



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0322]

Hours of Service of Drivers: Application of B.R. Kreider & Son, Inc. for Exemption from the 12-Hour Limit on the Duty Day of Short-Haul Drivers

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

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from B.R. Kreider & Son, Inc., (Kreider) for an exemption from the requirement that drivers of commercial motor vehicles (CMVs) must be released from work within 12 consecutive hours in order to take advantage of the exception to the record of duty status (RODS) rule for short-haul operations. Drivers qualifying for the short-haul exception are subject to the hours of service limits but are not required to maintain a RODS during the duty day. Kreider asks that its drivers be allowed to operate under the short-haul exception when their duty day exceeds 12 hours, and states that the same level of safety would be achieved with the exemption in place as would be achieved without the exemption.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2014-0322 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the online instructions for submitting comments.
- Fax: 1-202-493-2251.

- 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., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number.

For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to www.regulations.gov, including any personal information provided. Please also see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov, and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

Public participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the “help” section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after

submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert F. Schultz, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325. E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. Before doing so, the Agency must provide an opportunity for public comment. The Agency is required to publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)), providing the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted, and an opportunity to comment on the request. FMCSA must review the safety analyses and public comments submitted and determine whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) and state the reasons for denying or granting the application. If the exemption is granted, the notice must include the name of the person or entity, or class of persons, receiving the exemption, and the regulation from which the exemption is granted. The notice must also specify the effective period of the exemption and state the terms and conditions of the exemption, if any. The exemption may be renewed (49 CFR 381.300(b)).

The hours-of-service (HOS) rules (49 CFR part 395) require operators of CMVs to maintain a RODS on board the CMV at all times (§ 395.8(a)). However, the HOS rules provide an exception to this requirement for qualifying CMV drivers engaged in short-haul operations (§ 395.1(e)). Section 395.1(e) states in pertinent part: “(e) Short-haul operations—(1) 100 air-mile radius driver. A driver is exempt from [maintaining a RODS] if: (i) The driver operates within a 100 air-mile radius of the normal work reporting location; (ii) The driver ... returns to the work reporting location and is released from work within 12 consecutive hours; (iii)(A) A property-carrying commercial motor vehicle driver has at least 10 consecutive hours off duty separating each 12 hours on duty; ... (iv)(A) A property-carrying commercial motor vehicle driver does not exceed [11 hours] driving time ... following 10 consecutive hours off duty; ... and (v) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing: (A) The time the driver reports for duty each day; (B) The total number of hours the driver is on duty each day; (C) The time the driver is released from duty each day”

A driver who expects to qualify for the short-haul exception does not maintain a RODS on board the CMV. However, if the driver discovers later in the day that he or she is not going to qualify for the short-haul exception, the driver must immediately begin to prepare a RODS for the day. The RODS must cover the entire day, even if the driver has to record retroactively changes in duty status that occurred earlier in the day. See Q.21 under 49 CFR 395.1 at <http://www.fmcsa.dot.gov/regulations/title49/part395?guidance>.

Request for Exemption

Kreider is an interstate motor carrier engaged in the short-haul transportation of materials such as topsoil, fill, and stone. Kreider drivers do not go beyond a 100 air-mile radius of their normal work-reporting location during their duty day. Kreider states that its drivers make frequent deliveries during their duty day, and thus are “in and out of the truck all day long.” Kreider states that it is often not possible for its CMV drivers to complete their duty day within the 12-hour limit. The applicant believes that it is impractical to require these drivers to prepare a RODS when this occurs. Kreider states that the 12-hour requirement “affects the driver’s pay, production rates and makes for a very sloppy log book with so many lines between driving and on duty.” It believes that the same level of safety would be achieved with this exemption in place as would be achieved in the absence of the exemption. A copy of the applicants’ application for exemption is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on this application for an exemption from § 395.1(e)(1)(ii) so that its CMV drivers who are not released from duty within 12 consecutive hours can qualify for the short-haul exception.

The Agency will consider all comments received by close of business on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE **FEDERAL REGISTER**]. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider

to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: October 27, 2014.

Larry W. Minor,
Associate Administrator for Policy.

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