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Larry W. Minor,

Associate Administrator of Policy.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2012-0348]

#### 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 26 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 January 25, 2013. The exemptions expire on January 26, 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 December 29, 2010 (75 FR 82132), or you may visit <http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf>.

#### Background

On November 26, 2012, FMCSA published a notice of receipt of Federal diabetes exemption applications from 26 individuals and requested comments from the public (77 FR 70530). The public comment period closed on December 26, 2012, and no comments were received.

FMCSA has evaluated the eligibility of the 26 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 26 applicants have had ITDM over a range of 1 to 24 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 November 26, 2012, **Federal Register** notice and they will not be repeated in this notice.

#### Discussion of Comments

FMCSA received no comments in this proceeding.

#### 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 26 exemption applications, FMCSA exempts Kenneth R. Anderson (AL), Randle A. Badertscher (WY), Gerald R. Bryson (MT), Matthew J. Burris (MN), Samuel F. Dyer (NV), Jerol G. Fox (DE), Michael S. Freeman (OR), Harold D. Grimes (MI), Daniel L. Helton (IL), Douglas W. Hunderman (MI), Robert L. Johnson (VA), Kevin R. Martin (MO), George R. Miller, III (PA), Ronald G. Monroe (IN), Ronald D. Norton (WI), Lawrence E. Olson (WA), Israel Ramos (NY), Jed Ramsey (ID), Raymond E. Richardson (MD), Craig W. Schafer (DE), Stephen L. Schug (FL), Shawn M. Seeley (CT), Mark S. Shepherd (MA), L. Everett Stamper (IN), Vernon F. Walters (ID), and Christopher M. Young (OK) 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.

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**Larry W. Minor,**

*Associate Administrator for Policy.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2012-0110; Notice 1]

### Ford Motor Company, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Receipt of Petition.

**SUMMARY:** Ford Motor Company<sup>1</sup> (Ford) has determined that certain model year 2009–2012 Ford F-650 and F-750 trucks manufactured between June 26, 2008 and May 8, 2012, do not fully comply with paragraph S5.3.2(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 105, *Hydraulic and Electric Brake Systems*. Ford has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* (dated July 2, 2012).

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Ford has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Ford's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

**Vehicles Involved:** Affected are approximately 19,756 model year 2009–2012 Ford F-650 and F-750 trucks that were manufactured between June 26, 2008 and May 8, 2012.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the 19,756<sup>2</sup> model year 2009–2012 Ford F-

650 and F-750 passenger vehicles that Ford no longer controlled at the time it determined that the noncompliance existed.

**Noncompliance:** Ford explains that the noncompliance is that the subject vehicles do not illuminate the parking brake telltale lamp when the ignition switch is in the "on" or "start" positions as required by FMVSS No. 105.

### Rule Text

Paragraph S5.3.2(a) of FMVSS No. 105 requires:

S5.3.2(a) Except as provided in paragraph (b) of this section, all indicator lamps shall be activated as a check of lamp function either when the ignition (start) switch is turned to the "on" (run) position when the engine is not running, or when the ignition (start) switch is in a position between "on" (run) and "start" that is designated by the manufacturer as a check position.

### Summary of Ford's Analysis and Arguments

Ford stated its belief that although the affected vehicles do not illuminate the parking brake telltale lamp when the ignition start switch is in the "on" or "start" positions that the condition is inconsequential to motor vehicle safety for the following reasons:

(1) The parking brake telltale lamp functions as intended. Only the telltale bulb check at start-up is not illuminated.

(2) Unlike most other telltales, the park brake telltale will simultaneously illuminate when the customer applies the handbrake—essentially functioning as a bulb check. And, if the lamp does not illuminate when the handbrake is applied, the customer is able to identify the condition.

(3) If customers inadvertently operate the vehicle with the parking brake applied, the service brakes will not be affected because the design of the subject vehicles utilizes a separate, dedicated parking brake mounted on the driveshaft. Additionally, inadvertent application of the parking brake will result in poor vehicle acceleration and "drag" providing further indications that the parking brake is engaged.

(4) Instrument panel telltale bulbs are highly reliable. Engineering has reported no parking telltale bulb warranty claims for the subject vehicles.

(5) The physical position of the parking brake handle provides a readily apparent indication when the parking brake is applied. Partial park brake applications are not a concern because

<sup>1</sup> Ford Motor Company is a manufacturer of motor vehicles and is registered under the laws of the State of Delaware.

<sup>2</sup> Ford's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt Ford as a vehicle manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for 19,756 of the affected vehicles. However, a decision on this petition cannot relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into

interstate commerce of the noncompliant vehicles under their control after Ford notified them that the subject noncompliance existed.