

Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: June 4, 2007.

Robert F. Tally Jr.,

Division Administrator, Indianapolis, Indiana.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2006-26601]

Qualification of Drivers; Exemption Applications; Diabetes

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt seventy-three 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 June 8, 2007. The exemptions expire on June 8, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications 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 Document Management System (DMS) at: <http://dmses.dot.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> and/or Room W12-140 on the West Building Ground Floor, 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 complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at <http://dms.dot.gov>.

Background

On March 16, 2007, FMCSA published a notice of receipt of Federal diabetes exemption applications from seventy-four individuals, and requested comments from the public (72 FR 12656). The public comment period closed on April 16, 2007 and two comments were received.

FMCSA has evaluated the eligibility of the seventy-four applicants and determined that granting the exemptions to seventy-two of 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).

The Agency subsequently determined that two of the applicants did not meet the minimal age criteria outlined in 49 CFR 391.11(b)(1) which states that an individual must be at least 21 years old to operate a CMV in interstate commerce. The two applicants in question, Michael J. Guido and Cameron D. Hubbard will not be granted an exemption at this time. However, they can reapply for the exemption after they have satisfied the criteria discussed above. The Agency announces a correction regarding Robert A. Hartung, a Federal diabetes exemption applicant who was first published in a notice for comments on March 1, 2007 (72 FR 9402). There were no comments to the docket regarding granting him an exemption but he was omitted from the notice of final disposition that was published on April 30, 2007. Therefore, he will be granted an exemption with an effective date of April 30, 2007.

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers 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 2003 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 seventy-three applicants have had ITDM over a range of 1 to 38 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage their diabetes, 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 standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the March 16, 2007, **Federal Register** Notice (72 FR 12656). Therefore, they will not be repeated in this notice.

Basis for Exemption Determination

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

Consequently, FMCSA finds that exempting these applicants from the diabetes standard 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 they are 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.

Discussion of Comments

FMCSA received two comments in this proceeding. The comments are considered and discussed below.

An anonymous individual stated that Kenneth C. Michael should not receive a Federal diabetes exemption because he is both physically and cognitively unfit to be on the road due to frequent memory loss and debilitating illness.

Due to the fact that this comment was submitted by an anonymous individual and that the allegation of Mr. Michael having a "debilitating illness" was not specifically defined by the submitter presents challenges to the Agency in investigating the information submitted in the comment. FMCSA has re-evaluated his application and all supporting medical documents to determine if there was any information present to support the comment submitted. The documentation from his endocrinologist supports that he has stable control of his diabetes using insulin, and is able to drive a CMV safely. There is no indication that he has any other unresolved medical issues.

The Agency, at this time, has no evidence to support that the statement submitted into the docket is valid. The

Federal diabetes exemption only exempts the individual from 49 CFR 391.41(b)(3), it is the responsibility of the medical examiner to determine if the individual meets all other physical qualification standards. Therefore, FMCSA will require Mr. Michael to submit to the Agency a copy of his medical examination certificate as well as a copy of his medical examination form as a condition of granting the exemption. FMCSA will review the results of that examination report to determine if there is any medical information present to support the action of revoking the exemption. FMCSA is also willing to evaluate any additional information submitted by the public pertaining to this driver's safety at any point in time.

Another anonymous individual feels that the process for the Federal diabetes exemption is too long; he also believes that the Agency is discriminatory towards drivers with diabetes.

With regard to the length of time required to obtain a Federal exemption, FMCSA is required to publish in the **Federal Register** the name of each eligible individual who applies for a diabetes exemption, and request public comment on the application.

The Agency must then review all the comments received and determine whether granting the exemption would achieve a level of safety equivalent to, or greater than, the level of safety provided by compliance with the current diabetes standard. Depending on the complexity of the health issues discussed in the application, a final decision may take up to 180 days from the date we receive the completed application (49 U.S.C. 31136(e) and 31315). We recognize this potential 6-month waiting period may seem burdensome. However, we must carefully evaluate each applicant's request to assess his or her potential safety performance. FMCSA notifies all applicants in writing once a final decision is made. It is not the intention of FMCSA to impose hardship on commercial drivers. CMV drivers are held to a strict physical standard because of the extensive skill required to operate large trucks and buses and the potential harm these vehicles can cause to other motorists. Our safety regulations have a single goal—to reduce the number of CMV crashes and fatalities on the Nation's highways.

FMCSA's exemption process supports drivers with ITDM who seek to operate in interstate commerce. In addition, the Federal Motor Carrier Safety Regulations (FMCSRs) are not contrary to the Americans with Disabilities Act (ADA) of 1990. The mandates of the

ADA do not require that FMCSA alter the driver qualification requirements contained in 49 CFR part 391. The Senate report on the ADA, submitted by its Committee on Labor and Human Resources, included the following explanation:

With respect to covered entities subject to rules promulgated by the Department of Transportation regarding physical qualifications for drivers of certain classifications of motor vehicles, it is the Committee's intent that a person with a disability applying for or currently holding a job subject to these standards must be able to satisfy these physical qualification standards in order to be considered a qualified individual with a disability under Title I of this legislation. S. Rep. 101-116, at 27 (1989).

FMCSA relies on the expert medical opinion of the endocrinologist and the medical examiner, who are required to analyze individual ability to control and manage the diabetic condition, including the individual ability and willingness of the driver to monitor blood glucose level on an ongoing basis. Until the Agency issues a Final Rule, however, insulin-treated diabetic drivers must continue to apply for exemptions from FMCSA, and request renewals of such exemptions. FMCSA will grant exemptions only to those applicants who meet the specific conditions and comply with all the requirements of the exemption.

Conclusion

After considering the comments to the docket, and based upon its evaluation of the seventy-three exemption applications, FMCSA exempts, Jonathon L. Apuan, Oluwafemi A. Aruwajoye, Scott D. Baroch, David M. Beard, Andrew F. Behr, Brian G. Brianard, David A. Broughton, Kelly G. Burke, David R. Burton, Michael G. Cary, Esko G. Cate, Richard I. Chandler, Stephen R. Clemens, Johnny W. Corbin, Mark T. Cousins, Emory B. Duke, Mark K. Eaton, Chad L. Erickson, David E. Favour, Brian A. Foss, Manuel A. Garcia, Marcus B. Garis, John M. Gladu, Sr., William H. Grambusch, Kenneth M. Harrelson, Allan R. Harrison, Robert A. Hartung, Kendal B. Heath, Randy A. Hicks, Jon D. Huntsinger, Kirk J. Janczak, Thomas E. Jannicelli, Curtis L. Jewett, Mark W. Johnson, Robbie L. Jones, Lucas J. Jordan, Murl R. Kimmel, Michael D. Landon, ?, Patrick B. Lavespere, Aaron W. Lawrence, Scott W. Loucks, Jesse J. Louris, Michael G. McIntosh, Gordon L. Mattocks, Kenneth C. Michael, David W. Mills, Ellis E. Murdock, Mark E. Murphy, Daniel D. Neale, Judith A. Neel, Richard J. Neeman, Danny E. Norment, Marvin H.

Patterson, John H. Pitts, Kurt L. Podjaski, Lee M. Powell, Samuel N. Prindle, Ronald R. Reineke, Marks W. Sadowski, Thomas M. Sandahl, Bruce G. Scheffert, Carl W. Smith, Theodore M. Smith, Gilbert E. Strickland, John R. Thomas, Everett Tolbert, Kenneth R. Walker, John L. Waite, Jr., Donald S. Welch, James W. Williams, Milton L. Worsley, John A. Yarde, and Anthony Ybarra from the ITDM standard 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: June 4, 2007.

Larry W. Minor,

Acting Associate Administrator, Policy and Program Development.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2007-28055]

Demonstration Project on NAFTA Trucking Provisions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice; supplemental request for public comment.

SUMMARY: The FMCSA announces additional details about the initiation of a project to demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the commercial zones along the U.S.-Mexico border. On May 1, 2007, FMCSA published a notice in the **Federal Register** announcing its plans to initiate the project as part of the Agency's implementation of the North American Free Trade Agreement (NAFTA) cross-border trucking provisions. In response to section 6901(b)(2)(B) of the "U.S. Troop Readiness, Veterans' Care, Katrina

Recovery, and Iraq Accountability Appropriations Act, 2007," FMCSA provides for public comment certain additional details concerning the demonstration project. The FMCSA will carefully consider all comments received in response to the May 1, 2007, notice and this supplemental notice before further decisions are made concerning the implementation of the NAFTA trucking demonstration/pilot project.

DATES: Comments must be received on or before June 28, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA-2007-28055 by any of the following methods:

- Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site. Please note that the web site will not be available for use from June 13 through June 17, 2007 (72 FR 28092; May 18, 2007). During this period the Department of Transportation will be relocating the computers that host the electronic dockets. The electronic docket will again be available to users beginning on June 18, 2007. While the electronic docket is down from June 13 through June 17, interested parties may submit comments by fax, mail, or hand delivery, as described below. However, staff will not begin to place documents received during this period into the electronic docket until the computer goes back on line June 18.

- Fax: 1-202-493-2251.

- Mail: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- Hand Delivery: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington DC, 20590 between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

- Federal eRulemaking Portal: Go to www.regulations.gov. Follow the online instructions for submitting comments. Please note that submission of comments via this web site will be affected by the relocation of the Department's computers which host its electronic docket system.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information, see the Public Participation heading below. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal

information provided. Please see the Privacy Act heading below.

Docket: For access to the Docket Management System (DMS) to read background documents or comments received, go to <http://dms.dot.gov> at any time or to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington DC, 20590 between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The DMS is available electronically 24 hours each day, 365 days each year, except as noted above.

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 in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

Public Participation: The DMS is available 24 hours each day, 365 days each year, except during the relocation period noted above. You can get electronic submission and retrieval help and guidelines under the "help" section of the DMS Web site. Comments received after the comment closing date will be included in the docket, and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Milt Schmidt. Telephone (202) 366-4049; E-mail: milt.schmidt@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2007, FMCSA announced the initiation of a project to demonstrate the ability of Mexico-based motor carriers to operate safely in the United States beyond the commercial zones along the U.S.-Mexico border (72 FR 23883). The demonstration project will allow up to 100 Mexico-domiciled motor carriers to operate throughout the United States for one year. Up to 100 U.S.-domiciled motor carriers will be granted reciprocal rights to operate in Mexico for the same period. Participating Mexican carriers and drivers must comply with all applicable U.S. laws and regulations, including those concerned with motor carrier safety, customs, immigration, vehicle emissions, vehicle registration and taxation, and fuel taxation. The Agency explained the safety performance of the participating carriers will be tracked closely by FMCSA and its State partners, a joint U.S.-Mexico monitoring