

Operations Division, Office of Bus and Truck Standards and Operations, MC-PSV, (202) 366-1225; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA-21) [Pub. L. 105-178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

Background

IWFA Application for Exemption

IWFA applied for an exemption from 49 CFR 393.60(d) to allow the use of glazing in the windows to the immediate right and left of the driver that does not meet the light transmission requirements specified in the FMCSRs. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.60(d) of the FMCSRs permits coloring or tinting of windshields and the windows to the immediate right and left of the driver, as long as the "parallel luminous

transmittance through the colored or tinted glazing is not less than 70 percent of the light at normal incidence in those portions of the windshield or windows which are marked as having a parallel luminous transmittance of not less than 70 percent." The transmittance restriction does not apply to other windows on the commercial motor vehicle.

In its application, IWFA states:

Many commercial operators, however, have been unable to obtain the approved film products in a timely and local basis; this has generated a significant volume of inquiries to federal, state, and association offices. We are therefore requesting a favorable consideration for the use of a market-standard 50%-type of film with a 7% measurement tolerance (to accommodate variances in glass, glass condition, film manufacturing variation, and meter differences.) This would allow the standard 50%-type film to be used on CMVs for the windows to the immediate right and left of the driver. This film is the same minimum visibility requirement used in the majority of states for automobiles and is essentially "clear" to the extent that, in most cases, it is difficult to determine if a vehicle even has had film applied. Since a reduction of light entering the truck cab interior will decrease not only available visible light but also scattered light (sometimes called "interference haze" by optical researchers), it can significantly improve driver comfort and reduce eye strain while also allowing films to be used which can also reduce the heat load of the interior environment, thus making the driver more comfortable as well as lowering energy use for cooling.

In support of its application, IWFA also provided an excerpt from an article titled "Safety Benefits and Costs of Tinted Glazing" published in 1988 by Harold Wakeley of the IIT Research Institute of Chicago.

In addition, IWFA stated:

This level of application would retain the industry's commitment to the enforcement community and also provide the commercial fleet operator with the expanded benefits of a larger number of film products which can provide energy and emissions improvements. It should be noted that while there may be no additional improvement in UV protection from that received by the current standard of 70 percent, the added benefit of fuel savings (and therefore greenhouse gas reductions) as well as reduced glare (haze) and enhanced driver comfort are greatly expanded by the benefits associated with the use of the requested level of film on CMVs.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on IWFA's application for an exemption from 49 CFR 393.60(d). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be

considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: January 10, 2014.

Larry W. Minor,

Associate Administrator for Policy.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2013-0190]

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 25 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 January 23, 2014. The exemptions expire on January 25, 2016.

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).

Background

On October 30, 2013, FMCSA published a notice of receipt of Federal diabetes exemption applications from 25 individuals and requested comments from the public (78 FR 65034). The public comment period closed on November 29, 2013, and no comments were received.

FMCSA has evaluated the eligibility of the 25 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 25 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 29, 2013, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA received no 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 25 exemption applications, FMCSA exempts Phyllis J. Cameron (IN), Jarrid S. Childress (KY), James M. Costello (IN), Gary L. Crawford (OH), Roger D. Droog (IA), Clair H. Gilmore (WA), Reubem L. Hunter, Jr. (VA), Michael A. Kollo (MN), Daniel R. Lindahl (WI), Kenneth G. Mahan, Jr. (AL), Jason L. Martin (PA), James F. McSweeney (NH), Eric W. Miller (IN), Thomas E. Orms (AL), Michael D. Pederson (MN), Williams J. Rodgers (PA), Mark A. Rosenau (MN), George M. Sapirstein (NJ), Daniel B. Shaw (FL), Christopher A. Sosa (MD), John C. Thomas (IN), Richard Wasko (FL), Douglas E. Wilhoit (PA), Richard A. Wilk (OH), and Thomas A. Young (TX) 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: January 15, 2014.

Larry W. Minor,

Associate Administrator for Policy.

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