

IV. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must report any crashes or accidents as defined in 49 CFR 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR part 383 and 49 CFR 391 to FMCSA. In addition, the driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was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.

IV. Conclusion

Based upon its evaluation of the 32 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in 49 CFR 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: March 22, 2017.

Larry W. Minor,

Associate Administrator for Policy.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2016-0382]

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 47 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these

individuals to operate CMVs in interstate commerce.

DATES: The exemptions were effective on February 15, 2017. The exemptions expire on February 15, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-113, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. 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., e.t., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

II. Background

On January 12, 2017, FMCSA published a notice of receipt of Federal diabetes exemption applications from 47 individuals and requested comments from the public (82 FR 3845). The public comment period closed on February 13, 2017, and no comments were received.

FMCSA has evaluated the eligibility of the 47 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 47 applicants have had ITDM over a range of 1 to 41 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 January 12, 2017, **Federal Register** notice and they will not be repeated in this notice.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. 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.

V. 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.

VI. Conclusion

Based upon its evaluation of the 47 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(3):

Luciano Abreu (NJ)
Louis I. Alonzo (TX)
John P. Botcher (WI)
Mark D. Breskey (IL)
Cornelius T. Brooks (AR)
Donald E. Brown (IL)
Armando Camacho Nunez (WA)
Robert P. Coutu (RI)
John J. Crance, Jr. (NY)
Frank Croce (NY)
Kevin S. Cuberson (NC)
William T. DeGarmo (OR)
David J. Dionne (NH)
Raymond J. Dionne (NH)

Steven W. Doult (PA)
Brian J. Dunn (MA)
Jason E. Earlywine (KY)
William J. Evans (VA)
Brandon J. Fonstad (WI)
Raymond M. Garron (SC)
Jill M. Hall (ME)
Eugene C. Hamilton (NC)
Robert C. Hanna (OH)
Richard L. Hart (MI)
Rafael Hecht (IN)
Tony L. Hopper (IL)
Robert J. Hough (MD)
Curran P. Jones (AZ)
Ryan W. Koski (MI)
Forrest M. Land, Jr. (TX)
Allan M. Lewis (ME)
Jordan H. Little (NY)
Nicolas G. Lopez (TX)
Michael R. Ludowese (MN)
Brian L. Lynch (CT)
Marten L. Matuszewski (WI)
Thomas W. Mitchell, III (OH)
David M. Molnar (PA)
Anthony G. Monaghan (NY)
Jose N. Negron (NJ)
Michael J. Perfect (WA)
Lowell A. Reigel, Jr. (KY)
Jennifer L. Schroeder (WI)
Daniel M. Seguin (NH)
Darren K. Vaughan (NC)
Melvin E. Welton, Jr. (WA)
Keith A. Williams (AL)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is 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 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: March 22, 2017.

Larry W. Minor,

Associate Administrator for Policy.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of random drug and alcohol testing rates for 2017.

SUMMARY: This notice announces the random testing rates for employers subject to the Federal Transit Administration's (FTA) drug and alcohol rules for 2017.

DATES: *Effective Date:* January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Iyon Rosario, Drug and Alcohol Program Manager for the Office of Safety and Oversight, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202-366-2010 or email: Iyon.Rosario@dot.gov).

SUPPLEMENTARY INFORMATION: On January 1, 1995, FTA required large transit employers to begin drug and alcohol testing employees performing safety-sensitive functions and submit annual reports by March 15 of each year beginning in 1996. The annual report includes the number of employees who had a verified positive for the use of prohibited drugs, and the number of employees who tested positive for the misuse of alcohol during the reported year. Small employers commenced their FTA-required testing on January 1, 1996, and began reporting the same information as the large employers beginning March 15, 1997.

The testing rules were updated on August 1, 2001, and established a random testing rate for prohibited drugs and the misuse of alcohol. The rule initially required employers to conduct random drug tests for prohibited drug use at a rate equivalent to at least 50 percent of their total number of safety-sensitive employees and a rate of at least 25 percent for the misuse of alcohol. However, in accordance with 49 CFR 655.45 both random testing rates may be lowered based on industry reported violations over preceding consecutive calendar years. Accordingly, in 2005 the Administrator reduced the random alcohol testing rate from 25 percent to 10 percent and reduced the random drug testing rate from 50 percent to 25 percent in 2007 (*see* 72 FR 1057).

Once lowered, the random drug testing rate may be increased to 50 percent if the positive rate equals or exceeds one percent for any one year ("positive rate" means the number of verified positive results for random drug tests conducted under 49 CFR part 655.45 plus the number of refusals of random tests, divided by the total number of random drug test results (*i.e.*, positive, negative, and refusals). Likewise, the alcohol random rate may be increased from 10 percent to 25 percent should the reported violation rate be equal to or greater than 0.5 percent, but less than 1 percent for any one year. Furthermore, the random alcohol rate will be increased to 50