



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2017-0039]

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 89 individuals from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on September 12, 2017. The exemptions expire on September 12, 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, S.E., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

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, S.E., 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 <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

II. Background

On August 10, 2017, FMCSA published a notice announcing receipt of applications from 89 individuals requesting an exemption from diabetes requirement in 49 CFR 391.41(b)(3) and requested comments from the public (82 FR 37486). The public comment period ended on September 11, 2017, and three comments were received.

FMCSA has evaluated the eligibility of these 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).

The physical qualification standard for drivers regarding diabetes found in 49 CFR 391.41(b)(3) states that a person is physically qualified to drive a CMV if that person:

Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

III. Discussion of Comments

FMCSA received three comments in this proceeding. An anonymous commenter stated that they are in favor of granting “Greg” an exemption because he properly manages his diabetes. There are four Gregory’s listed in this Federal Register and there was no distinction of which Gregory this comment supported. An anonymous commenter stated that they believe hypoglycemia is a risk and they are against allowing Diabetic CDL drivers an exemption without the use of a glucose sensing pump. Currently, the insulin method of delivery is a decision between the driver and their treating physician. Vicky Johnson stated that Minnesota DVS is in favor of granting exemptions to Bruce A. Freiermuth and Edward R. Gitz, both of whom are drivers from Minnesota.

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.

The Agency’s decision regarding these exemption applications is based on the program eligibility criteria and an individualized assessment of information submitted by each applicant. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the August 10, 2017, Federal Register notice (82 FR 37486) and will not be repeated in this notice.

These 89 applicants have had ITDM over a range of one to 34 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 (two or more) severe hypoglycemic episodes in the past five 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).

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.

IV. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) each driver must submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) each driver must report within two 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) each driver must 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) each driver must provide a copy of the

annual medical certification to the employer for retention in the driver’s qualification file, or keeping a copy in his/her driver’s qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 89 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above:

James W. Ackerson (AZ)	Harry R. Albright (PA)
Pablo Alduende (NJ)	Abe C. Applewhite (VA)
William L. Bacon (WA)	Eric M. Ballard (IN)
Thomas R. Bingham (MT)	Harley E. Boone (ID)
Raymond P. Boskat, Sr. (NY)	Kevin M. Bruton, Jr. (NY)
Dylan J. Bryan (IL)	Vincente Burciaga (TX)
Roger E. Burkholder (IL)	James M. Butcher (IA)
Dino Chapman (TN)	Glen C. Davis (TN)
Glenn W. Davis (VA)	Jimmy D. Davis (MO)
Michael J. Dunnuck (CA)	Billy R. Edge (AL)
Craig Elgard (NJ)	Filiberto Espinoza (CA)

Julieanne Estes (NH)	Burl W. Fant (TX)
Grant E. Featherly (NY)	Ross G. Fogg, Jr.(NJ)
Damon M. Free (GA)	Raymond J. Freeman (TX)
Bruce A. Freiermuth (MN)	Alvin Frith (PA)
Eric T. George (TX)	Edward R. Gitz (MN)
William E. Glaster (NM)	Gregory C. Habel (ID)
Kevin O. Hansen (ID)	Richard A. Hanson (NJ)
John J. Hoeke (SD)	Howard R. Hudson (IL)
Michael T. Ilk (IN)	Ronald A. Jessop (RI)
Patrick A. Kelly (NC)	Vera M. Kipper (MO)
William A. Kitchens (GA)	Jerry R. Knight (WY)
Dick R. Kobayashi, Jr. (OR)	Roger P. Kukowski (WI)
Robert E. Lay (WA)	Gregory N. Lorenzi (WA)
Jake P. Mahoney (NY)	Ignatius Martin (NJ)
Ricky L. McCloskey (NE)	Carroll L. McCraw (NC)
Micah L. McDowell (NC)	Lonnell K. McKee (MO)
Kevin M. McKenna (MA)	Timothy S. Miller (WI)
Sammy Mouzone, Jr. (MI)	Timothy J. Mulvihill (SD)
Gregory J. Nixon (IN)	Anthony J. Njoroge (GA)
Robert N. Oakliff (CT)	Radame Perez (NY)
Gordon M. Peterson (IA)	Larry R. Predmore (PA)
Eric E. Ray (RI)	Angelo A. Reynoso (NJ)

Donald V. Rhoten, Jr. (MD)	William Rosado (NY)
Ryan M. Rosane (NE)	Solomon Rosenberg (NY)
James M. Roth (IN)	Robert J. Schlachter (IN)
D.S. Schneeberger (NY)	Robert F. Seiple (PA)
David M. Sheeran (NY)	John F. Smith (RI)
Mark E. Smith (PA)	Harley T. Steck (MO)
Ross M. Stirling (NV)	Dennis W. Thompson (WI)
Jose F. Toledo (OR)	Wayne A. Toms, Sr. (PA)
Gregory D. Vang (NE)	Charles H. Wainwright (NC)
Wayne G. Warren, Jr. (PA)	John G. Weinhofer (PA)
Grant E. Whetzel (SD)	Roger W. Yellow Boy (SD)
Richard L. Zelesket (MI)	

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years from the effective date 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 prior to being 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.

Issued on: October 18, 2017.

Larry W. Minor,
Associate Administrator for Policy.

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