DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012-0123; FMCSA-2015-0326; FMCSA-2015-0328;
FMCSA-2017-0061]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 18 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on August 22, 2020. The exemptions expire on August 22, 2022. Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

- **Federal eRulemaking Portal**: Go to http://www.regulations.gov. Follow the online instructions for submitting comments.

- **Mail**: Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- **Hand Delivery**: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

- **Fax**: (202) 493-2251.

  To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

**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 Operations, (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

I. **Public Participation**

A. **Submitting Comments**

   If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-2012-0123, FMCSA-2015-0326, FMCSA-2015-0328,
FMCSA-2017-0061), indicate the specific section of this document to which each
comment applies, and provide a reason for each suggestion or recommendation. You may
submit your comments and material online or by fax, mail, or hand delivery, but please
use only one of these means. FMCSA recommends that you include your name and a
mailing address, an email address, or a phone number in the body of your document so
that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to  http://www.regulations.gov, put the
docket number, FMCSA-2012-0123, FMCSA-2015-0326, FMCSA-2015-0328,
FMCSA-2017-0061, in the keyword box, and click “Search.” When the new screen
appears, click on the “Comment Now!” button and type your comment into the text box
on the following screen. Choose whether you are submitting your comment as an
individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an
unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic
filing. If you submit comments by mail and would like to know that they reached the
facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment
period.

B. 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,
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 Docket Operations 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. To be sure 
someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before 
visiting Docket Operations.

C. Privacy Act

In accordance with 5 U.S.C. 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.transportation.gov/privacy.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from 
the FMCSRs for no longer than a 5-year period if it finds such exemption would likely 
achieve a level of safety that is equivalent to, or greater than, the level that would be 
achieved absent such exemption. The statute also allows the Agency to renew exemptions 
at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for 
a 2-year period to align with the maximum duration of a driver’s medical certification.

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.

This standard was adopted in 1970 and was revised 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).

The 18 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 18 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing
requirement. The 18 drivers in this notice remain in good standing with the Agency. In addition, for Commercial Driver’s License (CDL) holders, the Commercial Driver’s License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver’s Licensing Agency. These factors provide an adequate basis for predicting each driver’s ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of August 22, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 18 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

<table>
<thead>
<tr>
<th>Mataio Brown (MS)</th>
<th>Barry Carpenter (SD)</th>
<th>Lyle Eash (VA)</th>
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<tr>
<td>Clay Fitzpatrick (ID)</td>
<td>Berenice Martinez (TX)</td>
<td>Michael McCarthy (MN)</td>
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<tr>
<td>Steven Moorehead (KY)</td>
<td>Gary Nagel (MN)</td>
<td>Christopher Poole (OH)</td>
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<tr>
<td>Ricardo Porras-Payan (TX)</td>
<td>James Quinn (TN)</td>
<td>Willine Smith (GA)</td>
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<tr>
<td>Brandon Soto (MO)</td>
<td>Dennis Stotts (OH)</td>
<td>Michael Tayman (ME)</td>
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<tr>
<td>Carlos Torres (FL)</td>
<td>Paul Wentworth (WA)</td>
<td>Joseph Woodle (KY)</td>
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V. Conditions and Requirements
The exemptions are extended subject to the following conditions: (1) each driver must report any crashes or accidents as defined in § 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver 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. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded 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(b).

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 18 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41 (b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.
Larry W. Minor,
Associate Administrator for Policy.

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