in interstate commerce:

(1) Currently, CMV drivers with ITDM must hold an exemption from the ITDM prohibition to operate in interstate commerce. What modifications to the ITDM prohibition in 49 CFR 391.41 should FMCSA consider to enable such drivers to operate safely in interstate commerce without an exemption?

(2) How should FMCSA ensure that health care professionals who might be applying any revised standards do so in a consistent and appropriate manner which ensures both that the physical conditions of such drivers are adequate to enable them to operate safely and that

<sup>2</sup> Section 4129(a) refers to the 2003 Notice as a "final rule." However, as indicated above, the 2003 Notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

the operation of CMVs is not deleterious to their health?

(3) FMCSA also requests public comments on the changes made in the current exemption program for CMV drivers with ITDM that were made by the November 8, 2005 Notice.

(4) Should FMCSA allow medical examiners to assume responsibility for making an individual determination of the ITDM driver's ability to manage this health condition, or should the agency require the physician responsible for treating the driver's ITDM to certify the driver meets the revised diabetes standard?

(5) Should the agency revise the medical certificate to be issued by the medical examiner to a driver with ITDM to include certification from the "treating physician" in addition to the medical examiner?

(6) Each medical examiner has discretion to set the expiration date on a driver's medical certificate so that it is valid for any period up to 24 months, based on the examiner's determination of how often a driver needs to be re-examined, such as for a specific health condition (e.g., hypertension). What should the Federal standard maximum period of medical certification be for drivers with ITDM?

(7) What changes in health condition of drivers with ITDM (e.g., hypoglycemia-induced incidents) should be reported? What changes in crash/incident data (e.g., each crash) should be reported? Who should be responsible for such reports? To whom should these reports be submitted?

(8) A number of States offer exemption, waiver, or grandfather programs for drivers with ITDM. Other States do not allow drivers with ITDM to operate without an exception/exemption. Would States that prohibit drivers with ITDM from operating CMVs continue to do so or would States adopt rules comparable with the new Federal standard? How many drivers with ITDM are currently operating commercially in these States? If these States have any evidence as to whether ITDM drivers operating CMVs are as safe, safer, or less safe than non-insulin-treated diabetic drivers or non-diabetic drivers, FMCSA would like these States to provide such evidence or identify any sources where FMCSA may obtain such evidence. Also please describe any analysis that has been done on these ITDM drivers, and any special oversight that States conduct.

(9) Should new and emerging therapies for treatment of diabetes mellitus be considered in reviewing and revising the current standard? If so, how? If a revised FMCSA standard for

drivers with ITDM is established, how would new and emerging therapies, particularly injectable medications (e.g., incretin mimetics) and continuous subcutaneous insulin infusion therapy, affect the implementation of a new standard?

(10) What quantitative data are there on safety performance of drivers with ITDM? Do these studies link efficacy of medication and therapy with risk and incidence of crashes in commercial and non-commercial motor vehicles? If so, how?

(11) How many individuals with ITDM are likely to enter the motor carrier occupation if the current medical standards are changed to allow them to drive in interstate commerce?

(12) The TEA-21 Report to Congress discusses occupational and health risks and challenges for individuals with ITDM who operate CMVs. Are there additional occupational and health risks and challenges the TEA-21 Report to Congress did not discuss? Are there additional attributes of this occupation, which may make it particularly difficult for such drivers to manage their condition? Are these attributes characteristic of certain segments of the industry? Should individuals with ITDM be restricted to operating in only certain segments of the industry (e.g., driving locally or short-haul, but not long-haul)?

(13) What are the potential operational stressors and physical impacts associated with CMV driving that may adversely impact a CMV operator with ITDM? Please provide references or available peer-reviewed research data.

#### Rulemaking Analyses and Notices

##### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

FMCSA has determined this ANPRM is a significant regulatory action within the meaning of Executive Order 12866 and the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The Office of Management and Budget has reviewed this ANPRM as required by Executive Order 12866.

The Agency is not yet in a position to analyze fully any potential actions it may initiate in response to this ANPRM. FMCSA seeks comments on the following issues to guide our analysis for a potential notice of proposed rulemaking:

(1) The costs and benefits of potentially effective and reasonably feasible alternatives to the current regulations, including improving the

current regulation and reasonably viable non-regulatory actions; and

(2) Any preliminary impact assessments of these regulatory and non-regulatory alternatives on the health of CMV drivers with ITDM.

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Pub. L. 104-121), (RFA) requires Federal agencies to analyze the impact of regulatory alternatives on small entities, unless FMCSA certifies that a regulatory alternative will not have a significant economic impact on a substantial number of small entities, and to consider non-regulatory alternatives that could achieve our goal while minimizing the burden on small entities.

The Agency is not yet in a position to analyze fully any potential actions it may initiate in response to this ANPRM.

