

### III. Request for Exemption

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its hours-of-service (HOS) regulations for drivers of property-carrying CMVs. The final rule adopted several changes to the HOS regulations, including a provision requiring drivers to take a rest break during the work day under certain circumstances. Drivers may drive a CMV only if 8 hours or less have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes. FMCSA did not specify when drivers must take the 30-minute break, but the rule requires that they wait no longer than 8 hours after the last off-duty or sleeper-berth period of that length or longer to take the break if they want to drive a CMV.

ACPA seeks an exemption from the 30-minute rest break provision in 49 CFR 395.3(a)(3)(ii). The requested exemption would apply industry-wide to all concrete pump operators, concrete pumping companies and drivers who deliver, set-up, and operate concrete pumps across the United States. ACPA currently represents more than 600 member companies employing over 7,000 workers nationwide. The exemption would be applied to all interstate concrete pumper trucks and their operators. Although many of the trucks operate intrastate and would therefore not be covered by an FMCSA exemption, an unknown number of the pumping trucks are operated in metropolitan areas and do routinely cross State lines.<sup>1</sup>

ACPA requests the exemption for the following reasons: First, it argues that the mandatory 30-minute rest break increases the risk of dangerous conditions on job sites. A mandatory 30-minute rest break during which the concrete pump operator is considered to be "off-duty" would require the concrete pump to be shut down, and likely cleaned out. Stopping the flow of concrete through the pump creates the risk of introducing air in the pump's pipe system. When air gets in the pump's pipe system, the risk of hose whipping is created, which can injure not only the pump operator, but any personnel within reach of the hose.

Secondly, concrete pump operators already take rest breaks throughout the typical day that reflect the work flow at the job site, so an additional minimum

30-minute rest break does not enhance job safety.

ACPA states that when concrete companies expect a 9-hour job and it ends up being 2–3 hours longer, most of that additional time is spent waiting on concrete and doing nothing more than recirculating the concrete in the pump about every 10–15 minutes to avoid hardening and the introduction of air pockets in the pipe system. Only a small percentage of the concrete pump operator's time is spent driving. On average, concrete pump operators spend between 25–32% of their time driving during a shift, and average daily driving distances are 20–25 miles. Another 30-minute break limits the operator's ability to return the concrete pump to the shop within the daily 14-hour driving window.

According to ACPA, concrete is a perishable product. The perishable nature of concrete also creates difficult schedule coordination issues due to concrete being needed on a just-in-time basis. A concrete pump operator cannot plan the timing of the 30-minute break, as they cannot interrupt their work activity without the threat of failure—failure to accept and deliver concrete within its perishable limits and failure by violating their contracts. Once the ingredients of ready-mixed concrete have been combined, there is a brief window during which the product can be pumped (roughly 90 minutes before the concrete hardens). Should the concrete pump operator be required to take a 30-minute off-duty break, it would cause a ripple effect on the ready-mix concrete trucks in line to supply the pump. Such a delay could cost thousands of dollars to rectify and could potentially violate a delivery contract. Once the concrete pump starts to receive a delivery, it must be completed, without disruption to conduct a safe and structurally sound pour.

Furthermore, ACPA adds that concrete pumping and placement companies work in collaboration with ready-mixed companies. Scheduling local business contracts in compliance with State and Federal regulations incorporating the 30-minute rest break is incredibly complicated, verging on impossible in cases when some concrete companies operate under different FMCSA rules. ACPA mentioned that the ready-mixed drivers were granted an exemption from the minimum 30-minute rest break provision.<sup>2</sup> As a result

of this, if a concrete pump operator has worked 8 hours when the ready-mixed truck arrives, it is impossible for the concrete pump operator to take his or her 30-minute break since he/she has to place the concrete.

ACPA believes that granting this exemption would achieve the same level of safety provided by the rule requiring the 30-minute rest break. The Association states that the concrete pumping industry has a solid safety record, and that concrete pump operators already receive numerous breaks throughout the work day. The ACPA Operation Certification Program ensures, encourages, and educates the industry on safe pumping and placement procedures. These safety practices allow concrete operators to maintain their safety record through careful training and well-developed safety guidelines.

A copy of the ACPA's application for exemption is available for review in the docket for this notice.

Issued on: October 17, 2016.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0224]

#### Qualification of Drivers; Exemption Applications; Diabetes

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

**ACTION:** Notice of denials.

**SUMMARY:** FMCSA announces its denial of 74 applications from individuals who requested an exemption from the Federal diabetes standard applicable to interstate truck and bus drivers and the reasons for the denials. FMCSA has statutory authority to exempt individuals from the diabetes requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions does not provide a level of safety that will be equivalent to, or

service regulations, including the 30-minute break rule, who operates within a 100 air-mile radius of his/her normal work reporting location and meets certain other requirements [Pub. L. 114–94, 129 Stat. 1312, 1559, Dec. 4, 2015, codified at 49 U.S.C. 31502(f)]. In addition, FMCSA granted drivers of ready mixed concrete trucks an exemption from the 30-minute break requirement [80 FR 17819, April 2, 2015], which section 5206(b)(1)(A) of the FAST Act made into permanent law [129 Stat. 1312, 1537].

<sup>1</sup> FMCSA does not have jurisdiction over intrastate transportation; however, most States have commercial motor vehicle statutes and regulations that are compatible with Federal regulations. An FMCSA exemption only applies to interstate transportation, although some States honor them for intrastate traffic.

