

10. Design Loading Structural Capacity is related to the strength and service limit state designs, not to traffic operations or the likelihood of traffic crashes. Previously called 'structural capacity,' FHWA proposes to clarify that the applicable criterion covered herein relates to the design of the structure, not the load rating. Design loading structural capacity is important in maintaining a consistent minimum standard for safe load-carrying capacity and deviations from this criterion should be extremely rare. Design loading structural capacity is proposed to be retained as a controlling criterion regardless of the design speed for the project. Exceptions to design loading structural capacity on the NHS could impact the mobility of freight, emergency and military vehicles, and the traveling public and requires additional coordination with the FHWA Office of Infrastructure.

#### Design Documentation

As codified in 23 CFR 625.3(f), and in accordance with the delegated authority provided by FHWA Order M1100.1A, exceptions may be approved on a project basis for designs that do not conform to the minimum or limiting criteria set forth in the standards, policies, and standard specifications adopted in 23 CFR part 625. Under this proposal, formal design exceptions, subject to approval by FHWA, or on behalf of FHWA if an STA has assumed the responsibility through a Stewardship and Oversight agreement, would be required for projects on the NHS only when the controlling criteria are not met. The FHWA expects documentation of design exceptions to include all of the following:

- Specific design criteria that will not be met.
    - Existing roadway characteristics.
    - Alternatives considered.
    - Analysis of standard criteria versus proposed design criteria.
      - Supporting quantitative analysis of expected operational and safety performance.
      - Right-of-way impacts.
      - Impacts to human and natural environment.
      - Impacts to the community.
      - Impacts on the needs of all users of the facility.
      - Project cost.
    - Proposed mitigation measures.
    - Compatibility with adjacent sections of roadway.
    - Possibility of a future project bringing this section into compliance with applicable standards.
- Design Speed and Design Loading Structural Capacity are fundamental

criteria in the design of a project. Exceptions to these criteria should be extremely rare and FHWA expects the documentation to provide the following additional information.

- Design Speed exceptions must address:
  - Length of section with reduced design speed compared to overall length of project.
  - Measures used in transitions to adjacent sections with higher or lower design or operating speeds.
- Design Loading Structural Capacity exceptions must address:
  - Verification of safe load-carrying capacity (load rating) for all State unrestricted legal loads or routine permit loads, and in the case of bridges on the Interstate, all Federal legal loads.

The FHWA encourages agencies to document all design decisions to demonstrate compliance with accepted engineering principles and the reasons for the decision. Deviations from criteria contained in the standards for projects on the NHS, but which are not considered to be controlling criteria, should be documented by the STA in accordance with State laws, regulations, directives, and safety standards. Deviations from criteria contained in standards adopted by a State for projects not on the NHS should be documented in accordance with State laws, regulations, directives, and safety standards. States can determine their own level of documentation depending on their State laws and risk management practices.

The proposed revisions to the controlling criteria and design documentation requirements will be published in final form after considering comments received regarding the proposed changes.

The FHWA requests comments on the revised guidance memorandum, which is available in the docket (FHWA-2015-0020). The FHWA will respond to comments received on the guidance in a second **Federal Register** notice, to be published after the close of the comment period. That second notice will include the final guidance memorandum that reflects any changes implemented as a result of comments received.

**Authority:** 23 U.S.C. 109 and 315; 23 CFR 1.32 and 625; 49 CFR 1.85.

Issued on: September 30, 2015.

**Gregory G. Nadeau,**  
*Administrator, Federal Highway Administration.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0105]

#### 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 10 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](mailto: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](http://www.regulations.gov).

*Docket:* For access to the docket to read background documents or comments, go to [www.regulations.gov](http://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(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](http://www.regulations.gov), as

described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://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 10 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,<sup>1</sup> for CDL holders, and inspections recorded in

MCMIS.<sup>2</sup> 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 November 24, 2014, FMCSA published a notice of receipt of exemption applications and requested public comment on 10 individuals (FR 79 69989; Docket number FMCSA-2014-27741). The comment period ended on December 24, 2014. In response to this notice, four comments were received from The Commonwealth of Virginia; The Indiana Bureau of Motor Vehicles; Schneider National, Inc.; The American Trucking Associations, Inc.; Schneider National, Inc.; Hub Group Trucking, Inc., and Werner Enterprises, Inc. Some of these comments were addressed in a previous notice. These stakeholders expressed safety concerns for the far reaching ramifications to the commercial driving industry of allowing deaf drivers to test, train and/or drive commercially. Additionally they expressed 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. FMCSA acknowledges the stakeholder’s concerns and may consider the initial steps to revising the physical qualification standards through a formal rulemaking process.

