

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

[Docket No. FMCSA-2008-0312]

**Parts and Accessories Necessary for Safe Operation; Exemption Renewal for DriveCam, Inc.****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Notice of renewal of exemption; request for comments.

**SUMMARY:** FMCSA renews the exemption requested by DriveCam, Inc. (DriveCam) which allows the placement of video event recorders at the top of the windshields on commercial motor vehicles (CMVs). CMVs may continue to use the video event recorders to increase safety through (1) identification and remediation of risky driving behaviors such as distracted driving and drowsiness; (2) enhanced monitoring of passenger behavior for CMVs in passenger service; and (3) enhanced collision review and analysis. The Agency has concluded that granting this exemption renewal will maintain a level of safety that is equivalent to or greater than the level of safety achieved without the exemption. However, FMCSA also solicits comments and information on the exemption, especially from anyone who believes this standard will not be maintained.

**DATES:** This decision is effective April 16, 2011. Comments must be received on or before May 18, 2011.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) number FMCSA-2008-0312 by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

- *Hand Delivery:* Ground Floor, Room W12-140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.
- *Fax:* 1-202-493-2251.

*Instructions:* Each submission must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the "Public Participation" heading below. Note that all comments received will be posted

without change to <http://www.regulations.gov>, including any personal information provided. Please see the "Privacy Act" heading for further information.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to Room W12-140, DOT Building, New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

*Privacy Act:* Anyone is able to search the electronic form of all 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 for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316) or you may visit [http://edocket/access.gpo.gov/2008/pdf/E8-785.pdf](http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf).

**FOR FURTHER INFORMATION CONTACT:** Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC-PSV, (202) 366-0676; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:****Background**

Under 49 U.S.C. 31136(e) and 31315(b)(1), FMCSA may renew an exemption from the Federal Motor Carrier Safety Regulations 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." DriveCam has requested a two year extension of the current exemption from 49 CFR 393.60(e)(1). The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

**Basis for Renewing Exemption**

DriveCam applied for an exemption from 49 CFR 393.60(e)(1) to allow the use of video event recorders on all CMVs. FMCSA published a notice of the application, and requested public comments, on October 31, 2008 (73 FR 65008). On April 15, 2009, FMCSA

published a notice of final disposition granting the exemption (74 FR 17549).

Recently, FMCSA completed a driving behavior management system study that involved installing video event recorders in two commercial carrier fleets and collecting data using the systems. In June 2010, FMCSA released a report titled "Evaluating the Safety Benefits of a Low-Cost Driving Behavior Management System in Commercial Vehicle Operations," which outlined this study and its results. The two carriers that participated in the study experienced a reduction in safety-related events per 10,000 miles of over 38 percent at one carrier and over 52 percent at the other. In addition, they found that severe safety-related incidents decreased by more than 59 percent and 44 percent, respectively. The report is available on FMCSA's Web site at: <http://www.fmcsa.dot.gov/facts-research/research-/FMCSA-RRR-10-033.pdf>.

On September 28, 2010, the National Transportation Safety Board (NTSB) published Highway Accident Report NTSB/HAR-10/02, "Truck-Tractor Semitrailer Rear-End Collision into Passenger Vehicles on Interstate 44 Near Miami, Oklahoma, June 26, 2009." In this report, NTSB issued two safety recommendations to FMCSA relating to the use of video event recorders:

*Safety Recommendation H-10-10:* "Require all heavy commercial vehicles to be equipped with video event recorders that capture data in connection with the driver and the outside environment and roadway in the event of a crash or sudden deceleration event. The device should create recordings that are easily accessible for review when conducting efficiency testing and systemwide performance-monitoring programs."

*Safety Recommendation H-10-11:* "Require motor carriers to review and use video event recorder information in conjunction with other performance data to verify that driver actions are in accordance with company and regulatory rules and procedures essential to safety."

