



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2016-0383]

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 41 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 April 8, 2017. The exemptions expire on April 8, 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 March 8, 2017, FMCSA published a notice announcing receipt of applications from 41 individuals requesting an exemption from diabetes requirement in 49 CFR 391.41(b)(3) and requested comments from the public (82 FR 13050). The public comment period ended on April 7, 2017, and four 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 four comments in this proceeding. Janet Sandoval and two anonymous commenters stated that they are against granting Mr. Ta Canunpa W. Banks the exemption. Ms. Sandoval stated that she does not believe Mr. Banks is under sufficient medical care for diabetes and that all drivers should be required to regularly see an endocrinologist to ensure their diabetes is under control. Quarterly and annual monitoring by an endocrinologist and eye doctor is a stipulation of the exemption. Drivers are required to submit these reports to the Agency on a continuing basis while they hold an exemption. The first anonymous commenter stated that Mr. Banks provided falsified information in order to obtain a medical card. The second anonymous commenter did not provide a reason for their objection to granting Mr. Banks an exemption. A third anonymous commenter stated that they were in favor of granting the exemptions to all drivers listed in this notice, and that the previous three comments appear to be a “smear campaign” directed towards Mr. Banks as they have no documentation to support their claims. FMCSA investigated the claim that Mr. Banks provided falsified information in order to obtain a medical card. Mr. Banks did not disclose insulin use to his Medical Examiners on exams dated January 27, 2017 and February 14, 2017 based on his fear of losing his livelihood. However, he did disclose it in the exam submitted as part of his exemption application on November 11, 2016. FMCSA evaluated the medical records provided by Mr. Banks and determined that

granting him an exemption would achieve an equivalent or greater level of safety than would be achieved without granting him an exemption.

IV. 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.

These 41 applicants have had ITDM over a range of 1 to 27 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).

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the March 8, 2017 Federal Register notice (82 FR 13050) and will not be repeated in this notice.

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 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.

VI. 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.

VII. Conclusion

Based upon its evaluation of the 41 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above:

Joseph A. Akers (WV)	Leslie R. Auger (MO)
Ta Canunpa W. Banks (SD)	Ralph E. Beard (MI)
Darrell W. Britnell (NC)	Paul M. Capeder (MN)
Robert D. Carnazzo (MA)	Randall C. Coleman (WA)
Thomas K. Coleman (NC)	Mark A. Cologne (LA)
Christopher J. Comstock (TX)	Alexander H. Cromartie (PA)
Michael R. Dark (TX)	Joseph P. Dellavolpe (NJ)
Shea E. Durand (NY)	David L. Farris (KS)
Donald D. Fown (OH)	Michael L. Gamache (NH)
David P. Glaeser (CO)	Donald J. Gray (CA)
James E. Guthrie, IV (KY)	James F. Hamilton (SD)
Paul R. Hanson (MN)	Jaculyn E. Heck (DE)
Greg J. Isom (GA)	Mark J. Johnson (WA)
Tyson C. Johnson (PA)	Darrell W. Luck (NC)

Gregory L. Markin (WI)	Patrick May (MD)
Elbert J. Means (SC)	Peter R. Meyer (WA)
Andrew R. Morris (WA)	Timothy A. Parks, Jr. (MD)
Dennis Pitt (NY)	Antonio R. Ragin (CT)
Matthew Reynolds (PA)	Robert G. Smith (MA)
Patricia M. Spurgeon (NY)	Robert M. Sypolt (WV)
Brandon R. Wedding (OR)	

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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