

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM—****STORAGE:**

Records are maintained in an electronic database and in paper files. Certain records are maintained only in paper files (for example, financial documents, photographs, and audio recordings).

**RETRIEVABILITY:**

Records are retrieved by the complainant's, inquirer's, or DBE appellant's name or case number, address, telephone number, or email address.

**SAFEGUARDS:**

Electronic files are stored in secure, password-protected databases. Users must sign a Rules of Behavior document prior to being granted access to the electronic systems. Any paper files and system-generated reports containing PII are labeled as containing PII and are stored in locked file cabinets and/or in a locked file room. Only the System Administrator and authorized Civil Rights personnel in DOOCR and in each DOT component are allowed access to the files, and on a "need-to-know" basis.

**RETENTION AND DISPOSAL:**

DOT is preparing a new records disposition schedule (Standard Form 115) for submission to the National Archives and Records Administration (NARA), which will include the following proposed retention periods:

- *General Information:* Destroy/delete 3 years after inquiry date, unless needed longer for legal or audit purposes.

- *Complaints and DBE Appeals:* Destroy/delete 5 years after final decision, unless needed longer for legal or audit purposes. A redacted copy of the final decision (with PII removed) may be retained longer for reference purposes.

- *De-certifications and Denials:* Delete immediately if decision to de-certify or deny certification is reversed or rescinded.

**SYSTEM MANAGER AND ADDRESS:**

Director, Departmental Office of Civil Rights (DOOCR), S-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W78-320, Washington, DC 20590.

**NOTIFICATION PROCEDURE:**

At any time, an individual inquirer, complainant, or DBE appellant may contact the System Manager to request access to review his or her personal information in the system and request

changes, as appropriate. During the pendency of the investigation, DOT may deny the individual access to the investigation files if necessary to avoid compromising the investigation. The investigator may require that the request be submitted in writing and include the requester's name, mailing address, telephone number, and/or email address, a description of the records requested, and a sworn statement (either a notarized statement or a statement signed under penalty of perjury) that the requester is the individual who he or she claims to be.

**RECORD ACCESS PROCEDURE:**

Same as indicated under "Notification procedure."

**CONTESTING RECORD PROCEDURE:**

Same as indicated under "Notification procedure."

**RECORD SOURCE CATEGORIES:**

Information is obtained from individuals making inquiries; correspondents; complainants; complaint subjects; DBE appellants; interviewees; investigation reports; and review of records.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Pursuant to subsection (k)(2) of the Privacy Act (5 U.S.C. 552a), because this system will contain investigatory material compiled for law enforcement purposes, a Notice of Proposed Rulemaking (NPRM) is pending to revise DOT's Privacy Act regulations (49 CFR part 10, Appendix, part II) to exempt this system from the requirements of the following Privacy Act subsections, for the reasons stated in the proposed revision: (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) to the extent that DOCRS contains investigatory material compiled for law enforcement purposes.

Issued in Washington, DC on November 9, 2011.

**Claire Barrett,**

*Departmental Chief Privacy Officer.*

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

**[FMCSA Docket No. FMCSA-2011-0194]**

**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 sixteen 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 November 16, 2011. The exemptions expire on November 16, 2013.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs Division, (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 Privacy Act Statement for the Federal Docket Management System (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>.

**Background**

On October 3, 2011, FMCSA published a notice of receipt of Federal diabetes exemption applications from sixteen individuals and requested comments from the public (76 FR 61140). The public comment period closed on November 2, 2011. No comments were received.

FMCSA has evaluated the eligibility of the sixteen 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 requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes 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 September 3, 2003 (68 FR 52441) **Federal Register** 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 sixteen applicants have had ITDM over a range of 1 to 26 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 (2 or more) severe hypoglycemic episodes in the past 5 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 and medical condition of each applicant were stated and discussed in detail in the October 3, 2011, **Federal Register** notice and they will not be repeated in this notice.

### **Discussion of Comment**

FMCSA did not receive any comments in this proceeding.

### **Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement 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 endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

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.

### **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 it is 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.

### **Conclusion**

Based upon its evaluation of the sixteen exemption applications, FMCSA exempts Mark D. Anderson, David A. Basher, Brian H. Berthiaume, Eric D. Blocker, Sr., Barry W. Campbell, Kevin

M. Donohue, Milton T. Gardiner, Raymond A. Jack, Quincy T. Johnson, Kenny B. Keels, Jr., Gene A. Michaels, Jason M. Pritchett, Steven R. Sibert, Cassie J. Silbernagel, Lewis B. Taylor and James A. Terilli from the ITDM requirement 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: November 9, 2011.

**Larry W. Minor,**

*Associate Administrator, Office of Policy.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2011-0300]**

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

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

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

**SUMMARY:** FMCSA announces receipt of applications from 20 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 December 16, 2011.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2011-0300 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the