## D. Exemptions Granted

Following individualized assessments of the exemption applications, FMCSA grants exemptions from 49 CFR 391.41(b)(11) to 10 individuals. Under current FMCSA regulations, all of the 10 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 10 applicants should be granted an exemption:

*Clayton L. Ashby*

Mr. Ashby, 28, holds an operator’s license in Virginia.

*Joseph G. Cerna-Nieves*

Mr. Cerna-Nieves, 24, holds an operator’s license in Florida.

*Steven C. Levine*

Mr. Levine, 40, holds an operator’s license in New York.

*Donna Neri*

Ms. Neri, 51, holds an operator’s license in Arizona.

*Brenda J. Palmigiano*

Ms. Palmigiano, 56, holds a Class A commercial driver’s license (CDL) in New York.

*Lon Edward Smith*

Mr. Smith, 80, holds an operator’s license in Mississippi.

*Mark Taylor*

Mr. Taylor, 46, holds an operator’s license in Arizona.

*James Clark Tillis*

Mr. Tillis, 53, holds an operator’s license in Alabama.

*Bruce N. Walker*

Mr. Walker, 66, holds an operator’s license in New York.

*Tommy Mark Weldon*

Mr. Weldon, 52, holds an operator’s license in Georgia.

## 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 intrastate commerce. The driver must comply with the terms and conditions of the exemption. This includes reporting any crashes or accidents as defined in 49 CFR 390.5 and reporting all citations and convictions for disqualifying offenses under 49 CFR part 383 and 49 CFR part 391.

## Conclusion

The Agency is granting exemptions from the hearing standard, 49 CFR 391.41(b)(11), to 10 individuals based on an evaluation of each driver’s safety experience. Safety analysis of information relating to these 10

<sup>1</sup> Commercial Driver License Information System (CDLIS) is an information system that allows the exchange of commercial driver licensing information among all the States. CDLIS includes the databases of 51 licensing jurisdictions and the CDLIS Central Site, all connected by a telecommunications network.

<sup>2</sup> Motor Carrier Management Information System (MCMIS) is an information system that captures data from field offices through SAFETYNET, CAPRI, and other sources. It is a source for FMCSA inspection, crash, compliance review, safety audit, and registration data.

applicants meets the burden of showing that granting the exemptions would achieve a level of safety that is equivalent to or greater than the level that would be achieved without the exemption. In accordance with 49 U.S.C. 31315, each exemption will be valid for 2 years from the effective date with annual recertification required 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.

FMCSA exempts the following 10 drivers for a period of 2 years from the physical qualification standard concerning hearing: Clayton L. Ashby (VA); Joseph G. Cerna-Nieves (FL); Steven C. Levine (NY); Donna Neri (AZ); Brenda J. Palmigiano (NY); Lon Edward Smith (MS); Mark Taylor (AZ); James Clark Tillis (AL); Bruce N. Walker (NY); and Tommy Mark Weldon (GA).

Dated: September 29, 2015.

Larry W. Minor,

Associate Administrator for Policy.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0384]

#### 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 12 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](mailto: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.

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##### B. Background

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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 12 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,<sup>1</sup> for CDL holders, and inspections recorded in MCMIS.<sup>2</sup> 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 May 8, 2015, FMCSA published a notice of receipt of exemption applications and requested public comment on 12 individuals (FR 80 26610; Docket number FMCSA-2015-11121). The comment period ended on June 8, 2015. In response to this notice, one comment was received expressing safety concerns for the far reaching ramifications to the commercial driving industry of allowing deaf drivers to test, train and/or drive commercially. Some of these concerns were addressed in a previous notice. Additionally they expressed concern for the process by which exemptions are granted from parts of 49 CFR 391.41, the increased

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