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# Oregon

John A. Kitzhaber, M.D., Governor

## Department of Transportation

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DEPT OF TRANSPORTATION

Reference: Docket No. FMCSA-2001-9800 - 22

Thank you for the opportunity to provide input on this notice and request for comment regarding FMCSA's proposal to issue exemptions to certain insulin-using diabetic drivers of commercial motor vehicles (CMV's).

The Oregon Department of Transportation supports FMCSA's proposal to introduce a pilot program for insulin-using commercial drivers. Oregon's intrastate waiver program for insulin-using commercial drivers is similar to the proposed FMCSA pilot program.

At the conclusion of the pilot program and once additional research has been completed, Oregon would like the opportunity to comment on any further rulemaking.

Oregon has had extensive experience in issuing intrastate waivers to insulin-using diabetic drivers of CMV's. The Oregon Department of Transportation, Motor Carrier Transportation Division, has had a program for providing limited exemptions for intrastate waivers of physical disqualification since 1984. A portion of that program provides that persons with insulin-using diabetes may be granted an intrastate waiver if they meet certain medical requirements. Of the intrastate waivers currently issued by the Oregon Department of Transportation, over one-fourth (125) are for insulin-using diabetes.

Oregon maintains crash data for intrastate transportation and that data shows no incidence directly related to commercial vehicle accidents where complications from diabetes were a causation factor in the accident.

Applicants for an intrastate waiver of disqualification for insulin-using diabetes must meet stringent medical requirements as outlined below.

All applicants for waiver who require the use of insulin in the control of their diabetes must present evidence from a treating specialist (Diabetologist, Endocrinologist or Internist) to include:

- A brief history of clinical findings relative to diabetes and its complications;
- A summary of current treatment, including whether the patient is on a tight control plan with multiple injections daily and whether frequent self-monitoring of blood glucose is being done;
- Results of recent blood glucose and hemoglobin A1c determinations;
- A statement whether the patient has had any severe hypoglycemic reactions ( defined as a loss of consciousness or control requiring hospitalization or other medical intervention with parenteral glucose or glucagon);
- An indication whether this patient has demonstrated hypoglycemia unawareness; and
- An opinion concerning this patient's understanding of hypoglycemia and how to prevent it. Opinion statements from the treating specialist as to the need for frequent driver monitoring and/or whether commercial driving would present a significant risk in this case are encouraged but optional. In addition to the treating specialist's report, applicants must submit a signed and dated statement indicating the month and year that the last severe hypoglycemic reaction occurred (see definition above) or indicating "none" if he/she has never had a severe reaction. This statement must also include the applicant's statement to maintain a regular meal schedule during working hours, to carry a readily available sugar source in the vehicle at all times in event of hypoglycemic symptoms, and to notify DMV and ODOT immediately if a severe hypoglycemic reaction occurs at any time (while driving or otherwise).

ODOT denies a waiver when there has been one or more severe hypoglycemic reactions within two years of the date of application, unless there is treating specialist opinion to the contrary. If the treating specialist in such cases indicates extenuating circumstances that have been corrected and specifically recommends that commercial driving be allowed, ODOT may approve a waiver for a six month period and review the waiver every six months until two years has elapsed from the last severe hypoglycemic episode.

Where there have been no severe hypoglycemic reactions within two years of the date of application, but there is documentation by the treating specialist of hypoglycemia unawareness, or of maintenance of a tight blood glucose control program without frequent self-monitoring of blood glucose, or of overly loose control of blood glucose, unless there is a treating specialist opinion to the contrary, ODOT approves a waiver for a twelve month period and reviewed yearly thereafter.

Where there have been no severe hypoglycemic reactions within two years of the date of application and there is no evidence of documented hypoglycemia unawareness, nor of tight glucose control without frequent self-monitoring of blood glucose, nor of overly loose control of blood glucose, unless there is a treating specialist opinion to the contrary, ODOT approves a waiver for a two year period.

All waiver renewal exams will require the usual driver physical form, a brief note from driver's regular treating source and a driver's signed statement as described in the first paragraph above.

In addition, Oregon has adopted administrative rules for the purpose of monitoring the performance of all intrastate waiver of physical disqualification holders which include reporting requirements, review provisions, and revocation provisions.

The comments submitted are those of the Oregon Department of Transportation, Motor Carrier Transportation Division and the Oregon Department of Transportation, Driver and Motor Vehicle Services.

