

service described above pending issuance of a foreign air carrier permit.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Inspection, Repair, and Maintenance; Periodic Inspection of Commercial Motor Vehicles

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

ACTION: Notice on State periodic inspection programs.

SUMMARY: The FMCSA announces its acceptance of the State of Massachusetts' periodic inspection (PI) program for commercial motor vehicles (CMVs). The Agency has reviewed the State's inspection program for CMVs and determined that it should be added to the list of programs which have been determined to be comparable to, or as effective as, the Federal PI requirements contained in the Federal Motor Carrier Safety Regulations (FMCSRs). The State requires CMVs to be inspected annually or within 7 days of registration for newly acquired vehicles. The agency has published a list of such programs in the **Federal Register** previously, and this list has been revised occasionally. Including Massachusetts, 22 States, the Alabama Liquefied Petroleum Gas Board, the District of Columbia, 10 Canadian Provinces, and one Canadian Territory have PI programs which have been determined to be comparable to, or as effective as, the Federal PI requirements.

DATES: This action is effective on October 22, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Huntley, Chief of the Vehicle and Roadside Operations Division, MC-PSV, (202) 366-5370, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 210 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31142) (the Act) requires the Secretary of Transportation to prescribe standards for annual or more frequent inspection

of CMVs unless the Secretary finds another inspection system is as effective as an annual or more frequent inspection. On December 7, 1988, in response to the Act, the Federal Highway Administration (FHWA), the agency within the Department of Transportation responsible for motor carrier safety until 1999, published a final rule amending part 396 of the FMCSRs (53 FR 49402). The final rule requires CMVs operated in interstate commerce to be inspected at least once a year. The inspection is to be based on Federal inspection standards, or a State inspection program determined by the FHWA to be comparable to, or as effective as, the Federal standards. Accordingly, if the agency determines a State's PI program is comparable to, or as effective as, the requirements of part 396, then a motor carrier must ensure all of its CMVs which are required by that State to be inspected through the State's inspection program are so inspected. If a State does not have such a program, the motor carrier is responsible for ensuring its CMVs are inspected using one of the alternatives included in the final rule.

On March 16, 1989, the FHWA published a notice in the **Federal Register** that requested States and other interested parties to identify and provide information on the CMV inspection programs in their respective jurisdictions (54 FR 11020). Upon review of the information submitted, the FHWA published a list of State inspection programs that were determined to be comparable to the Federal PI requirements (54 FR 50726, December 8, 1989). This initial list included 15 States and the District of Columbia. The list was revised on September 23, 1991, to include the inspection programs of the Alabama Liquefied Petroleum Gas (LPG) Board, California, Hawaii, Louisiana, Minnesota, all of the Canadian Provinces, and the Yukon Territory (56 FR 47982). On November 27, 1992, the list was revised to include the Wisconsin bus inspection program (57 FR 56400). On April 14, 1994, the list was revised to include the Texas CMV inspection program (59 FR 17829). The list was revised on November 7, 1995, to include the Connecticut bus inspection program (60 FR 56183). The most recent revision was made on February 19, 1998 to include the Ohio inspection program for church buses (63 FR 8516), and a notice announcing FMCSA's acceptance of certain enhancements to the program on June 18, 2001 (66 FR 32863).

Determination: State of Massachusetts Inspection Program

The State of Massachusetts (the State) has implemented a mandatory annual inspection requirement for all buses (vehicles designed to transport 16 or more passengers, including the driver) and trucks as part of its program to improve the safety of operation of CMVs. As of October 1, 2008, the State prohibits any person from operating CMVs that are designed to transport 16 or more passengers, including the driver, or that have a gross vehicle weight rating of 4,536 kilograms (10,001 pounds) or more, unless the vehicle displays a valid safety inspection decal (540 Code of Massachusetts Regulations [CMR] 4.00 and 310 CMR 60.02).

The FMCSA has determined that the Massachusetts inspection program in effect as of October 1, 2008, is comparable to, or as effective as, the Federal PI requirements. Therefore, motor carriers operating CMVs which are subject to the State's program and which are subject to the FMCSRs must use the State's program to satisfy the Federal PI requirements.

It should be noted that in accepting the State's PI program, FMCSA also accepts the recordkeeping requirements associated with the inspection program. Upon successful completion of the Massachusetts Commercial Motor Vehicle Safety Inspection a comprehensive Vehicle Inspection Report (VIR) is created which identifies the vehicle, inspector, and the status of the inspection. In addition to the VIR, a program inspection sticker indicating the vehicle has passed or failed the inspection will be affixed to the vehicle's windshield. For trailers, the required proof of inspection will be the VIR.

Massachusetts will also have a database of all vehicle inspections performed. The vehicle inspection information will be captured at the end of the inspection and stored for a period of five years. State officials can query the database to capture a specific inspection report, or to summarize and analyze a subset or all CMV safety inspection records.

States With Equivalent Periodic Inspection Programs

The following is a complete list of States with inspection programs that FMCSA has determined are comparable to, or as effective as, the Federal PI requirements. Alabama (LPG Board), California, Connecticut, District of Columbia,

Hawaii,
Illinois,
Louisiana,
Maine,
Maryland,
Massachusetts,
Michigan,
Minnesota,
New Hampshire,
New Jersey,
New York,
Ohio,
Pennsylvania,
Rhode Island,
Texas,
Utah,
Vermont,
Virginia,
West Virginia,
Wisconsin.

Please note that two States have been removed from the previous list of approved programs. Arkansas no longer has a periodic inspection program for buses comparable to, or as effective, as the Federal PI program. Oklahoma has repealed its inspection requirements. Both States have therefore been delisted. As required by 49 CFR 396.23(b)(2), each motor carrier in Arkansas and Oklahoma must ensure that the periodic inspection required by 49 CFR 396.17 is performed on all CMVs under its control.

In addition to the States listed above, the FMCSA accepts the inspection programs of the 10 Canadian Provinces (Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan) and the Yukon Territory are comparable to, or as effective as, the Federal PI requirements. All other States either have no PI programs for CMVs or their PI programs have not been determined by the FMCSA to be comparable to, or as effective as, the Federal PI requirements. Should any of these States wish to establish a program or modify their programs in order to make them comparable to the Federal requirements, the State should contact the appropriate FMCSA division office.

List of Subjects

Highway safety, Highways and roads, Motor carriers, Motor vehicle maintenance, Motor vehicle safety, Reporting and recordkeeping requirements.

Authority: 49 U.S.C. 31132, 31136, 31142, 31502, and 31504; 49 CFR 1.73.

Issued on: October 14, 2008.

John H. Hill,
Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2008-0267]

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 thirty-nine 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 22, 2008. The exemptions expire on October 22, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366-4001, 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 complete Privacy Act Statement in the **Federal Register** (65 FR 19476, Apr. 11, 2000). This statement is also available at <http://Docketsinfo.dot.gov>.

Background

On September 9, 2008, FMCSA published a notice announcing receipt of applications for exemption from the

Federal diabetes standard from thirty-nine individuals, and requested comments from the public (73 FR 52451). The public comment period closed on October 9, 2008, and no comments were received.

FMCSA has evaluated the eligibility of the thirty-nine 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 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 (68 FR 52442) 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 thirty-nine applicants have had ITDM over a range of 1 to 24 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or that 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 his or her diabetes, received education related to diabetes management, and is on a stable insulin regimen. Each driver reports no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).