

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 twenty-seven applicants have had ITDM over a range of 1 to 36 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 April 28, 2009, **Federal Register** Notice (74 FR 19275). 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 no comments in this proceeding.

#### Conclusion

After considering the comments to the docket, and based upon its evaluation of the twenty-seven exemption applications, FMCSA exempts, Carroll F. Aardema, Edward F. Back, III, Aaron Bailey, Mirsad Beganovic, Carol J. Brummel, Paul R. Caudill, Bernia G. Denegar, Felipe Guerra, Jr., Michael K. Gunn, Steven D. Hancock, George E. Hardman, David L. Hottell, Marlin K. Johnson, Joshua L. Kroetch, Thomas E. Kusinsky, David S. Maynard, Gareth L. Miller, Joseph C. Minnier, Brian K. Moore, Zachary T. Patton, Edward R. Peters, Terry L. Robinett, Mark E. Strunk, Scot J. Suhr, Michael R. Sullivan, Kenneth R. Walker, and Blake A. Woolman 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 5, 2009.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. E9-13832 Filed 6-11-09; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket ID. FMCSA-2009-0155]

#### Qualification of Drivers; Exemption Applications; Diabetes

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

**ACTION:** Notice of applications for exemptions from the diabetes standard; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 21 individuals for exemptions from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate commercial motor vehicles in interstate commerce.

**DATES:** Comments must be received on or before July 13, 2009.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2009-0122 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- **Hand Delivery:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- **Fax:** 1-202-493-2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

**Docket:** For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time 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. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

**Privacy Act:** Anyone may search the electronic form of all comments received into any of our 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, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at <http://Docketinfo.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 21 individuals listed in this notice have recently requested an exemption from

the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce.

Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

#### **Qualifications of Applicants**

##### *Eugene L. Bradley*

Mr. Bradley, age 59, has had ITDM since 1995. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bradley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

##### *John F. Carruthers*

Mr. Carruthers, 55, has had ITDM since 2002. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Carruthers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

##### *Keith A. Craven*

Mr. Craven, 50, has had ITDM since 1999. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Craven meets the

requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from North Carolina.

##### *Jose E. Cruz*

Mr. Cruz, 55, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cruz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Indiana.

##### *Daniel L. Dixon*

Mr. Dixon, 48, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dixon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

##### *Michael A. Garufi*

Mr. Garufi, 55, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Garufi meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

*Joseph P. Jurewicz II*

Mr. Jurewicz, 33, has had ITDM since 1999. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jurewicz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Connecticut.

*Dana N. Larsen*

Mr. Larsen, 39, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Larsen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

*Jason G. Leavitt*

Mr. Leavitt, 39, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Leavitt meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

*Chad M. Morris*

Mr. Morris, 32, has had ITDM since 1985. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or

resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morris meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from New York.

*Thomas M. Petee*

Mr. Petee, 58, has had ITDM since 2003. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Petee meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Michigan.

*Jim A. Phelps*

Mr. Phelps, 56, has had ITDM since 1994. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Phelps meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds an operator's license from Michigan.

*Larry R. Price*

Mr. Price, 66, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using

insulin, and is able to drive a CMV safely. Mr. Price meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

*James F. Rabideau, Jr.*

Mr. Rabideau, 32, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rabideau meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from New York.

*Stanley N. Reneau*

Mr. Reneau, 38, has had ITDM since 1977. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Reneau meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Mexico.

*Richard D. Ritenour*

Mr. Ritenour, 52, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ritenour meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy.

He holds a Class B CDL from Pennsylvania.

*John E. Spano*

Mr. Spano, 52, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Spano meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

*Delton N. Stewart*

Mr. Stewart, 49, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stewart meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from North Carolina.

*Mark S. Sundberg*

Mr. Sundberg, 51, has had ITDM since 1966. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sundberg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds an operator's license from Michigan.

*Timothy G. Walls*

Mr. Walls, 45, has had ITDM since 1998. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Walls meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from West Virginia.

*Kelly R. Winslow*

Mr. Winslow, 49, has had ITDM since 1995. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Winslow meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Idaho.

**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 (SAFETEA-LU) 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

<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.

4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the 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.

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.

Issued on: June 5, 2009.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

[Docket No. FMCSA-2000-7165; FMCSA-2000-7918; FMCSA-2000-8398; FMCSA-2002-12294; FMCSA-2002-13411; FMCSA-2004-17984; FMCSA-2004-19477; FMCSA-2005-20027; FMCSA-2005-20560; FMCSA-2007-27333]

**Qualification of Drivers; Exemption Renewals; Vision**

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety