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Decided: April 10, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. E9-8765 Filed 4-21-09; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2009-0055]

#### 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 twenty-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 April 22, 2009. The exemptions expire on April 22, 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 March 4, 2009, FMCSA published a notice of receipt of Federal diabetes exemption applications from fifty-six individuals, and requested comments from the public (74 FR 9467). The public comment period closed on April 3, 2009 and no comments were received.

FMCSA has evaluated the eligibility of the twenty-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 twenty-four applicants have had ITDM over a range of 1 to 28 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 March 4, 2009, **Federal Register** Notice (74 FR 9467). 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 one comment in this proceeding. The comment was in favor of the Federal diabetes exemption program.

#### Conclusion

After considering the comments to the docket, and based upon its evaluation of the twenty-four exemption applications, FMCSA exempts, Lloyd R. Ackley, Jr., Scott D. Baroch, Kelly G. Bauman, Martin J. Bowsher, Michael G. Chisum, Timothy N. Davenport, Ryan S. Ficke, James P. Gilmore, Henry S. Glover, James R. Halliday, Nathan M. Hennix, Jeffrey D. Horsey, Wilbert E. Isadore, Andrew J. Lunsford, Eddie J. Nossner, Paul J. O'Neal, Jr., Larry W. Partridge, Joseph C. Perrin III, Debra A. Pipes, Michael J. Rouark, John T. Savelsberg III, Scott C. Sisk, Ronald A. Stachura, and Chris M. Testa, 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: April 15, 2009.

#### Larry W. Minor,

*Associate Administrator for Policy and Program Development.*

[FR Doc. E9-9285 Filed 4-21-09; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-1998-4334; FMCSA-2000-7006; FMCSA-2000-7918; FMCSA-2000-8398; FMCSA-2002-13411; FMCSA-2005-20027]

#### Qualification of Drivers; Exemption Renewals; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 11 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

#### FOR FURTHER INFORMATION CONTACT:

Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64-224, 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>.

##### Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on April 2, 2009.

##### Discussion of Comments

FMCSA received no comments in this proceeding.

## Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 11 renewal applications, FMCSA renews the Federal vision exemptions for Richard D. Carlson, David J. Collier, Robert P. Conrad, Sr., Donald P. Dodson, Jr., Stephanie D. Klang, Mark J. Koscinski, Dexter L. Myhre, Henry C. Patton, George D. Schell, James A. Stoudt, and Ralph A. Thompson.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 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 and 31315.

Issued on: April 15, 2009.

#### Larry W. Minor,

*Associate Administrator for Policy and Program Development.*

[FR Doc. E9-9280 Filed 4-21-09; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-1998-4334; FMCSA-2000-7363; FMCSA-2000-7918; FMCSA-2000-8398; FMCSA-2002-12844; FMCSA-2002-13411; FMCSA-2004-19477; FMCSA-2006-25246; FMCSA-2006-26066]

#### Qualification of Drivers; Exemption Renewals; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 23 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.