

ending on July 26, 2013. Of the 1,709 violations in the Driver Fitness BASIC, 1,695 involve the English Language Proficiency (ELP) of their drivers. The drivers approved for this pilot program completed ELP testing during the PASA.

Regarding the Vehicle Maintenance BASIC, the Agency notes that TRACSO will be using all 2013 model year vehicles in the program and the vehicles passed the inspections required to obtain a Commercial Vehicle Safety Alliance safety decal.

The compliance review began on April 23, 2013, and identified six violations: (1) 49 CFR § 382.401(c)(6)(iii)—Failing to maintain semi-annual laboratory statistical summaries of urinalysis required by 49 CFR § 40.111(a); (2) 49 CFR § 390.15(b)(1)—Failing to keep an accident register in the form and manner prescribed; (3) 49 CFR 391.11(b)(2)/391.11(a)—Using a driver unable to read and/or speak the English language; (4) 49 CFR 391.21(a)—Using a driver who has not completed and furnished an employment application; (5) 49 CFR 391.23(e)(1)—Failing to investigate the driver's alcohol and controlled substances history for the previous 3 years; and (6) 49 CFR 395.8(a)—Failing to require driver to make a record of duty status. No acute violations were discovered, and the violations of critical regulations did not rise to the level of critical violation. Thus the carrier received a "Satisfactory" safety rating upon the conclusion of the compliance review.

The Agency provided TRACSO with recommendations for correcting the violations. To address the high Driver Fitness BASIC, carrier officials stated they have scheduled English proficiency training for their drivers, and will continue to test and monitor their drivers' English language proficiency. Additionally, to address the high Vehicle Maintenance BASIC, carrier officials stated they will start a training program for their drivers on driver vehicle inspections so they can identify problems with vehicles and have them repaired before roadside inspections.

The Agency will monitor the safety of TRACSO through SMS and take action, if appropriate. TRACSO is currently a hazardous materials carrier (reg. # 062212551016U) registered with the Pipeline and Hazardous Materials Safety Agency and reports the transportation of three types of hazardous materials on its most recent MCS-150 filing in May 2013. TRACSO will be subject to the terms and conditions of the pilot program and during the PASA process FMCSA confirmed that TRACSO will not transport placardable hazardous

materials under the upcoming OP-1MX authority in the pilot program.

Based on TRACSO's safety record and corrective action plan, FMCSA will proceed in issuing provisional operating authority for participation in the pilot program.

#### *Request for Comments*

In accordance with the Act, FMCSA requests public comment from all interested persons on the PASA information presented in this notice. 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, the 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.

FMCSA notes that under its regulations, preliminary grants of authority, pending the carrier's showing of compliance with insurance and process agent requirements and the resolution of any protests, are publicly noticed through publication in the FMCSA Register. Any protests of such grants must be filed within 10 days of publication of notice in the FMCSA Register.

Issued on: September 18, 2013.

**Anne S. Ferro,**  
*Administrator.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

**[FMCSA Docket No. FMCSA-2013-0020]**

#### **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 16 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 September 30, 2013. The exemptions expire on September 30, 2015.

#### **FOR FURTHER INFORMATION CONTACT:**

Elaine M. Papp, Chief, Medical Programs Division, (202) 366-4001, [fmcsamedical@dot.gov](mailto: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 June 26, 2013, FMCSA published a notice of receipt of Federal diabetes exemption applications from 16 individuals and requested comments from the public (78 FR 38439). The public comment period closed on July 26, 2013, and two comments were received.

FMCSA has evaluated the eligibility of the 16 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 16 applicants have had ITDM over a range of 1 to 28 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 June 26, 2013, **Federal Register** notice and they will not be repeated in this notice.

#### Discussion of Comments

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

Laurie Susan Palmer expressed concern regarding the new A1C testing regulations.

John D. Heffington requested information regarding the new A1C testing regulations.

#### 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 16 exemption applications, FMCSA exempts Tyler A. Benjamin (AL), Larry K. Brindle (KS), James D. Damske (MA), Manuel M. Fabela, Jr. (CA), Ryan L. Guffey (IL), Richard B. Harvey (CA), Donald F. Kurzejewski (PA), Joshua O. Lilly (VA), Steven C. Lundberg (IA),

Frank D. Marcou, Jr. (VT), Roger D. Mott (IA), Bernard K. Nixon (FL), Thomas P. Olson (WI), Steven T. Vanderburg (NC), John P. Washington (NJ), and Christopher J. Wisner (MD) 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 20, 2013.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Federal Highway Administration

[Docket No. FTA-2013-0029]

### Proposed Policy Guidance on Metropolitan Planning Organization Representation

**AGENCY:** Federal Transit Administration (FTA) and Federal Highway Administration (FHWA), DOT.

**ACTION:** Proposed policy guidance; request for comments.

**SUMMARY:** The FTA and FHWA are jointly issuing this proposed guidance on implementation of provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141, that require representation by providers of public transportation in each metropolitan planning organization (MPO) that serves a transportation management area (TMA) no later than October 1, 2014. The purpose of this guidance is to assist MPOs and providers of public transportation in complying with this new requirement.

**DATES:** Comments must be received by October 30, 2013. Any comments