

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****49 CFR Part 391**

[FHWA Docket No. MC-96-2]

RIN 2125-AD73

Qualification of Drivers; Vision and Diabetes; Limited Exemptions

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA announces a proposal to allow those drivers currently holding valid waivers from both the vision and diabetes standards contained in the Federal Motor Carrier Safety Regulations (FMCSRs) to continue to operate in interstate commerce after March 31, 1996. This action is directed solely at those drivers who have been granted temporary waivers to participate in either the Federal vision waiver study, who numbered 2240, or in the Federal diabetes waiver study, who number 119 as of November 1, 1995. The FHWA believes that allowing this special group of drivers to continue to drive after March 31, 1996, is consistent with the public interest and safe operation of commercial motor vehicles (CMV). This action is necessary because the waiver program termination date of March 31, 1996, has been established, and without this action, the drivers will no longer be qualified to operate in interstate commerce after that date. The FHWA proposes to allow these drivers to continue operations, subject to certain operating conditions. The proposal also includes a technical amendment to relocate an existing provision so that all limited exemptions from driver qualification standards can be found in the same subpart.

DATES: Comments must be received on or before February 7, 1996.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-96-2, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed envelope. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. The FHWA may

issue a final determination and rule on this matter at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: The FHWA has established a special telephone number to receive inquiries regarding this action. The number is 1-800-832-5660. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Section 206(f) of the Motor Carrier Safety Act of 1984 (MCSA), Pub. L. No. 98-554, 98 Stat. 2835 (codified at 49 U.S.C. 31136(e), formerly 49 U.S.C. App. 2505(f)) allows the Secretary of Transportation to issue waivers from the Federal Motor Carrier Safety Regulations only after a determination that such waivers are not contrary to the public interest and are consistent with the safe operation of CMVs. Historically, the FHWA has issued limited waivers and does not intend to enter into any large scale program of exemptions. The safety performance data collected under the vision and diabetes waiver programs would be used as the basis for this determination; however, separate research proceedings would form the basis for any future adjustments, if warranted, to the current vision and diabetes standards. The FHWA has decided on a 30 day comment period in order to give adequate notice to waived drivers of their status at the conclusion of the waiver program on March 31, 1996. Prior notices on the waiver program have established the issues facing the FHWA in deciding the disposition of these drivers; therefore, these issues are well known to potential commenters on this notice. See 59 FR 50887 (October 6, 1994) and 59 FR 59386 (November 17, 1994).

Vision Waiver Program Background

On February 28, 1992, the FHWA published a notice of proposed rulemaking (NPRM), 57 FR 6793, requesting comments on the need, if any, to amend its driver physical qualification requirements relating to vision. On March 25, 1992, the FHWA published a notice of intent to issue waivers from the vision requirement, 57 FR 10295. The notice indicated that applications would be processed as quickly as possible and waivers would be issued for a period of three years or until the current rulemaking addressing the Federal vision requirement is completed, whichever occurred first. The notice imposed certain conditions and reporting requirements on applicants, among them that applicants for a waiver submit medical certification that the vision in their better eye is at

least 20/40 acuity, corrected or uncorrected.¹

The FHWA published a subsequent notice, 57 FR 23370, on June 3, 1992, announcing the receipt of applications by drivers for waiver of the FHWA's vision requirements and seeking comments on its intent to waive its vision requirements for drivers who met certain conditions. The notice explained that the proposed waiver program would enable the FHWA to conduct a study comparing a group of experienced drivers with a visual deficit in one eye with a control group of experienced drivers who meet the Federal vision requirements. The FHWA believed that the study would provide the empirical data that a previous study did not.

In its Notice of Final Disposition, 57 FR 31458, published on July 16, 1992, the FHWA instituted the waiver program, making temporary waivers available to drivers who met the announced conditions. The FHWA determined that the waiver is not contrary to the public interest. The program is consistent with the national policy, as expressed in the Rehabilitation Act of 1973 and the Americans with Disabilities Act, to facilitate the employment of qualified individuals with disabilities. Moreover, the FHWA found that the waiver program was consistent with the safe operation of CMVs because the program's requirements would effectively screen out unsafe drivers.

These safeguards required waiver applicants to be otherwise qualified under 49 CFR Part 391, and hold a valid commercial driver's license to operate a CMV issued after April 1, 1990. The applicant must also have had three years' recent experience driving a CMV without (1) license suspension or revocation; (2) involvement in a reportable accident in which the applicant received a citation for a moving violation; (3) conviction for driving a CMV while intoxicated, leaving the scene of an accident involving a CMV, commission of a felony or more than one serious traffic violation involving a CMV; or (4) more than two convictions for any other moving violation in a CMV. Finally, the applicant had to present proof from an

¹ The current Federal vision standard for CMV drivers requires: distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber. 49 CFR 391.41(b)(10).

optometrist or ophthalmologist certifying that the applicant's visual deficiency has not worsened since his or her last examination, that vision in one eye is at least 20/40 acuity, corrected or uncorrected, and that the applicant is able to perform the driving tasks required to operate a CMV.

In addition, the applicant had to comply with the following requirements: (1) report all citations for moving violations involving a CMV; (2) report the disposition of the charge; (3) report any accident involvement whatsoever while operating a CMV; (4) submit documentation of an annual examination by an ophthalmologist or optometrist; and (5) submit reports of vehicle miles traveled monthly in a CMV.

Court Decision

On August 2, 1994, the U.S. Court of Appeals for the D.C. Circuit found that the agency's "determination that the waiver program will not adversely affect the safe operation of CMVs is devoid of empirical support in the record" and that "the FHWA has failed to meet the exacting requirements of section 2505(f) (now 49 U.S.C. 31136(e))." *Advocates for Highway and Auto Safety v. FHWA*, 28 F.3d 1288, 1294. Consequently, the Court concluded that the FHWA's adoption of the waiver program was contrary to law, and vacated and remanded the rule to the agency.

On October 6, 1994, the FHWA published a Notice of Determination, Request for comments, 59 FR 50887, extending the validity of the vision waivers for a thirty-day period. The notice also proposed to allow the waiver program to continue until its original March 31, 1996, termination date based on the additional empirical evidence presented in the notice. On the same day, an emergency motion was filed in the D.C. Circuit requesting that the court issue and enforce the mandate in *Advocates*, thereby halting the waiver program. The court issued its mandate on October 21, 1994, and on October 24, 1994, the court denied the *Advocates'* emergency motion.

On November 17, 1994, the FHWA published a Notice of Final Determination (59 FR 59386) that continued the vision waiver program through March 31, 1996. The FHWA's decision was based, in part, on data collected on the group of waived drivers indicating that they had performed and continued to perform more safely than drivers in the general population of commercial drivers. The notice announced that the FHWA would develop and impose more stringent performance conditions to further

reduce the safety risks to the waived drivers and highway users. This task was accomplished by separate mailings to vision waiver drivers on February 8, 1995. The notice also announced that the FHWA would convene a public meeting regarding its research plans with respect to defining the appropriate vision standard.

Diabetes Waiver Program Background

The FHWA has considered various amendments to its diabetes requirement since 1977. See 55 FR 41028 (October 5, 1990) (notice of proposed rulemaking) and 52 FR 45204 (November 25, 1987) (advance notice of proposed rulemaking) with FHWA docket number MC-87-17. Please refer to these notices for a complete background discussion of the FHWA's efforts in this area. Copies can be found in the docket.

The FHWA published in the Federal Register a Notice of Intent to Initiate a Waiver Program for certain insulin-using diabetic drivers of CMVs from the absolute prohibition contained in the FMCSRs. See 57 FR 48011 (October 21, 1992). The intent of the proposed waiver program was to collect data on the driving experience of a group of insulin-using drivers and use that information to support amending, if warranted, the current diabetes requirement.²

On July 29, 1993, the FHWA published in the Federal Register a Notice of Final Disposition allowing certain insulin-using diabetic drivers to operate a CMV in interstate commerce for a 3-year period. Stringent conditions were established to satisfy the mandate that this action be consistent with the safe operation of CMVs. These conditions included at least three years of experience driving a CMV while the individual had been using insulin to control his or her diabetes, a good driving record (as in the vision waiver condition) and certification from an endocrinologist that the diabetic condition will not adversely impact on the applicant's ability to operate a CMV. In addition, participants were required to monitor their blood glucose levels using portable glucose monitoring devices and maintain accurate logs, submit monthly driving activity reports to the FHWA, notify the FHWA of any involvement in an accident and undergo biannual examinations by an endocrinologist. Approximately 140 drivers were accepted into the diabetes waiver program. For a complete

description of the diabetes waiver program, see 58 FR 40690, July 29, 1993.

The August 2, 1994, court decision in *Advocates* called into question the FHWA's ability to issue waivers to insulin-treated diabetic drivers because of the similar approach used to pre-qualify drivers for participation in the diabetes waiver program.

Accordingly, the FHWA notified the diabetes waiver drivers, in separate mailings on March 28, 1995, of the court's decision and changes to the Vision and Diabetes Waiver Programs that allowed both programs to continue until March 31, 1996. The FHWA established stricter performance conditions for all participants, and enhanced the FHWA's monitoring of the performance of the waived drivers in order to ensure compliance with the statutory test as construed by the court.

Proposed Action

The FHWA now proposes that the waived drivers in the vision and diabetes programs should be allowed to continue driving in interstate commerce after March 31, 1996. The underlying basis for this proposal is that the FHWA has significant data to show that the continued operation of both waived groups of drivers, who total 2359 as of November 1, 1995, would be consistent with the safe operation of CMVs. Prior to being admitted into the study the waiver applicants had to demonstrate a three-year period of accident-free driving performance, coupled with an absence of serious traffic violations. Since the program began, the data have shown that the driving performance of this group of waived drivers was and continues to be better than the driving performance of all CMV drivers collectively, based on data obtained from the General Estimates Service (GES) as discussed more fully below.³ Moreover, each driver in the waiver programs has been closely monitored, in many cases for three years or more. Coupled with their 3-year good driving record preceding the waivers, the drivers have individually merited partial exemption from §§ 391.41(b)(10) or 391.41(b)(3).

Consequently, the FHWA proposes to amend part 391 of the FMCSRs to grant grandfather rights to all drivers holding a valid Federal vision or diabetes waiver on March 31, 1996. By proposing the grandfather provision, the FHWA intends to allow only those drivers who have been granted temporary waivers to

²The current Federal diabetes standard for CMV drivers requires no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control. 49 CFR 391.41(b)(3).

³The GES is a national survey conducted by the National Highway Traffic Safety Administration and was selected for use as the best measure of the prevailing national norm relative to large truck accidents.

participate in the Federal vision and diabetes waiver programs, numbering 2359 as of November 1, 1995, to continue to operate in interstate commerce beyond March 31, 1996, subject to certain operating conditions. This action would provide relief to these drivers who otherwise would not be permitted to operate a CMV in interstate commerce. These grandfather provisions would also be conditional in order to further reduce any possible risk associated with those drivers. In addition to the conditions regarding medical requirements discussed below, the FHWA proposes to continue monitoring the performance of these drivers through periodic checks.

Medical Requirements for Operating Under This Grandfather Provision

The FHWA recognizes that any person's medical or physical condition may deteriorate in a short period of time. The FHWA proposes to require an annual physical examination pursuant to § 391.43, instead of every 2 years as is required of other drivers, as an extra precaution to ensure the continued safe operation of these drivers. Under this provision, these drivers, as all other interstate drivers, must be otherwise physically qualified pursuant to § 391.41 of the FMCSRs.

In addition, the FHWA proposes that vision impaired drivers who would be grandfathered as a result of this action be required to obtain an annual vision examination by an ophthalmologist or optometrist indicating that they have been examined within the past two months and that the vision in the better eye is at least 20/40 acuity, corrected or uncorrected. This information would be submitted to the medical examiner at the time of the individual's annual physical qualification examination under part 391 of the FMCSRs. Accordingly, the FHWA proposes to amend part 391 to incorporate these conditions.

Similarly, diabetic drivers proposed to be grandfathered as a result of this proposal would be required to obtain an annual examination by a board certified/eligible endocrinologist who must certify that the driver (1) has been examined within the past two months; (2) is free of insulin reactions; (3) has the ability and has demonstrated willingness to properly monitor and manage his/her diabetes; and (4) does not have a diabetic condition that would adversely affect his or her ability to operate a CMV. One is free of insulin reactions if that individual has experienced less than one documented, symptomatic hypoglycemic reaction per month. These drivers would be required

to carry a source of rapidly absorbable glucose and continue to monitor their blood glucose using a portable glucose monitoring device equipped with a computerized memory one hour prior to and approximately every four hours while driving. Upon request, the driver would submit his or her blood glucose logs to the endocrinologist and/or the medical examiner or when otherwise directed by an authorized agent of the FHWA. A copy of the endocrinologist's report would be submitted to the medical examiner at the time of the annual physical qualification examination under part 391 of the FMCSRs.

The FHWA proposes to require this group of drivers to carry a medical examiners certificate stating: "Medically qualified by operation of 49 CFR 391.64." Drivers who do not provide a copy of the required information from the ophthalmologist/optometrist or the endocrinologist to the medical examiner at the time of their annual physical qualification examinations cannot be recertified to continue driving a CMV in interstate commerce under this proposed grandfather provision.

Analysis

The FHWA's proposed action is supported by the findings in an assessment prepared for the FHWA to determine the risk associated with the exposure to the public that is represented by allowing waived drivers to continue driving after March 31, 1996. A copy of this assessment is contained in the docket for public inspection.

Since the inception of the waiver programs, drivers with waivers have been monitored continuously. The monitoring has involved comparing the accident rates of the waived drivers to rates of a reference group, GES, that represent the safety level for drivers of large trucks (10,000 lbs. or larger) in the United States. The overall accident rates of the waived group represent the cumulative number of accidents for drivers still in the program at the time of the report. To determine if the waived drivers in the vision program posed an excessive threat to public safety, the monitoring process used the 90 percent confidence intervals associated with each cumulative accident rate and if the lower limit of that confidence interval did not exceed the national accident rate, the drivers in the program were considered not to be a threat to public safety.

To determine if the waived drivers in the diabetes program posed an excessive threat to public safety, it was decided that sampling error and

confidence intervals would play no role in the decision process. This was done because the small sample of drivers who received diabetes waivers would lead to wide confidence intervals. Rather, in the event that the accident rate of the diabetes waiver group would become larger than the national rate, notification would be made that there could be a threat to public safety. In this case, the national rate is treated as a constant since it is frequently expressed as an official rate without a confidence interval.

Additional monitoring and more stringent conditions were implemented in early 1995 in response to the *Advocates* decision and the concerns raised by the safety community. In addition to the group assessment, the waived drivers were now subject to a day-by-day individual assessment relative to program compliance, violations and accidents. Drivers in violation of program conditions were identified and removed if warranted; thereby identifying, in a timely fashion, aspects of the program that could compromise public safety.⁴ Therefore in both cases, data presented below will represent drivers who are still in the program as of this notice.

Drivers With Vision Waivers

The FHWA examined the vision waiver data in terms of how the waiver group performed in relation to the national population of large truck drivers and the future risk of these drivers from their behavior across time. An examination of the cumulative accident rates of the vision waived drivers has shown a steady decline, and by June 1995, the cumulative accident rate (1.63) was significantly lower than the most recent national rate (2.422).

An assessment of the trend in accident rates for this group was performed since the future driving behavior of this group is important to the disposition of the program. Findings from the evaluation of accident data occurring in six-month periods indicate that there is a decline in the total

⁴ *Vision*: At the end of October, 1995, 2240 drivers remained in the vision waiver program. A total of 317 drivers had their waivers revoked. Two hundred and thirty one were revoked for failure to submit monthly mileage reports. Twelve were revoked because of convictions for serious traffic or disqualifying offenses. Sixty-five were revoked for failure to submit a medical exam. Seven waivers were canceled for medical reasons. *Diabetes*: At the end of October, 1995, 119 drivers remained in the diabetes waiver program. A total of seven drivers had their waivers revoked. Three were revoked for failure to submit monthly mileage reports. One driver had his waiver revoked because of a disqualifying offense. Three were revoked for failing to submit a medical exam. Nine waivers were canceled for medical reasons.

accident rates across the periods. This significant negative trend suggests that these drivers are becoming increasingly careful in the operation of CMVs.

Some accidents that are the fault of these drivers can be clearly identified by virtue of an associated moving violation issued to a waived driver. All waived drivers are required to report any accident involvement whatsoever while operating a CMV and all accident information is verified through each driver's State motor vehicle record (MVR). Accidents associated with moving violations were examined for six-month periods between July 1992 and June 1995. The accident rates decreased across time with the exception of the period between January 1994 and June 1994. One explanation for this anomaly could be the severe winter weather that occurred in that period. The negative trend for accidents associated with moving violations was not as pronounced as the negative trend for total accidents for the waived group.

This evaluation of the performance data and assessment of risk indicates that the drivers who received vision waivers and are presently in the program will present no additional risk if they are allowed to continue to drive after March 1996. This group of drivers had accident rates initially (July 1992 to June 1993) that were comparable to the general population of large truck drivers. Following that period, their accident rates were consistently lower than the national rate. That performance, coupled with a three-year period of safe driving performance prior to being admitted into the program, suggests that this group of drivers exhibits behavior which presents no additional risk to the public.

With respect to future risk to the public, the data show a decreasing trend in total accident rates over equal time periods across driver participation in the waiver program. Accidents associated with a moving violation also show a decreasing trend, though not as pronounced as total accidents. This, combined with accident rates that are lower than the national rate, shows that these drivers will be less of a threat to public safety than the general population of CMV drivers. Moreover, each driver's performance was individually assessed to the extent that such driver met the requirements of the strengthened conditions and closer monitoring in effect since February 1995.

Drivers With Waivers for Diabetes

Overall monitoring of this group is performed on a quarterly basis in

relation to the national accident rate for large trucks. As previously mentioned, the national rate is treated as a constant and any time the accident rate of the waived group is larger than the national rate, notification is made to the FHWA that there could be a threat to public safety. From September 1993 to May 1995, 11 accidents were reported and, during this same period, waived drivers reported a total of 3.83 million vehicle miles traveled (VMT). The accident rate of the waived drivers for this period is 2.872 accidents per million VMT. This is larger than the 1993 national rate, 2.390 accidents per million VMT. The property damage only accident rate for the waived drivers (2.089) is also larger than the comparable national rate (1.782) as is the case for the fatal accidents (.261 for waiver group versus .027 for the national rate).

Because of the warning systems, these accidents were analyzed on an individual basis before decisions were made to continue the program. Of the eleven accidents reported, only one was shown to be the fault of a driver in the program. Although this driver was not initially charged in this accident, the accident did involve a fatality and the waived driver was subsequently charged and convicted of involuntary manslaughter. Consistent with the conditions, this driver's waiver has been revoked and the driver has been dropped from the program.

In none of the other ten accidents was the waived driver found to be at fault. Most involved only incidental contact with another vehicle. In fact, only three of the ten accidents would have been reportable or recordable under applicable regulations due to injury or damage. These three, plus the one involving a fatality, are the only accidents which are actually comparable to the national data. Accidents are not included in the national data unless there is a police report and one of the involved vehicles is towed from the accident scene. This is not the case for the waiver programs where all accidents are included, regardless of how minor they are. If the same criteria were to be applied to the waived group, then only three of the eleven accidents would be comparable to the national data and the resulting accident rate for the drivers with waivers for diabetes would be .783 per million VMT. This rate is considerably below the national rate of 2.390. Based on this performance data and the demonstrated three-year period of safe driving by this group prior to being admitted into the waiver program, it is

reasonable to conclude that these drivers are not a high risk group.

Notwithstanding the good driving performance of these drivers, the FHWA proposes to require the continued monitoring of the physical conditions that have caused these drivers to be unqualified pursuant to § 391.41(b)(10) and § 391.41(b)(3) of the FMCSRs. Therefore, the FHWA is requiring annual medical examinations to evaluate the disqualifying conditions in addition to the annual physical qualification examinations pursuant to part 391 of the FMCSRs.

Notice of Determination

The FHWA believes that its proposed actions in this document are consistent with the public interest and consistent with the safe operation of commercial motor vehicles. Based on the performance data gathered to date and the risk analysis performed on this data, the FHWA proposes that the drivers who currently hold waivers from the Federal vision and diabetes requirements should be allowed to continue to operate CMVs in interstate commerce after March 31, 1996. The statistics that have been gathered from these groups of waived drivers indicate that these drivers have performed and continue to perform more safely than those drivers in the general population of commercial drivers. In addition to their good driving performance, the continued monitoring of their physical condition and safety performance will further ensure the continued safe operation of these CMV drivers. The performance data collected under the vision and diabetes waiver programs would be used as the basis for this proposal; however, separate research proceedings would form the basis for any future adjustments, if warranted, to the current vision and diabetes standards.

Additionally, the proposal to permit these grandfathered drivers to continue to work in their chosen field of occupation is consistent with the public interest policy of employing persons with disabilities, which is evidenced in both the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 355, as amended, and the Americans With Disabilities Act of 1990, Pub. L. 101-336, 104 Stat. 327, as amended. Therefore, the FHWA proposes to amend part 391 of the FMCSRs to incorporate these grandfather provisions for these groups of drivers.

Technical Amendment

The FHWA is also proposing to relocate the provision in Part 391 providing limited exemptions for intra-

city zone drivers. The current provision, required under the Motor Carrier Act of 1988 (49 U.S.C. 31136(f)), is codified as paragraph (d) of 49 CFR 391.2, General Exemptions. This action would redesignate the provision, without any substantive change, as § 391.62, where it is more properly included in subpart G, Limited Exemptions.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that the proposed action, if implemented, would not be a significant regulatory action under Executive Order 12866 or under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this proposed rule would be minimal because of its limited application and the small number of affected drivers. Moreover, the action proposed herein would not have any permanent effect on any existing safety standard. It would merely continue the status quo by grandfathering some 2,300 drivers who have been operating safely for substantial periods of time. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601-612, the FHWA has evaluated the effects of this proposal on small entities. The FHWA believes that this proposed action would not have a significant economic impact on a substantial number of small entities because this proposal is directed solely at a limited number and narrowly defined population of CMV drivers operating in interstate commerce. This proposal would not cause a major increase in costs or prices and, therefore, would not have a significant effect on the nation's economy. The FHWA intends to further evaluate the economic consequences of this proposal on small entities in light of the comments received in response to this notice.

Executive Order 12612 (Federalism Assessment)

This proposed rulemaking, if promulgated, would amend Part 391 of the FMCSRs pertaining to the qualification of drivers. This action would allow drivers who currently hold waivers from the Federal vision and diabetes requirements to continue operating in interstate commerce after March 31, 1996. This proposal has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. Nothing in this proposal would directly preempt any

State law or regulation. This proposal would not limit the policymaking discretion of the States. Therefore, the FHWA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a separate Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This program does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 391

Driver qualifications, Highways and roads, Highway safety, Motor carriers, Motor vehicle safety.

Issued on: December 21, 1995.
Rodney E. Slater,
Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend 49 CFR, subchapter B, chapter III, part 391 as set forth below:

PART 391—QUALIFICATIONS OF DRIVERS [REVISED]

1. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, and 31502; and 49 CFR 1.48.

§ 391.2 [Redesignated]

2. Part 391 is amended by redesignating § 391.2, as § 391.62, and revising the section to read as follows:

§ 391.62 Limited exemptions for intra-city zone drivers.

The provisions of §§ 391.11 (b)(1) and 391.41 (b)(1) through (b)(11) do not apply to a person who:

(a) Was otherwise qualified to operate and operated a commercial motor

vehicle in a municipality or exempt intracity zone thereof throughout the one-year period ending November 18, 1988;

(b) Meets all the other requirements of this section;

(c) Operates wholly within the exempt intracity zone (as defined in § 390.5);

(d) Does not operate a vehicle used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under 49 U.S.C. chapter 51; and

(e)(1) Was not yet 21 years of age on July 1, 1988; or

(2) Has a medical or physical condition which:

(i) Would have prevented such person from operating a commercial motor vehicle under the Federal Motor Carrier Safety Regulations contained in this subchapter;

(ii) Existed on July 1, 1988, or at the time of the first required physical examination after that date; and

(iii) The examining physician has determined has not substantially worsened since July 1, 1988, or at the time of the first required physical examination after that date.

2. A new § 391.64 is added to read as follows:

§ 391.64 Grandfathering for certain drivers participating in vision and diabetes waiver studies.

(a) The provisions of § 391.41(b)(3) do not apply to a driver who was a participant in good standing on March 31, 1996, in a study concerning the operation of commercial motor vehicles by insulin-controlled diabetic drivers, *provided:*

(1) The driver is physically examined every year, including an examination by a board-certified/eligible endocrinologist attesting to the fact the driver is:

(i) Otherwise qualified under § 391.41;

(ii) Free of insulin reactions (one is free of insulin reactions if that individual has experienced less than one documented, symptomatic hypoglycemic reaction per month);

(iii) Able to and has demonstrated willingness to properly monitor and manage his/her diabetes; and

(iv) Not likely to suffer any diminution in driving ability due to his/her diabetic condition.

(2) The driver agrees to and complies with the following conditions:

(i) A source of rapidly absorbable glucose will be carried at all times while driving;

(ii) Blood glucose levels are to be self-monitored one hour prior to driving and

at least once every four hours while driving or on duty prior to driving using a portable glucose monitoring device equipped with a computerized memory;

(iii) Blood glucose logs will be submitted to the endocrinologist or medical examiner at the annual examination or when otherwise directed by an authorized agent of the FHWA; and

(iv) A copy of the endocrinologist's report will be provided to the medical examiner at the time of the annual medical examination; and

(v) A copy of the annual medical certification will be provided to the employer for retention in the driver's qualification file and a copy of the certification will be retained on his/her person while driving for presentation to a duly authorized federal, state or local enforcement official.

(b) The provisions of § 391.41(b)(10) do not apply to a driver who was a participant in good standing on March 31, 1996, in a study concerning the operation of commercial motor vehicles by drivers with visual impairment in one eye, *provided*:

(1) The driver is physically examined every year, including an examination by an ophthalmologist or optometrist attesting to the fact the driver

(i) Is otherwise qualified under § 391.41; and

(ii) Continues to measure at least 20/40 (Snellen) in the better eye.

(2) The driver provides a copy of the ophthalmologist or optometrist report to the medical examiner at the time of the annual medical examination.

(3) The driver provides a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State or local enforcement official.

3. Section 391.43 is amended by redesignating paragraphs (e), (f) and (g) as paragraphs (f), (g) and (h), respectively and by adding a new paragraph (e) to read as follows:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(e) Any driver operating under a limited exemption authorized by § 391.64 of this part shall furnish the medical examiner with a copy of the annual medical findings of the endocrinologist, ophthalmologist or optometrist, as required under that section. If the medical examiner finds the driver qualified under the limited exemption in § 391.64, such fact shall be noted on the Medical Examiner's Certificate.

* * * * *

4. Section 391.43 is further amended by inserting in the form following newly designated paragraph (h), a new entry reading "____ Qualified by operation of 49 CFR 391.64" immediately following the entry "____ Medically unqualified unless driving within an exempt intracity zone".

§ 319.45 [Amended]

5. Section 391.45 is amended by revising "§ 391.2(d)" in paragraph (b)(2) to read "391.62, or only by operation of the exemption in § 391.64,".

[FR Doc. 96-218 Filed 1-5-96; 8:45 am]

BILLING CODE 4910-22-P