

VII. Treatment: Oropharyngeal Surgery, Facial Bone Surgery

A. After oropharyngeal or facial bone surgery, a driver may be certified if the following conditions are met:

1. One month has passed since surgery; *and*
2. The driver has been cleared by the treating physician; *and*
3. The driver does not report excessive sleepiness during the major wake period.

B. After one month has passed since surgery, if the apnea appears to have resolved a repeat sleep study should be considered to test for the presence of ongoing sleep apnea.

C. Annual recertification:

1. If clinically indicated, repeat the sleep study.

VIII. Treatment: Tracheostomy

A. After a tracheostomy, a driver may be certified if the following conditions are met:

1. One month has passed since surgery; *and*
2. The driver has been cleared by the treating physician; *and*
3. The driver does not report excessive sleepiness during the major wake period.

B. After one month has passed since surgery, if the apnea appears to have resolved a repeat sleep study should be considered to test for the presence of ongoing sleep apnea.

C. Annual recertification:

1. If clinically indicated, repeat the sleep study.

IX. Treatment Alternatives

A. There is limited data regarding compliance and long-term efficacy of dental appliances and these technologies are not approved alternatives at this time.²

B. Surgical treatment is acceptable (See Recommendations VI–VIII).

Request for Comments

FMCSA requests comments on the above joint recommendations provided to the Agency by its Motor Carrier Safety Advisory Committee and Medical Review Board on Obstructive Sleep Apnea. Commenters are requested to provide supporting data wherever appropriate.

The Agency will consider all comments received before the close of business May 21, 2012. Comments will be available for examination in the

² Based on public comments received at the February MCSAC meeting, one member (Danny Schnautz, Clark Freight Lines, Inc., Pasadena, TX) suggested that the efficacy of dental appliances may need to be reviewed.

docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: April 16, 2012.

Larry W. Minor,
Associate Administrator of Policy.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-1999-6480; FMCSA-2001-11426; FMCSA-2002-12844; FMCSA-2003-16564; FMCSA-2005-21711; FMCSA-2005-22727; FMCSA-2006-23773; FMCSA-2007-0017; FMCSA-2008-0021; FMCSA-2009-0303; FMCSA-2009-0291]

Qualification of Drivers; Exemption Applications; Vision

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

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

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 29 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective May 12, 2012. Comments must be received on or before May 21, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA-1999-6480; FMCSA-2001-11426; FMCSA-2002-12844; FMCSA-2003-16564; FMCSA-2005-21711; FMCSA-2005-22727; FMCSA-2006-23773; FMCSA-2007-0017; FMCSA-2008-0021; FMCSA-2009-0303; FMCSA-2009-0291, using any of the following methods:

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

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

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

- **Fax:** 1-202-493-2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time 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., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

FOR FURTHER INFORMATION CONTACT:

Elaine M. Papp, 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. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-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 procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 29 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 29 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Dennis J. Ameling (IA)
 Leo G. Becker (KS)
 Timothy W. Bickford (ME)
 Stanley W. Davis (TX)
 Ray L. Emert (PA)
 Sean O. Feeny (FL)
 Steven R. Felks (TX)
 John W. Forgy (ID)
 Michael J. Frein (IA)
 Jimmy G. Hall (NC)
 Dennis R. Irvin (MA)
 Neil W. Jennings (MO)
 Mark L. LeBlanc (MN)
 David A. Miller (IA)
 Richard W. Neyens (WA)
 Paul D. Schnautz (TX)
 Steve J. Sherar (AZ)
 Robert R. Skinner, Jr. (NY)
 William T. Smiley (MD)
 Richard M. Smith (CO)
 David N. Stubbs (MS)
 Edward J. Sullivan (NH)
 Martin L. Taylor (UT)
 Aaron S. Taylor (WI)
 William B. Thomas (SC)
 Gary R. Thomas (OH)
 Michael J. Tisher (AK)
 Kevin R. White (NC)
 Robert D. Williams (LA)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination;

and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two 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.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 29 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 68195; 65 FR 20251; 67 FR 10471; 67 FR 17102; 67 FR 19798; 67 FR 68719; 68 FR 2629; 68 FR 74699; 69 FR 10503; 69 FR 17267; 69 FR 19611; 69 FR 71100; 70 FR 48797; 70 FR 61493; 70 FR 71884; 71 FR 4632; 71 FR 6829; 71 FR 16410; 71 FR 19602; 71 FR 19604; 72 FR 1053; 72 FR 67340; 73 FR 1395; 73 FR 5259; 73 FR 6246; 73 FR 11989; 73 FR 15254; 73 FR 15567; 73 FR 16950; 73 FR 27015; 73 FR 76440; 74 FR 60022; 74 FR 65842; 74 FR 65842; 75 FR 4623; 75 FR 9478; 75 FR 9480; 75 FR 13653; 75 FR 19674; 75 FR 20881; 75 FR 22176). Each of these 29 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by May 21, 2012.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 29 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

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, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: April 16, 2012.

Larry W. Minor,

Associate Administrator for Policy.

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