



April 13, 2017

Elaine L. Chao
Secretary, Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

Dear Secretary Chao:

The National Association of the Deaf (NAD) seeks your assistance in ensuring that qualified deaf and hard of hearing drivers are not unfairly excluded from jobs that remain unfilled. For 80 years, the DOT has had rules that prohibit deaf and hard of hearing drivers from acquiring Commercial Driver's Licenses (CDLs). Yet, the American Trucking Association (ATA) has decried a crisis in the fast growing number of truck driving positions that go unfilled - as many as 48,000 in 2015.¹ The number is undoubtedly higher now.

Established in 1880, the National Association of the Deaf ("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. The advocacy scope of the NAD is broad, covering the breadth of a lifetime and impacting future generations in the areas of education, employment, technology, telecommunications, transportation and more.

Over the past few years, the NAD has had an excellent collaboration with the Department of Transportation (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. However, we have been frustrated with the delays in resolving our petition regarding CDLs.

The DOT's Physical Qualification Standards currently require 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.² The NAD submitted a

¹See, New ATA Report Shows Growing Shortage of Qualified Truck Drivers, October 16, 2015,

<http://www.trucking.org/article.aspx?uid=ad3cff3e-7c8b-400f-8c68-afb3dde6898>

²See Executive Summary: Hearing, Vestibular Function and Commercial Motor Vehicle Driver Safety, August 26, 2008,

<https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Hearing-Evidence-Report-Final-Executive-Summary-prot.pdf>

("Executive Study").



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petition to DOT Secretary Ray LaHood on July 26, 2012 seeking a repeal of §391.41(b)(11) among other offending regulations. A copy of this letter is enclosed for your convenience.

To date, the DOT has failed to repeal those regulations or take steps to do so. 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 477 deaf and hard of hearing individuals.

While the NAD and the deaf and hard of hearing community appreciates these DOT exemptions for interstate CDLs, such exemptions are not a long-term solution. Deaf and hard of hearing individuals wanting to become truckers face numerous barriers despite such exemptions. State departments of transportation or motor vehicles routinely deny deaf and hard of hearing individuals the opportunity to use the US DOT exemptions on the basis of state licensure requirements that mirror the US DOT's Physical Qualification Standards. Moreover, the US DOT implemented in 2011 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 run afoul of the Rehabilitation Act of 1973 which prohibit discrimination against individuals with disabilities. These regulations have also led state actors to deny CDLs and trucking work opportunities to qualified deaf and hard of hearing individuals. The exemptions are not enough; repeal of the regulations is necessary.

Trucking companies do not have enough people driving their trucks. Deaf and hard of hearing people want to drive these trucks, yet are barred from doing so because of the DOT's misguided and outdated regulations. Please work with us to eliminate these regulations and ensure that everyone benefits.

To ensure that we get these issues resolved expeditiously, we request a formal meeting with you and any other officers at DOT to discuss the matter at your earliest convenience and look forward to your response.

Sincerely,

Howard A. Rosenblum, Esq.
Chief Executive Officer & Director of Legal Services