

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration**

[FMCSA Docket No. FMCSA-2005-24210]

**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 forty-seven 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 August 8, 2006. The exemptions expire on August 8, 2008.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366-4001, [maggi.gunnels@dot.gov](mailto:maggi.gunnels@dot.gov), FMCSA, Department of Transportation, 400 Seventh Street, SW., 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 PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., 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 June 2, 2006, FMCSA published a Notice of receipt of Federal diabetes exemption applications from forty-seven individuals, and requested comments from the public (71 FR 32177). The public comment period closed on July 3,

2006. One comment was received, and fully considered by FMCSA in reaching the final decision to grant the exemptions.

FMCSA has evaluated the eligibility of the forty-seven 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 Insulin-Treated Diabetes Mellitus (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 forty-seven applicants have had ITDM over a range of 1 to 33 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 June 2,

2006, **Federal Register** Notice (71 FR 32177). Because there were no docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here.

**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 one comment in this proceeding. The comment is considered and is discussed below.

One letter of recommendation was received in favor of granting the Federal diabetes exemption to one of the applicants. It was concerning Arthur Webber and it was written by W.J. Williams, who is a manager of the oil department at Meenan Oil in Upper Darby, PA. He said that Mr. Webber is one of his best oil delivery men and one of the safest drivers.

### Conclusion

After considering the comments to the docket and based upon its evaluation of the forty-seven exemption applications, FMCSA exempts Charles A. Adams, Jr., Scott R. Anderson, Richard Bechtel, Robert R. Chase, Dale J. Cleaver, Jeffrey W. Cotner, Todd A. Dean, Dale R. Gansz, Neal J. Gifford, Donald W. Havourd, Sr., Peter D. Jacobs, David A. Kelley, Jeffrey M. King, Milton A. Klise, Jeffrey Knight, Edward V. Kruse, Lee P. Lembke, Dominick T. Mastroni, Ronald S. Mavilla, Derril W. Nunnally, Ronald D. Olson, Robert L. Olson, Terrence V. Parker, Robert L. Pflugler, Jr., William E. Pruett, Jr., Ronald B. Purdum, William C. Rasely, Jr., Maurice E. Ratliff, Sr., Duane C. Rieger, Gregory A. Rigg, Scott L. Shreffler, Henry E. Sisler, Vernon L. Small, Sandra L. Smith, John J. Steigauf, Walter D. Stowman, Thomas C. Torbett, Derrick Underhill, Sr., Paul M. Violette, Antonino S. Vita, Henry B. Walker-Waltz, III, Arthur C. Webber, Scott A. Wertz, Larry D. Williams, Danny R. Wood, and Jeffrey E. Zaniewski 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: July 31, 2006.

**Rose A. McMurray,**

*Associate Administrator, Policy and Program Development.*

[FR Doc. E6-12848 Filed 8-7-06; 8:45 am]

BILLING CODE 4910-EX-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

#### Capital Metropolitan Transportation Authority

[Docket Number FRA-2006-25040]

Capital Metropolitan Transportation Authority (CMTA), located in Austin, TX, seeks a permanent waiver of compliance from Title 49 of the CFR for operation of a new planned Commuter Rail Service (CRS), partially sharing trackage with the Austin Area Terminal Railroad (AUAR), a common carrier freight railroad. The operation will feature temporal separation of CRS and AUAR operations. CMTA has selected a light rail style, non-FRA compliant Diesel-Multiple Unit (DMU), in order to offer a "one-seat ride" operation on both the shared and light rail-exclusive city street running portions of the system. *See Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment, 65 FR 42529 (July 10, 2000); see also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems, 65 FR 42626 (July 10, 2000).*

CMTA is constructing a 32-mile CRS, (27 miles shared, 5 miles light rail-exclusive) linking the City of Leander, TX, with downtown Austin, TX. CMTA owns the railroad right-of-way, referred to as the Central Sub-division of the AUAR, between MP 55.19DT (Austin) and MP 88.0 (Leander), and will utilize temporal separation of freight and passenger operations on this shared trackage. AUAR provides freight service to on-line customers, as well as interchanges with Union Pacific (UPRR) and BNSF Railway at MP 71.45.

Based on the foregoing, CMTA is seeking waiver of compliance from the provisions of the *Federal Railroad Locomotive Safety Standards*, 49 CFR:

Part 219 Drug and Alcohol; Part 221 Rear End Marking Devices; Part 223 Safety Glazing Standards; Part 225 Accident and Incident Reporting; Part 229 Railroad Locomotive Safety Standards; Part 231 Railroad Safety Appliance Standards; Part 238 Passenger Equipment Safety Standards; Part 239 Passenger Train Emergency Preparedness; Part 240 Qualification and Certification of Locomotive Engineers.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communication concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2006-25040) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL-401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

Issued in Washington, DC, on August 1, 2006.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E6-12799 Filed 8-7-06; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad