

unloaded trailer condition. Electric brakes on commercial trailers will not operate unless the tow vehicle has a brake controller.

Technology developments in electronics have allowed the development of a self contained electric brake control device that is mounted directly to the trailer enabling it to monitor and actuate the brakes based on inertial forces developed in response to the braking action of the towing vehicle. The device is essentially an electric surge brake controller, with the electric power for the brakes provided by the tow vehicle, but the braking action of the trailer is controlled by the electronic controller mounted on the trailer. A trailer using this trailer mounted electronic brake controller does not meet the "operative at all times" requirement of 49 CFR 393.48 and the brakes do not meet the "apply by a single application valve" requirement of 49 CFR 393.49. Innovative Electronics and other electric surge brake controller manufacturers have identified potential significant market penetration in commercial trailers equipped with electric brakes. Consequently, Innovative Electronics is requesting this exemption for all commercial motor vehicles as defined in § 390.5, for a period of 2 years.

Innovative Electronics requests that the standards for hydraulic surge brakes in 393.48(d) and 393.49(c) be applied to the temporary exemption, i.e., substituting "trailer mounted electric brake controller" for "surge brake" as follows:

(1) Trailer-mounted electric brake controllers are allowed on:

(i) Any trailer with a gross vehicle weight rating (GVWR) of 12,000 pounds or less, when its GVWR does not exceed 1.75 times the GVWR of the towing vehicle; and

(ii) Any trailer with a GVWR greater than 12,000 pounds, but less than 20,001 pounds, when its GVWR does not exceed 1.25 times the GVWR of the towing vehicle.

(2) The gross vehicle weight (GVW) of a trailer equipped with a trailer-mounted electric brake controller may be used instead of its GVWR to calculate compliance with the weight ratios specified in paragraph (d)(1) of this section when the trailer manufacturer's GVWR label is missing.

(3) The GVW of a trailer equipped with a trailer-mounted electric brake controller must be used to calculate compliance with the weight ratios specified in paragraph (d)(1) of this section when the trailer's GVW exceeds its GVWR.

(4) The trailer equipped with a trailer-mounted electric brake controller must meet the requirements of § 393.40.

Control valves for brakes.

(1) Trailer-mounted electric brake controller exception. This requirement is not applicable to trailers equipped with trailer-mounted electric brake controllers that satisfy the conditions specified in 393.48(d).

Without this exemption, commercial vehicle operators who tow trailers equipped with electric brakes must continue to purchase and install aftermarket trailer brake controls in each tow vehicle which may be used to tow

a commercial trailer equipped with electric brakes. Similarly, rental companies will be prevented from renting trailers equipped with electric brakes to commercial customers whose tow vehicles are not equipped with electric brake controllers, although they can rent such trailers to a customer for non-commercial use.

Innovative Electronics has provided limited test data showing that the trailer-mounted electronic brake controller appears to meet the braking performance requirements of 49 CFR 393.52(d). These test data have been included in the docket referenced at the beginning of this notice. Innovative Electronics' trailer-mounted electric brake controllers are currently available for non-commercial use trailers. The use of trailers equipped with electric brakes is currently allowed, and the brake performance of trailers equipped with the trailer-mounted controller appears to be at least as good as the performance of a tow vehicle equipped with a trailer brake controller. Trailer-mounted electric brake controllers offer the advantage of continuous electronic sensing of the braking forces acting on the trailer by the tow vehicle, thus eliminating the over-application of the trailer brakes in wet or icy conditions and continuously adjusting the application of the trailer brakes to variations in trailer weight; this is not possible when relying on the crude manual adjustments available on most in-cab tow vehicle brake controllers.

For the reasons stated above, Innovative Electronics requests that motor carriers be permitted to use trailer-mounted electronic brake controllers, which would eliminate the requirement for each individual tow vehicle to be equipped with an electronic brake controller. Innovative Electronics is making this request because it believes the use of trailer-mounted electronic brake controllers will maintain a level of safety that is equivalent to the level of safety achieved without the exemption.

FMCSA notes that, in comments submitted to the 2005 NPRM, the Coalition stated that surge brake technology had evolved since its petition was originally submitted, and suggested that the definition of surge brakes may someday require modification. For example, the Coalition noted that non-hydraulic surge brake systems had been developed and were entering the marketplace in Europe. The Coalition proposed that FMCSA consider deleting "permanently closed hydraulic" and the adjective 'hydraulic' from the definition of surge brakes as proposed in the NPRM to eliminate any

future design restrictions or the need for further rulemaking petitions.

FMCSA responded in the March 2007 final rule, stating that "No data are available to the Agency regarding the performance of other surge brake technologies to support the Coalition's request to remove the word 'hydraulic' from the definition of surge brake. If the Coalition wishes to make such data available to FMCSA, a modification of this definition may be evaluated."

#### Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on Innovative Electronics' application for an exemption from 49 CFR 393.48(a) and 49 CFR 393.49(a). 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, 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.

Issued on: February 4, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2010-0414]

#### 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 twenty-three 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 February 10, 2011. The exemptions expire on February 10, 2013.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (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), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

**Background**

On December 23, 2010, FMCSA published a notice of receipt of Federal diabetes exemption applications from twenty-three individuals and requested comments from the public (75 FR 80889). The public comment period closed on January 24, 2011 and no comments were received.