In support of these safety recommendations, the report noted:

\* \* \* VERs [video event recorders] can provide information not typically available through other investigative means, potentially allowing a more accurate determination of probable cause. In the case of the Miami accident, a forward-looking video could have provided investigators more information on the actions of the vehicles ahead of the accident truck and their visibility, and an interior video could have allowed investigators to entirely rule out medical incapacitation or distraction and

identify periods of reduced vigilance. The NTSB concludes that had the accident truck been equipped with a VER, a more definitive assessment of the driver's precrash condition and behavior would have been possible  
\* \* \*

The NTSB has long advocated the use of recording devices as a means of quantifying operator and vehicle behaviors in other modes of transportation. NTSB investigations have benefitted from the presence of data, video, and audio recorders in most modes of transportation, and it is evident from FMCSA-funded research that VER data are being used on a routine basis by transportation safety managers to reduce risky behaviors by their drivers through structured safety-performance-monitoring programs \* \* \*

The Miami accident investigation shows not only the value of having scientific, unbiased data available when investigating and reconstructing highway transportation accidents but also the value of having video-based event data to correlate with analog and digital EDR data to establish a driver's condition and state of attention. Heavy commercial vehicle industry members could also realize safety, cost, and other benefits by installing VERs in all their vehicles. Therefore, the NTSB recommends that the FMCSA require all heavy commercial vehicles to be equipped with VERs that capture data in connection with the driver and the outside environment and roadway in the event of a crash or sudden deceleration event. The device should create recordings that are easily accessible for review when conducting efficiency testing and systemwide performance-monitoring programs. Further, the NTSB recommends that the FMCSA require motor carriers to review and use VER information in conjunction with other performance data to verify that driver actions are in accordance with company and regulatory rules and procedures essential to safety.

NTSB/HAR-10/02, at 67, 68. Renewal of the existing exemption to enable the continued voluntary use of video event recorders is consistent with the NTSB's efforts to expand the use of such technology as noted above.

On May 15, 2009, FMCSA received a letter from Karen S. Burstein, counsel for Transport Workers Union (TWU) Local 101 ("Local 101"), requesting temporary suspension of the DriveCam exemption. Local 101 expressed concerns regarding the use and installation of video event recorders on CMVs operated by National Grid, a utility operator in the northeastern United States. A copy of this letter was placed in the docket established by FMCSA for its notice of the DriveCam application for an exemption and request for public comments (Docket No. FMCSA-2008-0312).

FMCSA determined that the information provided by Local 101 did not warrant suspension of the exemption. Local 101 did not provide

specific evidence that safety was compromised through use of the video event recorders. With respect to drivers' field of view, FMCSA concluded that, provided the video event recorders are positioned within the top two inches of the area swept by the windshield wiper, as specified in the 2009 exemption, drivers' vision is not impacted any more than when—for example—the sun visor is lowered. As noted in the original exemption, trucks and buses generally have an elevated seating position which greatly improves the forward visual field of the driver, and any impairment of available sight lines is minimal.

However, as a result of the letter from Local 101, FMCSA requested (1) that DriveCam place in the docket specific mounting instructions for its video event recorder unit, and (2) that DriveCam representatives visit National Grid to review installation of the video event recorder units in its vehicles. DriveCam satisfactorily addressed both of these requests.

#### Exemption Decision

FMCSA is not aware of any evidence showing that the installation of video event recorders on CMVs, in accordance with the conditions of the original exemption, has resulted in any degradation in safety. FMCSA continues to believe that the potential safety gains from the use of video event recorders to improve driver behavior will improve the overall level of safety to the motoring public.

The exemption is renewed subject to the requirements that video event recorders installed in commercial motor vehicles be mounted not more than 50mm (2 inches) below the upper edge of the area swept by the windshield wipers, and located outside the driver's sight lines to the road and highway signs and signals. The exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Motor carriers and/or commercial motor vehicles fail 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.

The Agency believes that extending the exemption for another two years will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption because (1) based on the technical information available, there is no indication that the video event recorders obstruct drivers' views of the

roadway, highway signs and surrounding traffic; (2) trucks and buses generally have an elevated seating position which greatly improves the forward visual field of the driver, and any impairment of available sight lines is minimal; and (3) the location within the top two inches of the area swept by the windshield wiper and out of the driver's normal sightline is reasonable and enforceable at roadside. In addition, the Agency believes that the use of video event recorders by fleets to deter unsafe driving behavior is likely to improve the overall level of safety to the motoring public. Without the exemption, FMCSA would be unable to continue to test this innovative safety management control system.

#### Request for Comments

FMCSA requests comments from parties with data concerning the safety record of CMVs equipped with video event recorders by May 18, 2011. The Agency will evaluate any data submitted and, if adverse evidence suggests that safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the DriveCam exemption.

Issued on: April 13, 2011.

Larry W. Minor,

Associate Administrator for Policy.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2011-0093]

#### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

**ACTION:** Notice of applications for exemption from the diabetes mellitus standard; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 21 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before May 18, 2011.