

July 29, 2019

Submitted Online

U.S. Department of Transportation  
Docket Management Facility  
1200 New Jersey Avenue SE  
Washington, DC 20590-0001

Re: Comments Concerning Safe Integration of Automated Driving Systems-Equipped  
Commercial Motor Vehicles, Docket Number: FMCSA-2018-0037-0136

The Disability Rights Education and Defense Fund (DREDF) and the National Association of the Deaf (NAD) are pleased to submit comments in response to the Federal Motor Carrier Safety Administration (FMCSA) ANPRM concerning safe deployment of automated driving systems-equipped commercial motor vehicles (ADS-CMV). DREDF and NAD urge FMCSA to reconsider physical qualification restrictions regarding operation and monitoring of ADS-CMV, and eliminate the restrictions placed on deaf and hard of hearing applicants for ADS and Non-ADS commercial driver's licenses (CDLs).

DREDF is a leading national civil rights law and policy center directed by individuals with disabilities and parents who have children with disabilities. Our mission is to advance the civil and human rights of people with disabilities through legal advocacy, training, education, public policy and legislative development. DREDF demonstrated an early interest in the development of equitable autonomous vehicle policy in its drafting of the 2015 National Council on Disability report, *Self-Driving Cars: Mapping Access to a Technology Revolution*. DREDF also participated in the October 2018 Department of Transportation (DOT), Department of Labor Office of Disability Employment Policy Autonomous Vehicle (AV) accessibility and employment information-gathering session<sup>i</sup> and in recent Alliance of Automobile Manufacturers AV workshops.<sup>ii</sup>

Established in 1880, the NAD is the nation's oldest civil rights organization and the largest consumer-based advocacy organization safeguarding the civil and accessibility rights of deaf and hard of hearing individuals in the United States of America. In recent years, the NAD has had an excellent collaboration with the DOT on a variety of accessibility issues, such as in-flight entertainment access on airlines and visual access to information on trains and buses as well as in train/bus stations.

DREDF and NAD recognize and appreciate Secretary Chao's stated commitment to ensuring improved mobility for disabled travelers. We commend the Office of the Secretary and all agency staff for the particular attention paid to AV accessibility reflected in *Preparing for the Future of Transportation, AV 3.0* (AV 3.0). Inaccessible transportation is a barrier to

employment. People with disabilities have significantly lower employment rates. According to the Bureau of Labor Statistics, only 21% of people with disabilities participate in the labor force while 8% are unemployed, compared to 68% and 4% of non-disabled individuals respectively.<sup>iii</sup>

The deployment of AVs can increase employment opportunities of people with disabilities and deaf and hard of hearing individuals through mobility and in monitoring and controlling ADS-CMVs. The promise and benefits of AVs will only be realized if regulations are written to be fully inclusive of the rights and full potential of disabled, and deaf and hard of hearing individuals.

*Questions: 4.1. Should some of the physical qualification rules be eliminated or made less stringent for humans remotely monitoring or potentially controlling ADS-equipped CMVs? 4.2. If so, which of the requirements should be less restrictive for human operators who would take control of an ADS-equipped CMV remotely?*

FMCSA's regulations in 49 C.F.R. §391.41(3) include Physical Qualifications Standards for individuals operating CMVs. As indicated in the ANPRM notice, the standards were originally established in the late 1930s and have been slightly modified since that time, including a recent September 19, 2018 rule allowing individuals with diabetes to qualify for CDLs. DREDF and NAD encourage FMCSA to engage in the same process for disabled, and deaf and hard of hearing individuals seeking to monitor or control ADS-CMVs.

Physical Qualification Standards restrictions prohibit qualification of people with neuromuscular disease, limited ability for prehension or power grasping, epilepsy, certain psychiatric disorders, users of habit-forming drugs, and deaf and hard of hearing drivers, among others. Amputees or those with limb impairment may be granted a skill performance evaluation (SPE) certificate as a waiver (49 C.F.R. §391.49).

Restrictions should be removed to allow people with disabilities to remotely monitor or control an ADS-CMV if they are able to meet the same requirements as people without impairments, with or without accommodation. A SPE certificate process could be developed. Motor carriers or ADS-CMV operators could submit an application jointly.

### Deaf and Hard of Hearing Applicants

The Physical Qualification Standards currently require CDL drivers to be able to hear. These requirements (which date back to 1938) state that drivers have to be able to hear “a forced whisper at not less than five feet in the better ear with or without a hearing aid, or cannot 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” (49 C.F.R. §391.41(b)(11), also known as “forced whisper test” or “hearing test”).

