

accordance with 49 U.S.C. 31136(e) and 31315, each of the 12 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 40404; 64 FR 66962; 66 FR 66969; 68 FR 69432; 71 FR 644; 64 FR 54948; 65 FR 159; 66 FR 53826; 68 FR 69434; 71 FR 646; 70 FR 57353; 70 FR 72689). Each of these 12 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 18, 2008.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 12 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

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,

FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: December 12, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2007-29035]

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 forty-eight 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 operate CMVs in interstate commerce.

DATES: The exemptions are effective December 19, 2007. The exemptions expire on December 21, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Room W64-224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> and/or Room W12-140 on the ground level of the West Building, 1200 New Jersey

Avenue, SE., 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, April 11, 2000). This statement is also available at <http://Docketinfo.dot.gov>.

Background

On November 5, 2007, FMCSA published a notice of receipt of Federal diabetes exemption applications from forty-eight individuals, and requested comments from the public (72 FR 62514). The public comment period closed on December 5, 2007 and three comments were received.

FMCSA has evaluated the eligibility of the forty-eight applicants and determined 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).

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 drivers with ITDM to operate CMVs is feasible. The 2003 notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These forty-eight applicants have had ITDM over a range of 1 to 51 years. These applicants report no

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 that the driver has demonstrated willingness to properly monitor and manage their diabetes, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the November 5, 2007, **Federal Register** Notice (72 FR 62514). Therefore, they will not be repeated in this notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, 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, and reviewed the treating endocrinologist's medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

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.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not they are related to an episode of hypoglycemia; (3) that each individual

provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received three comments in this proceeding. Two of the comments were recommendations in favor of granting the Federal diabetes exemption to the drivers. The third comment was from an anonymous individual, who stated that he felt it was discriminatory for truck drivers on insulin to have to go through a lengthy process to keep their jobs.

With regard to the length of time required to obtain a Federal exemption, FMCSA is required to publish in the **Federal Register** the name of each eligible individual who applies for a diabetes exemption, and request public comment on the application.

The Agency must then review all the comments received and determine whether granting the exemption would achieve a level of safety equivalent to, or greater than, the level of safety provided by compliance with the current diabetes standard. Depending on the complexity of the health issues discussed in the application, a final decision may take up to 180 days from the date we receive the completed application (49 U.S.C. 31136(e) and 31315). We recognize this potential 6-month waiting period may seem burdensome. However, we must carefully evaluate each applicant's request to assess his or her potential safety performance. FMCSA notifies all applicants in writing once a final decision is made. It is not the intention of FMCSA to impose hardship on commercial drivers. CMV drivers are held to a strict physical standard because of the extensive skill required to operate large trucks and buses and the potential harm these vehicles can cause to other motorists. Our safety regulations have a single goal—to reduce the number of CMV crashes and fatalities on the Nation's highways.

FMCSA's exemption process supports drivers with ITDM who seek to operate in interstate commerce. In addition, the Federal Motor Carrier Safety Regulations (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).

FMCSA 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. 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. FMCSA will grant exemptions only to those applicants who meet the specific conditions and comply with all the requirements of the exemption.

Conclusion

After considering the comments to the docket, and based upon its evaluation of the forty-eight exemption applications, FMCSA exempts, Paul N. Abelson, Robin R. Baumgartner, Albert W. Bayne, Joseph K. Beasley, Philip E. Brown, Toni A. Brown, Larry M. Burkett, Jr., Ronald J. Charette, Jr., Charles E. Clark, II, Margaret I. Clevidence, Fred J. Combs, Douglas N. Craven, Rene A. DeLuna, Charles Demesmin, Derek E. Dowling, Donald E. Dupke, Jr., Frederick E. Dyer, Ronald S. Easter, Steven W. Freeman, Sr., Robert R. Gladd, Tim E. Holmberg, Russell D. Jordan, Warren D. Knabe, David J. Kreider, Terry R. Leslie, Dennis L. Lorenz, John N. Love, Ronald T. Lowery, Charles C. Madeira, V., Robert J. Malone, John R. Milberger, Norman J. Millard, Eric R. Nickel, Clayton A. Powers, Charles R. Rafferty, Curtis J. Sato, William B. Schauer, Herschel S. Sejnoha, Adam J. Sharp, Darrol H. Sponberg, Reese L. Sullivan, Kenneth R. Tuggle, Robert M. Walker, William A. Watts, Robert E. Weiss, Robert A. Wild, James G. Wilkerson, and Randy L. Wyant, from the ITDM standard in 49

CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

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

Issued on: December 12, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-01-10578, FMCSA-03-16241]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 10 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective December 31, 2007. Comments must be received on or before January 18, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-01-10578, FMCSA-03-16241, using any of the following methods.

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

- *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 or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our 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, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78; Apr. 11, 2000). This information is also available at <http://DocketInfo.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202)-366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from

the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-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 procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 10 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 10 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are: Ronald G. Austin, Rickey C. Dalton, Martiniano L. Espinosa, Derek T. Ford, Paul C. Gruenberg, Jr., James G. LaBair, Dennis A. Leschke, Lonnie Lomax, Jr., Eugene C. Murphy, Carl W. Skinner, Jr.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. 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.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer