

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

[FMCSA Docket No. FMCSA-2008-0341]

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

**SUMMARY:** FMCSA announces its decision to exempt eighty-four 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 February 9, 2009. The exemptions expire on February 9, 2011.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (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 complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at <http://Docketinfo.dot.gov>.

**Background**

On December 12, 2008, FMCSA published a notice of receipt of Federal diabetes exemption applications from

eighty-four individuals, and requested comments from the public (73 FR 75794). The public comment period closed on January 12, 2009 and six comments were received.

FMCSA has evaluated the eligibility of the eighty-four 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 standard for diabetes in 1970 because several risk studies indicated that diabetic drivers 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 2003 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 eighty-four applicants have had ITDM over a range of 1 to 36 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage their diabetes, 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 standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated

and discussed in detail in the December 12, 2008, **Federal Register** Notice (73 FR 75794). Therefore, they will not be repeated in this notice.

**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.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologist's medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that exempting these applicants from the diabetes standard 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 they are 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.

**Discussion of Comments**

FMCSA received six comments in this proceeding. The Pennsylvania Department of Transportation expressed that it had reviewed the driving records

for Robert S. Althouse, Tyson C. Johnson, Steven F. Kohalmi, Theodore Stanley Pankiewicz and Gary E. Stone, and was in favor of granting the Federal diabetes exemptions to these applicants. Two of the comments were recommendations in favor of granting the Federal diabetes exemption for Mr. William G. Hansen. The letters were written by Mr. Eric D. Stubblefield and Ms. Charlene Ruth LaForest, who state that Mr. Hansen has not had problems with his diabetes to preclude him from operating a commercial motor vehicle safely. Three of the comments were recommendations in favor of granting Federal diabetes exemptions to individuals with ITDM and suggested streamlining the process of granting exemptions.

### Conclusion

After considering the comments to the docket, and based upon its evaluation of the eighty-four exemption applications, FMCSA exempts, Robert S. Althouse, Edwin K. Anderson, James G. Arnoldussen, Sr., William B. Bailor, Kenneth E. Benoit, Thomas S. Benson, Dennis A. Boelens, Melvin J. Boney, Christopher D. Bostic, Walter R. Braxton, Gordon M. Caldwell, Jake C. Cogswell, Eric W. Crawford, Merle N. Cromwell, Trenn A. Davis, Bobby J. Davison, Donald J. DeBaets, Anthony Espinosa, Gregory W. Eylar, Stephen R. Ferrario, Raymond J. Ford, Kevin J. Fries, Fred L. Frisch, Douglas E. Fuller, Daniel D. Greenwell, William G. Hansen, George H. Hayes, Jr., Danny E. Hillier, John H. Hilliges, Thomas Hogan, Harvey J. Hollins, John Horta, Paris J. Howell, Eric J. Huffman, Tyson C. Johnson, Ken M. Jorgenson, Barry J. Kelley, John H. Kingsley, Gary J. Klostermann, Steven F. Kohalmi, Peter D. Krenz, Robert J. Lampman, Jason C. Lang, Kevin J. Lavoie, Dennis M. Lester, Dario Lopez, Jerard L. Marquardt, Robert H. McCann, III, Lewis S. Needles, Derald W. Newton, Galen L. Nightingale, Chris C. Northway, John D. Owens, Theodore S. Pankiewicz, Jody A. Peckels, James H. Pfeiffer, Marc R. Pream, Travis W. Proctor, William B. Racobs, Remson H. Rawson, Ann M. Reinke, Frank W. Reynolds, Vincente L. Rodriguez, Bradley C. Roen, Thomas C. Routon, Tyler A. Russell, Randy L. Schroeder, Michael W. Sharp, Nathaniel B. Shaw, Sean L. Shidell, Wendell R. Shults, Joseph B. Simon, David E. Steinke, Floyd T. Stokes, Gary E. Stone, Timothy D. Stone, Anthony A. Thomas, William J. Thomas, Kaleo B. Tokunaga, John R. Turcotte, Danny J. Watson, Eric W. Williams, Russell A. Williams, and Kimberly A. Woehrman, from the ITDM standard 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: (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: January 29, 2009.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. E9-2451 Filed 2-6-09; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236, as detailed below.

[Docket Number FRA-2009-0003]

*Applicant:* CSX Transportation, Incorporated, Mr. C. M. King, Chief Engineer, Communications and Signals, 500 Water Street, SC J-350, Jacksonville, Florida 32202.

The CSX Transportation, Incorporated seeks approval of the proposed discontinuance of CP Barbourville Station (MP CA-494.37), including the conversion of the power-operated switch to hand operation, and the discontinuance and removal of dispatcher controlled signals 42R, 44R, 46L, 46RA, and 46RB on Main Tracks #1 and #2, on the Huntington Division, Kanawha Subdivision, at CP Barbourville Station, milepost CA-494.37.

The reason given for the proposed changes is a pole line elimination project and that the power-operated switch and signals at the east leg of wye

are no longer needed for present day operations.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2009-0003) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).