Sincerely,

A handwritten signature in cursive script that reads "Mari Miller". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Mari Miller

Program Services Manager

**Oregon Administrative Rule 740-100-0140**  
**Oregon Waiver of Physical Disqualification**

(1) A waiver of physical disqualification issued to a commercial motor vehicle driver by MCTD is subject to procedures, conditions and limitations set by MCTD in this rule.

(2) Definitions:

(a) "Accident/conviction records" are records used to establish when a medical waiver issued by MCTD may be denied or suspended. These include, but are not limited to DMV records, police reports, crash reports or other reports from motor carriers.

(b) "Accident/conviction guidelines" are those criteria based on records of conviction or crash reports used to establish periods of suspensions of medical waivers as maintained by MCTD.

(c) "Conditions requiring waiver" are as provided in Title 49, CFR Sections 391.41 through 391.49;

(d) "MCTD" means the Motor Carrier Transportation Division of the Oregon Department of Transportation;

(e) "Waiver Guidelines" are those criteria maintained by, and available from, MCTD as provided for by the Oregon Health Division or the licensed health care professional under contract with the Department.

(3) Waiver conditions and procedures include:

(a) When an intrastate driver of a commercial motor vehicle (CMV) does not qualify for a waiver of physical disqualification pursuant to Title 49, CFR Sections 391.41 through 391.49, the driver may make application to MCTD for a medical waiver;

(b) Applications for waiver shall be accompanied by a completed waiver application form and other information as required by MCTD, including a current USDOT physical examination form completed by a license health care professional;

(c) All physical waivers and requests for physical waivers shall be subject to review by a licensed health care professional or the Oregon Health Division; and

(d) The Department may make an inquiry, review, or investigation of an applicant or current physical waiver holder's driving record, both commercial and noncommercial, at any time and it may use its findings as a basis for denial of a waiver or for suspension or permanent revocation of an existing waiver as specified in OAR 740-300-0140. Subject information shall include but not be limited to:

(A) Accident/conviction record;

(B) Crash information; and

(C) Any other information received regarding driving activities.

(e) If an inquiry, review or investigation of an applicant for, or current holder of, a driver's waiver of physical disqualification is conducted under subsection (d) of this section and information is obtained that may be used as a basis for denial of waiver or for suspension or permanent revocation of an existing waiver, the Department may take action as follows:

(A) If no penalty order or cease and desist order has been entered against the driver within the preceding five years for violations or other actions taken under subsection (d) of this section:

(i) When the record or other information being acted upon relates to non-commercial driving activities, the Department may suspend a driver's waiver of physical disqualification for up to 180 days; and

(ii) When the record or other information being acted upon relates to commercial driving activities, suspension of a driver's waiver of physical disqualification for up to one year.

(B) If a penalty order or cease and desist order has been entered against the driver within the preceding five years for violations or other actions taken under subsection (d) of this section:

(i) When the record or other information being acted upon relates to non-commercial driving activities, the Department may suspend a driver's waiver of physical disqualification for up to one year or permanently revoke the driver's waiver of physical disqualification, as warranted by the circumstances of a particular case.

(ii) When the record or other information being acted upon relates to commercial driving activities, the Department may suspend a driver's waiver of physical disqualification for up to

two years or permanently revoke the driver's waiver of physical disqualification, as warranted by the circumstances of a particular case.

(C) If a driver has been subject to action specified in subsection (b) of this section in the preceding 12 months:

- (i) When the record or other information being acted upon relates to non-commercial driving activities, suspension of a driver's waiver of physical disqualification for up to five years or permanent revocation as warranted by the circumstances of a particular case; and
- (ii) When the record or other information being acted upon relates to commercial driving activities, the Department may permanently revoke the driver's waiver of physical disqualification.

(4) Any driver issued a waiver shall:

- (a) Notify MCTD of any change in the driver's physical condition pertaining to the need for a waiver or any other condition which may require a waiver or waiver modification;
  - (b) Notify MCTD of all crashes, arrests or convictions involving the use of a motor vehicle within 30 days of the crash or within 10 days of the arrest or conviction;
  - (c) Notify MCTD of any notice of suspension, revocation or withdrawal of driving privileges in any state;
  - (d) Notify MCTD within 10 days of changing employers and provide your employer with a copy of your waiver;
  - (e) Carry a copy of the medical waiver and any listed waiver conditions at all times while operating a CMV and make the waiver and waiver conditions available to enforcement personnel upon request;
  - (f) Only operate a CMV in Oregon intrastate operations; and
  - (g) Comply with all of the waiver conditions.
- (5) The waiver period shall not exceed the expiration date of the driver's medical certificate.