FMCSA requests comments and data from the public on how potential alternatives may impact small motor carriers, including owner-operators, who may employ or use a driver with ITDM. This information would represent a major input to estimating the costs of any potential alternatives on small entities. The agency also specifically requests comments on the benefits of potential alternatives. In addition, FMCSA asks entities and associations of small entities to identify their gross revenues.

##### *Executive Order 13132 (Federalism)*

Although the agency believes there are no Federalism issues, the agency is not yet in a position to analyze fully any potential actions in accordance with the principles and criteria contained in Executive Order 13132, (64 FR 43255, August 10, 1999). As stated earlier in this ANPRM, FMCSA and its predecessors have regulated the physical condition of drivers with ITDM since 1971. The agency believes regulating drivers with ITDM in interstate commerce is an issue that is national in scope. The agency specifically requests comment from State and local officials on any Federalism issues.

##### *Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a

State, local, or tribal government, or by the private sector of \$120.7 million or more in 2003 dollars in any one year, must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. Although FMCSA believes there would be no unfunded mandates arising from any change in the current standard, the Agency is not yet in a position to analyze fully any potential actions it may initiate and that may meet the requirements of the Unfunded Mandates Reform Act. FMCSA seeks specific comments whether such impacts are likely for any regulatory or non-regulatory alternative for agency consideration.

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), a Federal agency must obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations.

Current exemption program applicants provide personal, employee health and driving information during the application process. There may be additional health information required as a result of this rulemaking action. The agency is not yet in a position to analyze fully any potential action the agency may initiate that may fall within the scope of the Paperwork Reduction Act. If FMCSA initiates a potential regulatory alternative in the future, incorporating these or other relevant provisions, the Agency would seek approval of any collection of information requirements to generate, maintain, retain, disclose, and provide information to, or for, the agency under 49 CFR part 391.

#### *National Environmental Policy Act*

It is not expected that this rulemaking will have environmental impacts, although the agency is not yet in a position to analyze fully any potential actions under the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f) and our environmental procedures Order 5610.1 (issued on March 1, 2004, 69 FR 9680). The agency believes potential actions the agency may initiate in response to this ANPRM may be categorically excluded (CE) from further

environmental documentation under Appendix 2.6.d. and 2.6.z. of Order 5610.1, which contain categorical exclusions for regulations concerning the training, qualifying, licensing, certifying, and managing of personnel and regulations establishing minimum qualifications for persons who drive CMVs as, for, or on behalf of motor carriers. In addition, FMCSA believes potential actions the agency may initiate would not involve extraordinary circumstances that would affect the quality of the environment.

FMCSA is not yet in a position to analyze fully any potential actions under the requirements of the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401–7671) and implementing regulations promulgated by the Environmental Protection Agency. FMCSA believes potential actions the agency may initiate would be exempt from the CAA's General conformity requirement since they would involve policy development and civil enforcement activities, such as investigations, inspections, examinations, and the training of law enforcement personnel. See 40 CFR 93.153(c)(2). The agency anticipates potential actions the agency may initiate in response to this ANPRM would not result in any emissions increase or result in emissions that are above the general conformity rule's *de minimis* emission threshold levels because potential actions would merely establish standards for drivers to control their diabetes mellitus.

The agency seeks comment on the effect on the environment of any potential action alternatives.

#### *Executive Order 12630 (Taking of Private Property)*

The Agency is not yet in a position to analyze fully any potential actions that may constitute a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. FMCSA seeks comment on whether potential actions it may initiate in response to this ANPRM would constitute a taking of private property or otherwise have implications under Executive Order 12630.

#### *Executive Order 12372 (Intergovernmental Review)*

The agency is not yet in a position to analyze fully any potential actions that may require intergovernmental consultation on Federal programs and activities under Executive Order 12372, as amended. FMCSA seeks comment on whether potential actions the agency may initiate in response to this ANPRM would require any intergovernmental consultation on Federal programs and activities under Executive Order 12372, as amended.

#### *Executive Order 13211 (Energy Supply, Distribution, or Use)*

FMCSA is not yet in a position to analyze fully any potential actions that may affect energy supply, distribution, or use under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The agency seeks comment on whether potential actions the agency may initiate in response to this ANPRM would affect any regulatory or non-regulatory alternatives that may significantly affect energy supply, distribution, or use.

#### *Executive Order 12988 (Civil Justice Reform)*

The agency is not yet in a position to analyze fully any potential actions that may meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The agency seeks comment on whether potential actions FMCSA may initiate in response to this ANPRM would meet the standards in Executive Order 12988.

#### **List of Subjects in 49 CFR Part 391**

Alcohol abuse, Diabetes, Drug abuse, Drug testing, Highway safety, Medical, Motor carriers, Physical qualifications, Reporting and recordkeeping requirements, Safety, Transportation.

Issued on: March 6, 2006.

**Annette M. Sandberg,**

*Administrator.*

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