

diabetic retinopathy. He holds a Class A CDL from Minnesota.

### Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).<sup>1</sup> The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

<sup>1</sup> Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

Issued on: April 25, 2013.

Larry W. Minor,

Associate Administrator of Policy.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2013-0012]

#### 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 20 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 May 6, 2013. The exemptions expire on May 5, 2015.

**FOR FURTHER INFORMATION CONTACT:**

Elaine M. Papp, Chief, Medical Programs Division, (202) 366-4001, [fmcamedical@dot.gov](mailto:fmcamedical@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).

### Background

On March 18, 2013, FMCSA published a notice of receipt of Federal diabetes exemption applications from 20 individuals and requested comments from the public (78 FR 16758). The public comment period closed on April 17, 2013, and one comment was received.

FMCSA has evaluated the eligibility of the 20 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 20 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 March 18, 2013, **Federal Register** notice and they will not be repeated in this notice.

#### Discussion of Comments

FMCSA received one comment in this proceeding. The comment is considered and discussed below.

The Pennsylvania Department of Transportation is in favor of granting an exemption to Robert J. Weyant after reviewing his driving history.

#### 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 20 exemption applications, FMCSA exempts Mick E. Brand (WA), Victor L. Daniels, Sr. (DE), Kenneth T. Faborito (HI), Colleen M. Herron (CA), Vincent K. Johnson (DC), Mark R. Kolling (MN), Kevin P. Lee (MN), Jason J. Libkie (CA), William R. Luckenbach (OK), Duane W. Mansur (NH), Fritz R. McBride (WI), Arthur H. Olsen (AZ), Jacob D. Parnaby (OH), Billy L. Suffel (OH), Samuel A. Tuzenew (NC), Ronnie L. West (MO), Robert J. Weyant (PA), Douglas G. Willson (OK), Brandon P. Wilson (NC), and Peter S. Zipperer (LA) 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: April 25, 2013.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA-2000-7257; Notice No. 74]

#### Railroad Safety Advisory Committee; Notice of Meeting

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Announcement of Railroad Safety Advisory Committee (RSAC) Meeting.

**SUMMARY:** FRA announces the forty-eighth meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The RSAC meeting topics will include opening remarks from the FRA Administrator. Status reports will be provided by the Fatigue Management, Rail Failure, and Risk Reduction Working Groups. Status reports will also be provided by the Engineering and System Safety Task Forces. This agenda is subject to change, including the possible addition of further proposed tasks under the Rail Safety Improvement Act of 2008.

**DATES:** The RSAC meeting is scheduled to commence at 9:30 a.m. on Friday, June 14, 2013, and will adjourn by 4:30 p.m.

**ADDRESSES:** The RSAC meeting will be held at the National Housing Center, located at 1201 15th Street NW., Washington, DC 20005. The meeting is open to the public on a first-come, first-served basis, and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Woolverton, RSAC Administrative Officer/Coordinator, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493-6212; or Mr. Robert Lauby, Deputy Associate Administrator for Regulatory and Legislative Operations, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493-6474.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 10(a)(2) of the Federal

Advisory Committee Act (Pub. L. 92-463), FRA is giving notice of a meeting of the RSAC. The RSAC was established to provide advice and recommendations to FRA on railroad safety matters. The RSAC is composed of 54 voting representatives from 32 member organizations, representing various rail industry perspectives. In addition, there are non-voting advisory representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico, the National Transportation Safety Board, and the Federal Transit Administration. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. See the RSAC Web site for details on prior RSAC activities and pending tasks at: <http://rsac.fra.dot.gov/>. Please refer to the notice published in the **Federal**