

the proposed program, citing complexities of the application process, the extent of the medical examination, and the length of time until FMCSA grants an exemption. Among the comments in support, while citing problems with other elements of the program, 191 wrote specific comments about the requirement for three years of driving experience with the condition.

Nine organizations and individuals submitted 23 comments in opposition to the proposal. They argued that available evidence does not support implementation of an exemption program that must meet the safety requirements for new programs. They assert that the medical examination process cannot conclusively identify safe drivers with ITDM, that interstate driving is too arduous for such individuals, and the risk assessment results are not sufficient to justify a program that will be as safe or safer than the existing absence of a program.

The comments on the proposed program are further discussed below. Numerous commenters have substantive concerns about the same issues. The FMCSA presents its response after the comments are described.

Comments In Support

The American Diabetes Association (ADA) generally supports the FMCSA proposal to end the blanket ban prohibiting insulin-treated diabetics from operating CMVs. It believes that this proposal is long overdue and it would institute a process for the individual assessment of applicants. The ADA said that it does not believe all individuals with insulin-treated diabetes should qualify for a CDL. It strongly supports replacing the blanket ban with a medically sound protocol that maximizes safety and employment opportunities for individuals with diabetes. Consistent with that support, the ADA states that it supports most aspects of the proposed program. Specifically, the ADA agrees with three aspects of the proposed protocol; the careful medical screening, the stringent guidelines for drivers to use when driving, and the aggressive monitoring for safety. It supports the rigorous approach to assuring the highest levels of safety and believes that most aspects of the proposal are excellent.

The ADA, however, disagrees with the exemption requirement that insulin-treated drivers should have three years of safe driving experience with the condition. It states that nothing in the TEA-21 Report to Congress supports this requirement, and that the proposed requirement disregards currently available medical treatment and

supplies for people with diabetes. The ADA claims that the agency's own medical panel recommended a one or two month period for a person to adjust to insulin before applying for a CDL, and urges the adoption of that standard. It goes on to state that the three-year screening criteria should be replaced with a one-month adjustment period for those with non-ITDM that are moving to the use of insulin, and a two month adjustment period for those newly diagnosed with the ITDM condition. Individual circumstances could extend this latter period. Moreover, the ADA believes that there should be no requirement for the CDL applicant to have any experience driving a CMV.

The ADA also believes that DOT should change the regulations in relation to diabetes. It believes that the proposed exemption program has a number of difficulties that a regulatory change would not. The ADA believes the exemption program could be terminated at any time in the same manner the FHWA did when it ended the diabetes waiver program. It also believes that an exemption program may not be able to protect qualified ITDM drivers from employer discrimination, citing a supreme court decision, *Albertson's Inc. v. Kirkingberg*, 527 U.S. 555 (1999). The ADA states that an exemption program could result in more discrimination and litigation. As a result, the ADA argues that the general regulatory standard in 49 CFR 391.41(b)(3) should not continue when the DOT has determined that individual assessment is feasible.

The U.S. Equal Employment Opportunity Commission (EEOC) states that the proposed exemption program is intended to increase employment opportunities for individuals with disabilities while monitoring for safety. In this sense, the EEOC claims that the process is consistent with the Americans with Disabilities Act. However, the EEOC is concerned about the requirement for three years of driving experience with the condition. It is concerned that this screening process may exclude a large number of drivers from interstate commerce, which may limit diabetic drivers to a small number of lower paying jobs. It was also concerned that some drivers may live in states that do not allow diabetic drivers to operate CMVs in intrastate commerce. The EEOC urges the FMCSA to monitor the three-year experience requirement if it is used and reassess it if it becomes too exclusionary.

The Congressional Diabetic Caucus (Caucus) generally supports the program, saying that it is pleased that the TEA-21 Report to Congress

"concludes that a safe and practicable protocol to allow some individuals with insulin-treated diabetes mellitus to operate commercial motor vehicles is feasible." However, it has concerns about the three-year requirement for driving experience. It claims that the proposed three-year requirement ignores advances in medical treatment. The Caucus points to the input given by a DOT medical advisory panel which recommended a one to two month adjustment period before driving for those individuals newly treated with insulin.

The Caucus also believes that DOT should not implement the proposed policy through another exemption or waiver program. It believes the vast majority of States and the Federal Government have successfully experimented with allowing a limited number of insulin-treated drivers to operate CMVs. With the Federal government's analysis of the issue, another exemption (waiver) program would be inadequate to provide benefits for all involved. Based on this, it urged DOT to permanently change the regulations concerning insulin-treated diabetes and the operation of CMVs.

The Civil Rights Division of the U.S. Department of Justice (DOJ) generally supports the proposed exemption program as a positive step toward permitting an individual assessment of persons with ITDM to operate CMVs in interstate commerce. The DOJ, however, has concerns regarding the three-year driving requirement and urged the FMCSA to continue to obtain and analyze data on the safety records of CMV operators with ITDM from all available sources. This should permit the FMCSA to consider if it is appropriate to modify the three-year requirement. The DOJ believes that among those States that allow drivers with ITDM to operate CMVs, some monitor the drivers for a variety of reasons. As a result, those states should be able to provide the FMCSA with several years of data to examine the risk associated with relaxing the three-year requirement.

The Amalgamated Transit Union (ATU), which represents over 175,000 members maintaining and operating bus, light rail, ferry, over-the-road bus, school bus, and paratransit vehicles in the U.S. and Canada, strongly supports the proposed program because advances in the treatment of diabetes make it possible for some ITDM individuals to operate a CMV. However, the ATU strongly opposes the requirement for three years of safe CMV operation with the condition. This aspect of the proposal, the ATU argues, would place