<sup>2</sup> More precisely, section 5521 of the Fixing America's Surface Transportation (FAST) Act, exempts a "driver of a ready mixed concrete delivery vehicle" from all of the normal hours-of-

greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-113, 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:**

**Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal diabetes standard for a renewable 2-year period if it finds “such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption.” The procedures for requesting an exemption are set forth in 49 CFR part 381.

Accordingly, FMCSA evaluated 74 individual exemption requests on their merits and made a determination that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption program. Each applicant has, prior to this notice, received a letter of final disposition on the exemption request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published in this notice summarizes the Agency’s recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following 10 applicants met the diabetes requirements of 49 CFR 391.41(b)(3) and do not need an exemption:

Byron D. Benham (IL)  
Donald D. Dixon, Sr. (IN)  
Reggie L. Knight (NC)  
Daniel Meza (TX)  
Robert L. Middleton (NC)  
Augustino M. Pang (NY)  
Dana W. Rhoades (WA)  
Gary W. Shreve (MI)  
Robert B. Ulrich, Jr. (PA)  
Kenneth D. Williams (GA)

The following 34 applicants were not operating CMVs in interstate commerce:

William F. Batz (NY)  
Gregory A. Carroll (MD)  
Fred J. Conti (PA)  
Francis D.P. Desouza (PA)  
Cory J. Dey (PA)  
John R. Ebell (OR)  
Harold K. Goebel (TX)

Evon L. Gray (PA)  
Joseph L. Gutierrez (IL)  
Joseph A. Haase (WI)  
Jeffrey L. Hays (ID)  
Pieter M. Hoeckman (CO)  
Mary A. Jefferson (VA)  
Randy W. Jones (NC)  
Dennis V. Klima (KS)  
Chi H. Ku (WI)  
Vernard E. Lackey (OR)  
Cory K. Malloy (NY)  
David Marseille (NY)  
Colton R. Martin (TX)  
Gerasim J. Merculief (AK)  
Luong G. Pham (OR)  
Alphonso Rose (NH)  
Paul Ross (GA)  
Rafael A. Santana (MA)  
Cole J. Schoennema (CA)  
William C. Sexton, Jr. (VA)  
Nicole B. Sherman (CT)  
Kim D. Steinbeck (MA)  
John C. Story (MT)  
Randy L. Toy (PA)  
Hartman P. Trabeaux (LA)  
Tracy W. Williams (MD)  
Mark E. Wilson (VA)

The following applicant, Raphael N. Haynes (NY), had renal insufficiency.

The following 8 applicants have had more than one hypoglycemic episode requiring hospitalization or the assistance of others, or has had one such episode but has not had one year of stability following the episode:

Glen A. Clark (DE)  
Dana L. Guest (TN)  
Jason P. Kunkle (PA)  
Giasi A. Leite (GA)  
David V. Marreel (NE)  
Casey M. O’Reilly (PA)  
Daniel A. Sorem (MN)  
Michael D. Underwood (AL)

The following 6 applicants had other medical conditions making the applicant otherwise unqualified under the Federal Motor Carrier Safety Regulations:

Gordon R. Jockisch (IL)  
Gerald P. Malone (IA)  
Michael J. Perfect (WA)  
Van A. Tenny (KS)  
Jay M. Westerfer (PA)  
Timothy A. Wright (OH)

The following applicant, Kenneth W. Wilson (BC), currently resides in Canada. He is not eligible because the Federal exemption is for drivers operating only in the United States.

The following 5 applicants did not meet the minimum age criteria outlined in 49 CFR 391.41(b)(1) which states that an individual must be at least 21 years old to operate a CMV in interstate commerce:

James C. Cox (TX)  
Joseph M. Hall (NY)

Logan J. Kocher (PA)  
Wilbur Robinson (SC)  
Makhial J. Webb (CA)

The following 9 applicants were exempt from the diabetes standard:

David B. Anderson (VA)  
Carlos J. Carames (NJ)  
Ronald L. Cogan (OH)  
Douglas L. Dudley (VA)  
Michael Halsey (IN)  
Frederick R. Haynes (MI)  
Danny R. Knox (KY)  
John M. Reichenberg (NJ)  
Julia M. Seger (MD)

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**Larry W. Minor,**

*Associate Administrator for Policy.*

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

[Docket No. NHTSA-2016-0105]

**Traffic Safety for Older Road Users Meeting**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) is announcing a meeting that will be held in Washington, DC on November 3, 2016 to discuss older driver traffic safety program priorities and current research efforts. The Traffic Safety for Older Road Users meeting will include presentations and discussions on a number of topics including older driver demographics; research on understanding the dynamics, mechanisms, determinants and consequences of older driver safety; integration of law enforcement information, education of licensing agency personnel, aging services providers and medical personnel; identification and services for at-risk drivers; state and local mobility alternatives and the future potential of connected and automated vehicles for an aging population. Attendance at the meeting is limited to invited participants because of space limitations of the DOT Conference Center. However, the meeting will be available for live public viewing on the NHTSA Web site ([www.nhtsa.gov](http://www.nhtsa.gov)).

**DATES:** The meeting will be held on November 3, 2016 from 9:00 a.m. to 4:30 p.m.

**ADDRESSES:** The meeting will be held in the Media Center of the U.S. Department