

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

[FMCSA Docket No. FMCSA–2012–0218]

**Qualification of Drivers; Exemption Applications; Diabetes Mellitus****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 28 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 October 22, 2012. The exemptions expire on October 22, 2014.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, [fmcsamedical@dot.gov](mailto: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 Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

**Background**

On August 29, 2012, FMCSA published a notice of receipt of Federal

diabetes exemption applications from 28 individuals and requested comments from the public (77 FR 52384). The public comment period closed on September 28, 2012, and two comments were received.

FMCSA has evaluated the eligibility of the 28 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 requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes 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 September 3, 2003 (68 FR 52441), **Federal Register** 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 28 applicants have had ITDM over a range of 1 to 46 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, 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 requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the August 29, 2012, **Federal Register** notice and they will not be repeated in this notice.

**Discussion of Comments**

FMCSA received two comments in this proceeding. Mr. Lyle Brandstrom stated that he had worked with Daniel John Gladen and is in favor of granting him a Federal Diabetes exemption. According to Mr. Brandstrom, Mr. Gladen is a dedicated and responsible driver.

Mr. Curtus Sherman stated that he had worked with Daniel John Gladen and is in favor of granting him a Federal Diabetes exemption. According to Mr. Sherman, Mr. Gladen is a dedicated and responsible driver.

**Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement 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 endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement 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 it is 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.

### Conclusion

Based upon its evaluation of the 28 exemption applications, FMCSA exempts Anthony J. Annatone (FL), Trevor J. Corley (TX), Shannon K. Ellingsworth (KY), Richard T. Ewell (IL), Norman S. Forsythe (WI), Patrick D. Fortier (MN), Daniel J. Gladen (MN), Walter V. Gruba (VA), Marshall D. Howell (MI), Larry Knox (AK), Roger P. LaFever (WI), Blaze E. Lampman (NY), William R. Lawrence (MT), Duane J. Mullins (WI), Louis R. Noellsch (WA), Darrin W. Pettis (WA), Michael J. Raposa (MA), Jeremy K. Redger (LA), Anthony E. Reed (MO), Earl L. Slater (NY), Keith J. Tavares (MA), Phillip L. Truitt (MD), Gregory H. Tullock (NJ), Michael D. Underwood (AL), Raffaele Vano (NY), Brian D. Weeden (NH), David A. Weinbroer (KY) and Robert J. Westover (WI) from the ITDM 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. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the 1/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: October 9, 2012.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### Limitation on Claims Against Proposed Public Transportation Projects

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

**ACTION:** Notice.

**SUMMARY:** This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for projects in the following locations: Los Angeles County, CA; San Antonio, TX; Prince George's County, MD; and Chicago, IL. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

**DATES:** By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before March 21, 2013.

**FOR FURTHER INFORMATION CONTACT:** Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353-2577 or Terence Plaskon, Environmental Protection Specialist, Office of Human and Natural Environment, (202) 366-0442. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9:00 a.m. to 5:30 p.m., EDT, Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation projects listed below. The actions on these projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the projects. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information on the project. Contact information for FTA's Regional Offices may be found at <http://www.fta.dot.gov>.

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42

U.S.C. 4321-4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401-7671q]. This notice does not, however, alter or extend the limitation period of 180 days for challenges of project decisions subject to previous notices published in the **Federal Register**. For example, this notice does not extend the limitation on claims announced for earlier decisions on the Crenshaw/LAX Transit Corridor Project. The projects and actions that are the subject of this notice are:

1. *Project name and location:* Crenshaw/LAX Transit Corridor Project, Los Angeles, CA. *Project sponsor:* Los Angeles County Metropolitan Transportation Authority (LACMTA). *Project description:* The project will extend from the existing Metro Exposition Line at Crenshaw and Exposition Boulevards and travel 8.5 miles to the Metro Green Line's Aviation/LAX Station. The project includes six transit stations, a vehicle maintenance storage facility, park-and-ride lots, traction power substations, and the acquisition of rail vehicles and maintenance equipment. Modifications to the project design have occurred during the preliminary engineering phase to reduce cost, reduce right-of-way impacts, reduce utility impacts, improve light rail transit operations, and improve traffic circulation and pedestrian crossings. The project modifications include a shift in the location of the optional Crenshaw/Vernon Station and Florence/Hindry Station (formerly Manchester/Aviation Station), street/driveway/sidewalk modifications, pedestrian crossing improvements, and a shift of a portion of the alignment into the former Burlington Northern Santa Fe right-of-way. This would require demolition of two railroad bridges and partial acquisitions. This action is on the September 2012 Finding of No Significant Impact. Nothing in this notice affects FTA's previous decisions, or notice thereof, for this project. More specifically, the statute of limitations for the approvals documented in the project's December 30, 2011 Record of Decision and the environmental documents on which it is based expired on August 6, 2012, as noticed in the **Federal Register** on February 8, 2012 (77 FR 6624). This notice only applies to the actions taken by FTA at this time as described below. *Final agency actions:* no use of Section 4(f) resources; Section 106 finding of no adverse effect; project-level air quality conformity; and