

the NPRM, FMCSA proposed revisions to the standards for mandatory training requirements for entry-level operators of CMVs in interstate operations who are required to possess a CDL. The proposal would apply to drivers who apply for a CDL beginning 3 years after a final rule goes into effect. Following that date, persons applying for new or upgraded CDLs would be required to successfully complete specified minimum classroom and BTW training from an accredited institution or program. The FMCSA proposed that the State driver-licensing agency would issue a CDL only if the applicant presented a valid driver training certificate obtained from an accredited institution or program. The Agency indicated the rulemaking would strengthen the Agency's ELDT requirements in response to the 2005 DC Circuit Court decision.

Since the publication of the NPRM, the Agency has completed its review of the public responses to the proposal and initiated new research concerning driver training. The Agency has also begun exploring new alternatives for mining Motor Carrier Safety Management Information System (MCMIS) data and Commercial Driver's License Information System (CDLIS) data to attempt to assess the safety performance of new CDL holders compared to that of more experienced CDL holders. In addition, in response to the public comments, the Agency has reexamined the regulatory options presented in the 2007 NPRM, as well as its estimates of the driver population who would be subject to the requirements. As a result, the Agency has concluded that additional stakeholder input will be useful in determining the most appropriate path forward for an ELDT rulemaking.

Section 32304 of MAP-21 requires that FMCSA issue final ELDT regulations by October 1, 2013, establishing minimum ELDT requirements for operators of CMVs. The listening session at the ABA's Marketplace will provide an opportunity for motorcoach operators and other interested parties to share with FMCSA their ideas, especially as they relate to the training needs for individuals seeking a passenger endorsement.

## II. Meeting Participation and Information FMCSA Seeks From the Public

The listening session is open to the public. Speakers' remarks will be limited to 5 minutes each. No pre-registration is required. The public may submit material to the FMCSA staff at

the session for inclusion in the public docket, FMCSA-2007-27748.

### III. Alternative Media Broadcasts During and Immediately After the Listening Session on January 7, 2013

FMCSA will webcast the listening session on the Internet. The telephone access number and other information on how to participate via the Internet will be posted on the FMCSA Web site at [www.fmcsa.dot.gov/rules-regulations/topics/hos/HOS-Listening-Sessions.aspx](http://www.fmcsa.dot.gov/rules-regulations/topics/hos/HOS-Listening-Sessions.aspx).

FMCSA will docket the transcripts of the webcast and a separate transcription of the listening session that will be prepared by an official court reporter.

Issued on: December 12, 2012.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2012-0283]

#### 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 16 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 20, 2012. The exemptions expire on December 20, 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 October 18, 2012, FMCSA published a notice of receipt of Federal diabetes exemption applications from 16 individuals and requested comments from the public (77 FR 64181). The public comment period closed on November 19, 2012, and one comment was received.

FMCSA has evaluated the eligibility of the 16 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 16 applicants have had ITDM over a range of 1 to 13 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 October 18, 2012, **Federal Register** notice and they will not be repeated in this notice.

#### Discussion of Comments

FMCSA received one comment in this proceeding. Mr. Thomas A. Goodman stated he had met with a dietitian and surgeon to start the process for bariatric surgery, joined the ADA, and signed up for a diabetes program provided by his health insurer.

#### 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 16 exemption applications, FMCSA exempts James D. Astle (OH), Gregory L. Faison (MD), Theodore A. Garsombke (WI), Thomas A. Goodman (PA), Kenneth M. Hanson (IA), Ronald D. Johnston (VA), Carl E. McCartney (PA), Jerry W. McFarland (OR), Fred Nelson, Jr. (PA), Ricky L. Osterback (WA), Francis J. Pollock (MA), Dwaine H. Sandlin (MI), Dan R. Stark (MN), Chad E. Vanscoy (OH), Gregory C. Watson (NC), and Bailey G. Zickefoose, Jr. (WV) 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: December 12, 2012.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2012-0282]

#### 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 14 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 20, 2012. The exemptions expire on December 20, 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.

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