

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

[FMCSA Docket No. FMCSA–2012–0217]

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 17 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 October 10, 2012. The exemptions expire on October 10, 2014.

FOR FURTHER INFORMATION CONTACT:

Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, 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 August 14, 2012, FMCSA published a notice of receipt of Federal

diabetes exemption applications from 17 individuals and requested comments from the public (77 FR 48587). The public comment period closed on September 13, 2012, and no comments were received.

FMCSA has evaluated the eligibility of the 17 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 17 applicants have had ITDM over a range of 1 to 22 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 August 14, 2012, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

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 17 exemption applications, FMCSA exempts Victor E. Angelo, Jr. (PA), David M. Atkins (SC), Roger A. Black (IN), Dominick Bravata (IL), Barry J. Drews (MI), Donald T. Farris (MS), Mark A. Hadrava (MN), Mason L. Hall (SD), Chad E. Hasler (MT), Norman A. Latondresse (RI), Robert C. Lister (OH), Roy E. Macomber (WA), Timothy J. Peterson (NE), Jim R. Phillippi (NE), Daryl E. Rohn, Jr. (WA), Robert E. Smith (GA) and Steven A. Wilson (FL) 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 the following occurs: (1) The person fails to comply with the terms and conditions of the 1/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: September 26, 2012.

Larry W. Minor,

Associate Administrator for Policy.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2012-0003]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated December 23, 2011, the McCreary County Heritage Foundation, Inc. (MCHF), on behalf of the Big South Fork Scenic Railway (BSFSRY), has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 215.303. FRA assigned the petition Docket Number FRA-2012-0003.

Specifically, MCHF/BSFSRY seeks a waiver of compliance from the railroad

freight car safety standards found at 49 CFR 215.303, which requires stenciling on restricted freight cars in clearly legible letters "R" followed by the basis of the restriction. This request is made for seven flatcars that were modified as "open air" and enclosed passenger cars (Car Numbers K&T 1001, 1002, 1003, 1004, 1005, 1006, and 1007) and one caboose (Car Number K&T Cab. 1).

As information, MCHF/BSFSRY also requested a Special Approval to continue in service the same cars in accordance with 49 CFR 215.203(c). The ages of these cars are more than 50 years from their original construction dates, and therefore, are restricted per 49 CFR 215.203(a), unless MCHF/BSFSRY receives a Special Approval from FRA.

MCHF/BSFSRY states that it is a 501(c)3 not-for-profit organization. This tourist railroad operates on a 7-mile portion of former Kentucky & Tennessee Railway right-of-way out of Stearns, KY. Operation of BSFSRY is entirely for historical, educational, and excursion purposes by employees of MCHF. BSFSRY is a non-insular tourist operation and does not interchange any of the equipment subject to this petition with the general system of railroads.

MCHF was incorporated in Kentucky in 1987. Since 2000 MCHF has operated BSFSRY as a historical tourist railroad for the purpose of providing an opportunity or the public to view and experience a ride on the historic Kentucky & Tennessee Railway into the river gorge of the Big South Fork of the Cumberland River. The cars are operated at a maximum speed of 15 mph, typically 16-30 times a month from April through October, and average 80 miles per week. Special trains are operated 6-12 times a month in October, November, and December, and these cars travel an average of 50 miles per week. These cars carry no more than 15 tons of payload (passengers and modifications), which is less than 30 percent of their original design capacities of 40 to 60 tons. The caboose subject to this petition is used as a passenger car for small private parties. A BSFSRY attendant is always onboard the caboose.

BSFSRY states that the cars subject to this petition do not interchange with any railroad and as such are in captive service. The stenciling requirement would affect the appearance of the renovated cars that have been preserved for historical, educational, and interpretive purposes.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's

(DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number 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 by November 26, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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), or online at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on October 2, 2012.

Ron Hynes,

Director, Office of Safety Assurance and Compliance.

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