FMCSA has evaluated the eligibility of the twenty-three 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 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 twenty-three applicants have had ITDM over a range of 1 to 33 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 standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the December 23, 2010, **Federal Register** notice and they will not be repeated in this notice.

**Discussion of Comment**

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

The Pennsylvania Department of Transportation stated that it had reviewed the driving records for Thomas H. Adams and are in favor of granting him a Federal diabetes exemption.

**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 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 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 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 twenty-three exemption applications, FMCSA exempts, Thomas H. Adams, Jr., Charlie A. Barner, Charles G. Beasley, Philp M. Carr, Timothy D. Cochran, John A. Curtis, Robert M. Eggert, Christopher R. Everitt, Dustin J. Favor, Scott J. Forsmann, Joseph A. Griffin, Paul R. Hollenbach, Michael A. Holy, Victor M. Lewis, William P. Miller, Jr., Floyd R. Plocher, Darwin D. Roberts, Robert A. Roskamp, David N. Studebaker, Danny J. Watson, Robert L. Wenzel, David A. Wiltse and Walter B. Wirth 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: February 4, 2011.

**Larry W. Minor,**

*Associate Administrator, Office of Policy.*

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## 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.

#### Association of American Railroads

[Waiver Petition Docket Number FRA-2005-21613]

FRA granted waiver Docket Number FRA-2005-21613 to the Association of American Railroads (AAR) on December 5, 2005, establishing an extensive testing and inspection program to determine extended clean, repair and test intervals for air brake valves and related components as required by the *Railroad Locomotive Safety Standards* per 49 CFR 229.27 *Annual tests* and § 229.29 *Biannual tests*. Eighteen (18) separate groups of locomotives were identified for investigation in the waiver approval letter. This waiver has expired and AAR's request is to extend the waiver for another 5 years, as provided for in condition 12 of the original approval letter. As part of this request for extension, AAR has also requested that three Wabtec Railway Electronics (WRE) air brake system models (EPIC,

EPIC-II, and EPIC 3102D2) be combined into one testing category, thereby reducing the number of locomotive groups that must be investigated.

In support of this petition, AAR says that this extension will be utilized to collect additional data sufficient to determine appropriate test and inspection intervals for electronic air brake equipment. They have also submitted information from WRE supporting combining EPIC 3102D2 and EPIC II models into one group, stating that they have commonality of pneumatic components and electronic controls.

Electronic airbrake systems began to be introduced in the early 1990s. Due to the clean operation of these systems, the brake manufacturers applied for and were granted industry wide waivers permitting the clean, repair and test intervals under 49 CFR 229.27 and 229.29, to be extended to 5 years. Waiver Docket Number FRA-2000-7367 (formerly H-95-3), applies to electronic brake systems manufactured by New York Air Brake Corporation (NYAB) and Waiver Docket Number FRA-2002-13397 (formerly H-92-3) applies to electronic air brake systems manufactured by Wabtec Railway Electronics.

The successful performance of the electronic air brake systems out to 5 years led the CSX Transportation, Inc. (CSXT) to apply for a further extension for NYAB electronic air brake systems. An extensive test and inspection program under waiver Docket Number FRA-1999-6252 led to further extension of the airbrake servicing interval for the subject CSXT locomotives. The joint FRA-industry-labor committee approach to performing waiver evaluations was also validated by the experience on CSXT.

Based largely on the success of CSXT clean, repair, and test interval extension program, AAR applied for and was granted a waiver establishing a similar program for many groups of locomotives owned and operated by their member railroads. Conditional approval of waiver Docket Number FRA-2005-21613 established the terms under which the relief granted to CSXT could be extended to other AAR member railroads and established a means of evaluating 18 groups of locomotives for potential increases in electronic airbrake clean, repair and test intervals. The groups of locomotives are based on locomotive manufacturer, air brake manufacturer, manufacturer's system model, and whether or not the locomotives are equipped with an air dryer. The process for evaluating groups of locomotives was based on the

establishment of the same type of test and inspection program as had been used on CSXT for each group of locomotives identified in the approval letter.

In the 5 years that this waiver has been in effect, several joint committees including representatives of FRA, railroads, labor organizations (both operating and maintaining crafts), locomotive manufacturers, airbrake manufacturers, and others have met repeatedly to evaluate the condition of the electronic air brake equipment on various groups of locomotives at ages beyond the 5-year clean, repair and test cycle previously approved. The BNSF Railway (BNSF) has convened a joint waiver committee to evaluate GE and EMD locomotives equipped with NYAB CCB-2 air brakes without an air dryer. Interim results at the 7 years of service mark have shown the air brake system condition to be substantially the same as for similar CSXT locomotives which are air dryer equipped. Tests, teardowns and inspections of WRE Fastbrake systems have recently begun on the Union Pacific Railroad (UP) and CSXT.

Some of the locomotive groups being studied have not yet reached the clean, repair and test cycle time limit and the committees will continue to meet if this extension is granted. Certain other combinations of equipment have not yet passed beyond the 5-year age covered under the earlier waivers so committees to cover these groups are yet to be formed.

In addition to the committee work being done, Norfolk Southern, UP, Amtrak, and Canadian National have submitted the proper documentation and have been individually approved for the same relief granted to CSXT based on the established similarity of their locomotives and electronic airbrake systems to those evaluated on CSXT.

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 communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number 2005-21613) and may be submitted by any of the following methods: