



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0138]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 27 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on June 17, 2019. The exemptions expire on June 17, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-

2018-0138 in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

II. Background

On May 14, 2019, FMCSA published a notice announcing receipt of applications from 27 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (84 FR 21395). The public comment period ended on June 13, 2019, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting 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)(11).

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first

perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

49 CFR 391.41(b)(11) was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received one comment in this proceeding. Michael Millard, President /CSO AWM Associates, LLC, noted the FMCSA has taken award of the hearing exemption too far by awarding it to deaf persons who have never operated a CMV. He feels the Agency's decision to issue hearing exemptions to non-CDL holders is imposing requirements on motor carriers and training academies beyond their control that affect the applicant's safety, and feels FMCSA should carefully examine the nature of trucking and the applicant's safety before exposing both applicant and public to increased safety risk. The Agency previously addressed this same concern in response to comments provided by the Commercial Vehicle Training Association (CVTA) on December 29, 2017, (82 FR 61809). For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency (SDLA). The records for each applicant who has been granted a hearing exemption demonstrate that the driver has a safe driving history. Therefore, the Agency believes that these drivers do not pose a risk to public safety and that granting the exemption achieves a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.

Although we acknowledge these concerns, the lack of any technology or accommodations that would enable institutions to train hard of hearing and deaf drivers is not evidence that FMCSA should no longer grant hearing exemptions. In fact, the Agency is aware of several States that currently conduct CDL skills testing on hard of hearing and deaf drivers, each utilizing different methods. In an effort to make this information available to others, FMCSA is working with the AAMVA to develop a resource guide for administering the CDL skills test to hard of hearing and deaf drivers.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption for up to five years from the hearing standard in 49 CFR 391.41(b)(11) 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. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on current medical information and literature, and the 2008 Evidence Report, "Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety." The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) no studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System (CDLIS), for

commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System (MCMIS). For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency (SDLA). Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce, the Agency believes the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the hearing standard in 49 CFR 391.41(b)(11) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) each driver must report any crashes or accidents as defined in 49 CFR 390.5; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR part 383 and 49 CFR 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 27 exemption applications, FMCSA exempts the following drivers from the hearing standard, 49 CFR 391.41(b)(11), subject to the requirements cited above:

Selwyn Abrahamson, (MN)	Oluwatobim Akinsanya, (NJ)
Dennis J. Ayers, (MD)	Cesare Belardi, (PA)
Robert M. Benner, (OH)	Jubal Carnley, (FL)
Jason M. Clark, (MO)	Erik De Leon, (TX)
Kareem M. Douglas, (OH)	Jacob Gadreault, (MA)
Boris D. Garth, (AL)	Lane Grover, (IN)
Michael S. Haywood, (TX)	David J. Jabubowski, (CA)
Scott W. Lufkin, (NC)	Billie Jo Martinez, (TX)
Steve Martinez, (CO)	Sergio Miramontes, (CA)
Jonathan A. Muhm, (CA)	Karl Ortiz, (MO)
Andreas Shije, (NM)	Mildred A. Smith, (AR)
Joseph Strassburg, (SD)	James Thomason, (MO)
Gerald Wager, Jr. (NC)	Jeremy A. Williamson Sr. (CA)
Matthew Whitehouse, (WA)	

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (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 prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: August 16, 2019.

Larry W. Minor,
Associate Administrator for Policy.

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