



4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2001-9800]

Qualifications of Drivers; Exemption Applications; Diabetes; Withdrawal of Notices of Final Disposition

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

ACTION: Notice of withdrawal of 2003 and 2005 final disposition notices for the diabetes exemption program.

SUMMARY: FMCSA withdraws its September 3, 2003, notice concerning exemptions for certain individuals with insulin-treated diabetes mellitus (ITDM) and its November 8, 2005, revision. This action is in response to the Qualifications of Drivers; Diabetes Standard final rule, published on September 19, 2018, which revised the physical qualifications standard for ITDM individuals who wish to operate commercial motor vehicles (CMVs) in interstate commerce. The revised standard allows certified medical examiners, in consultation with the treating clinician, to evaluate and determine whether to grant an ITDM individual a medical examiner's certificate (MEC) to drive a CMV in interstate commerce. FMCSA has determined, therefore, that an exemption program for ITDM individuals is no longer necessary.

DATES: This notice is applicable **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Hydock, Chief, Medical Programs Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, by telephone at (202) 366-4001, or by email at fmcsamedical@dot.gov. If you have questions on viewing material in the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1970, 49 CFR 391.41(b)(3) prohibited ITDM individuals from operating CMVs. On September 3, 2003, FMCSA announced that the Agency would begin authorizing exemptions from 49 CFR 391.41(b)(3) for certain ITDM individuals (68 FR 52441). Section 31315(b)(2) of 49 U.S.C. allows the Agency to grant exemptions for a 2-year period and to renew them at the end of the period.¹ The 2003 notice of final disposition outlined the requirements for ITDM individuals to apply for an exemption, and the considerations FMCSA would apply in determining whether to grant such applications in accordance with the statute and the provisions of 49 CFR part 381, subpart C. It addressed the requirements to renew exemptions and the considerations that would be used by the Agency to determine whether to renew an exemption once issued. It also set out the circumstances that would require revocation of an exemption.

In response to the enactment of section 4129(a) through (c) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109–59, 119 Stat. 1144, 1742, Aug. 10, 2005), the Agency revised certain considerations for such exemptions on November 8, 2005 (70 FR 67777).

¹ At the time, the statute limited exemptions to 2 years. The statute was subsequently amended to allow exemptions for up to 5 years, but, as a practical matter, diabetes exemptions have been limited to 2 years.

On September 19, 2018, the Agency published a final rule revising the physical qualification standard for operators of CMVs with ITDM (83 FR 47486). As of September 19, 2018, there were 4,719 ITDM drivers who held Federal diabetes exemptions. While the exemption program provides a pathway to medical certification for ITDM individuals who otherwise meet the physical qualifications standards of 49 CFR 391.41(b), the amended diabetes standard provides a less burdensome approach that emphasizes individualized assessment and utilizes the treating clinician of the ITDM individual to assist the certified medical examiner in making the certification determination. Detailed explanations of the process for complying with the new physical qualification requirements are included in the preamble to the final rule published on September 19, 2018.

II. Transition from Exemption Program to the New Standard

The withdrawal of the 2003 and 2005 program notices is applicable **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Individuals could begin the process of obtaining MECs following the new streamlined process on November 19, 2018.

A. Existing Diabetes Exemption Holders

Diabetes exemptions under the program are issued for 2 years, but exemption holders must be medically certified by a certified medical examiner and issued an MEC annually. Any MEC that was obtained under an exemption and was in effect when the final rule became effective on November 19, 2018, will remain in effect until the MEC expires or is replaced by an MEC issued under the new standard. Prior to its expiration, a new MEC must be issued under the new standard to operate a CMV. FMCSA will direct

certified medical examiners to cease issuing MECs under the exemption program on or after the date of this withdrawal notice.

Beginning November 19, 2018, exemption holders could begin the process of obtaining certification under the new standard. This requires being evaluated by a treating clinician who must complete an Insulin-Treated Diabetes Mellitus Assessment Form, MCSA-5870, which is available on the Agency's website, and then obtaining a medical certification examination by a certified medical examiner. Existing diabetes exemption holders should have adequate time to comply with the provisions of the final rule before their current MECs expire. Obtaining certification under the new standard should be much less burdensome in terms of both time and resources than the lengthy process of applying for and maintaining an exemption.

B. State Driver Licensing Agencies and Variances

When an ITDM individual obtains an MEC under the new standard, it will not be necessary for the certified medical examiner to indicate on the MEC that certification is made consistent with the terms of an exemption (unless other exemptions are involved) because a diabetes exemption is no longer required to operate a CMV. Therefore, in the case of an ITDM individual holding a commercial driver's license or a commercial learner's permit, it will not be necessary for a State Driver Licensing Agency to receive and post the information about such a medical variance on the individual's Commercial Driver's License Information System (CDLIS) record (see 49 CFR 383.73(o)).

Issued on: February 13, 2019.

Raymond P. Martinez,

Administrator.

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