FMCSA Decision

The FMCSA has evaluated SDDC’s application for renewal of the exemption. The Agency believes that SDDC will likely achieve a level of safety that is equivalent to or greater than, the level of safety achieved without the exception [49 CFR 381.305(a)]. The exempted drivers will receive 30 minutes or more of rest when required since they will be free of all duties other than “attending” the vehicle during the break periods. The safety objectives of the break requirement will be met; the only subject of the exemption is the duty status of the driver while attending the vehicle during a required rest break. Therefore, the Agency grants the exemption request subject to the terms and conditions in this Federal Register notice.

Terms of the Exemption

1. Drivers authorized by SDDC to utilize this exemption must have a copy of this exemption document in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.

2. All motor carriers operating under this exemption must have a “Satisfactory” safety rating with FMCSA, or be “unrated;” motor carriers with “Conditional” or “Unsatisfactory” FMCSA safety ratings are prohibited from using this exemption.

3. All motor carriers operating under this exemption must have Safety Measurement System (SMS) scores below FMCSA’s intervention thresholds, as displayed at http://ai.fmcsa.dot.gov/sms/

Period of the Exemption

This exemption from the requirements of 49 CFR 395.3(a)(3)(ii) is granted for the period from 12:01 a.m., October 22, 2015, through 11:59 p.m., October 21, 2017.

Extent of the Exemption

The exemption is restricted to SDDC’s contract driver-employees transporting security-sensitive materials. This exemption is limited to the provisions of 49 CFR 395.3(a)(3)(ii) to allow contract driver-employees transporting security-sensitive materials to be treated the same as drivers transporting explosives, as provided in §395.1(q). These drivers must comply with all other applicable provisions of the FMCSRs.

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to SDDC contract operators in intrastate commerce.

Notification to FMCSA

The SDDC must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier’s CMVs operating under the terms of this exemption. The notification must include the following information:

- b. Name of operating motor carrier and USDOT number,
- c. Date of the accident,
- d. City or town, and State, in which the accident occurred, or closest to the accident scene,
- e. Driver’s name and driver’s license number and State of issuance,
- f. Vehicle number and State license plate number,
- g. Number of individuals suffering physical injury,
- h. Number of fatalities,
- i. The police-reported cause of the accident,
- j. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and
- k. The driver’s total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be emailed to MCPSD@DOT.GOV.

Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: September 25, 2015.

T.F. Scott Darling, III,
Acting Administrator.

[FR Doc. 2015–25520 Filed 10–6–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[DOcket No. FMCSA–2014–0106]

Qualification of Drivers; Application for Exemptions; Hearing

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to grant requests from 14 individuals for exemptions from the Agency’s physical qualifications standard concerning hearing for interstate drivers. The current regulation prohibits hearing impaired individuals from operating CMVs in interstate commerce. After notice and opportunity for public comment, the Agency concluded that granting exemptions for these drivers to operate property-carrying CMVs will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions. The exemptions are valid for a 2-year period and may be renewed, and the exemptions preempt State laws and regulations.

DATES: The exemptions are effective October 7, 2015. The exemptions expire on October 10, 2017.

FOR FURTHER INFORMATION CONTACT:
Charles A. Horan, III, Director, Office of Carrier, Driver and Vehicle Safety. (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 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:
A. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: www.regulations.gov.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(e), 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.

B. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the safety regulations for a 2-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 2-year period. The current provisions of the FMCSRs concerning hearing state 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). This standard 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).

FMCSA grants 14 individuals an exemption from § 391.41(b)(11) concerning hearing to enable them to operate property-carrying CMVs in interstate commerce for a 2-year period. The Agency’s decision on these exemption applications is based on the current medical literature and information and the “Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety” (the 2008 Evidence Report) presented to FMCSA on August 26, 2008. 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 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 CDLIS, for CDL holders, and inspections recorded in MCMIS. For non-CDL holders, the Agency reviewed the driving records from the State licensing agency. Each applicant’s record demonstrated a safe driving history. The Agency believes the drivers covered by the exemptions do not pose a risk to public safety.

C. Comments

On January 22, 2015, FMCSA published a notice of receipt of exemption applications and requested public comment on 14 individuals (FR 80 3306; Docket number FMCSA–2015–00995). The comment period ended on February 23, 2015. In response to this notice, one comment was received expressing concern for the process by which exemptions are granted from parts of 49 CFR 391.41, the increased volume of exemptions, and the need to rely on scientific support as a basis for granting the exemptions. The American Trucking Associations, Inc. (ATA) submitted a comment stating, “The granting of such a large number of exemptions dilutes the physical qualification standards and constitutes regulation through exemption. FMCSA must begin a dialogue on the need and effectiveness of these standards. If it is determined that these standards need to be altered, it must be done through the formal rulemaking process.” FMCSA acknowledges ATA’s concerns and may consider in the future the initial steps to a formal rulemaking process to revise physical qualification standards.

D. Exemptions Granted

Following individualized assessments of the exemption applications, FMCSA grants exemptions from 49 CFR 391.41(b)(11) to 14 individuals. Under current FMCSA regulations, all of the 14 drivers receiving exemptions from 49 CFR 391.41(b)(11) would have been considered physically qualified to drive a CMV in interstate commerce except that they do not meet the hearing requirement. FMCSA has determined that the following 14 applicants should be granted an exemption:

Weston Tyler Arhurs

Mr. Arhurs, 28, holds an operator’s license in California.

Kevin Ray Ballard

Mr. Ballard, 38, holds an operator’s license in Texas.

Jeremy Wayne Brandyberry

Mr. Brandyberry, 34, holds an operator’s license in Nebraska.

Scott C. Friedo

Mr. Friedo, 40, holds a Class A commercial driver’s license (CDL) in Nebraska.

Glenn E. Hivey

Mr. Hivey, 81, holds a Class A commercial driver’s license (CDL) in Pennsylvania.

Jeremiah Putnam Hoagland

Mr. Hoagland, 35, holds a Class A commercial driver’s license (CDL) in Colorado.

Curtis J. Horning

Mr. Horning, 40, holds an operator’s license in Pennsylvania.

Leroy Lynch

Mr. Lynch, 59, holds a Class A commercial driver’s license (CDL) in Ohio.

Floyd McClain, Jr.

Mr. McClain, 38, holds an operator’s license in Florida.

Christopher David McKenzie

Mr. McKenzie, 37, holds an operator’s license in Texas.

Kimothy Fred Mcleod

Mr. Mcleod, 51, holds a Class A commercial driver’s license (CDL) in Georgia.

Victor Morales-Contreras

Mr. Morales-Contreras, 27, holds an operator’s license in Texas.

Brandon Veronie, Sr.

Mr. Veronie, 36, holds a chauffeur’s license in Louisiana.

Anthony L. Witcher

Mr. Witcher, 55, holds a chauffeur’s license in Michigan.

Basis for Exemption

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption 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. With the exemption, applicants can drive in interstate commerce. Thus, the Agency’s analysis focuses 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 interstate commerce. The
The exemptions to the drivers.

III. Discussion of Comments

FMCSA received one comment in this proceeding. The comment is addressed below.

Miguel Morales stated that he is in favor of granting the Federal diabetes exemption to the drivers.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from