This physical standard does not correlate to any known studies justifying such a requirement. In fact, the DOT conducted a study proving that deaf and hard of hearing drivers have no increased crash risk compared to other drivers, and documented this in a 2008 Executive Summary. After previously submitting a petition to DOT Secretary Ray LaHood in 2012, the NAD submitted a renewed petition to Secretary Chao seeking a repeal of §391.41(b)(11) among other offending regulations, and a follow up letter on March 14, 2017 and April 13, 2017. The 2017 petition and letters are included for reference.

On February 1, 2013, the DOT agreed to grant exemptions to drivers who are deaf and hard of hearing and who meet the other standards for the CDL. In doing so, the DOT noted its own 2008 Executive Study finding deaf and hard of hearing to be safe drivers, and questioning the validity of the “forced whisper test.” The DOT has issued exemptions for interstate CDLs to approximately **612** deaf and hard of hearing individuals.

While DREDF and NAD appreciate these DOT exemptions for interstate CDLs, such exemptions are not a long-term solution. State departments of transportation or motor vehicles routinely deny deaf and hard of hearing individuals the opportunity to use the DOT exemptions on the basis of state licensure requirements that mirror the DOT’s Physical Qualification Standards. DREDF and NAD urge repeal of the requirements for current CDLs and monitoring and control of ADS-CMV’s for deaf and hard of hearing applicants.

*Question 4.3. Should the Agency consider less restrictive rules for humans who have the benefit of ADS technology to assist them in controlling the vehicle (e.g., technologies that would enable individuals with limb impairments to operate at a level comparable to individuals without such impairments)?*

FMCSA should consider loosening restrictions for humans who benefit from ADS technology to assist them in controlling the vehicle. ADS can provide accommodations that allow disabled individuals to operate vehicles on par with non-disabled drivers, assisting in alleviating the current commercial vehicle driver shortage and benefiting the nation’s economy. DOT already allows amputees with a SPE to qualify, and recently allowed individuals with diabetes to qualify as well.

In order to reach their full potential and allow for the most diverse workforce, ADS-CMV’s should be accessible. Vehicles should be physically accessible whenever possible, and must provide multiple modes of communication in the human machine interface including visual communications for deaf and hard of hearing operators of ADS-CMV’s.

## *Repeal Existing Discriminatory Testing Guidelines*

In addition, and in accordance with Executive Order 13771, we strongly urge repeal of two regulations which currently discriminate against deaf and hard of hearing CDL applicants. In 2011 DOT implemented inappropriate regulations mandating speaking requirements such as in 49 C.F.R. § 391.11(b)(2) and prohibiting the use of interpreters during examinations such as in 49 C.F.R. § 383.133(b)(3) and (c)(5). These regulations are not compliant with Section 504 of the Rehabilitation Act of 1973 which prohibit discrimination against individuals with disabilities. As a result of these inappropriate regulations, state entities have been allowed to deny opportunities to otherwise qualified applicants.

Disabled and deaf and hard of hearing people want an opportunity to participate in the AV workforce of the future. Please work with us to eliminate outdated and misguided regulations that create unnecessary barriers.

Thank you again for your commitment to mobility for all, and for increasing access to employment through the development and deployment of AVs. We look forward to remaining engaged in these vital conversations. Please do not hesitate to contact Zainab Alkebsi at [zainab.alkebsi@nad.org](mailto:zainab.alkebsi@nad.org) and Carol Tyson at [ctyson@dredf.org](mailto:ctyson@dredf.org) with any questions.

Sincerely,



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Chief Executive Officer & Director of Legal Services  
National Association of the Deaf



Susan Henderson  
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<sup>i</sup>Autonomous Vehicles: Driving Employment for People with Disabilities Information-Gathering Session, Washington, DC October 26, 2018. <http://images.magnetmail.net/images/clients/CONCEPTSPR/attach/AVInfoGatheringReport2Final.pdf>

<sup>ii</sup> Alliance of Automobile Manufacturers Accessibility Workshops Series held May 3<sup>rd</sup>, July 19, 2019.

<https://autoalliance.org/avsaccessibility/>

<sup>iii</sup>Persons with a Disability: Labor Force Characteristics - 2018, Press Release. February 26, 2019. Bureau of Labor Statistics. <https://www.bls.gov/news.release/pdf/disabl.pdf>