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Larry W. Minor,

Associate Administrator for Policy.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0322]

#### Hours of Service of Drivers: B.R. Kreider & Son, Inc.'s Application for Exemption

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

**ACTION:** Notice of final disposition; denial of application for exemption.

**SUMMARY:** FMCSA announces its denial of the application of B.R. Kreider & Son, Inc., (Kreider) for an exemption from the requirement that drivers of commercial motor vehicles (CMVs) be released from work within 12 hours in order to take advantage of the short-haul exception to part of the hours of service (HOS) rules. Drivers qualifying for the short-haul exception are subject to the HOS limits but are not required to maintain a record of duty status (RODS) during the duty day. FMCSA concluded that Kreider has not demonstrated how its CMV operations under such an exemption would be likely to achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

**DATES:** FMCSA denied the application for exemption by letter dated May 21, 2015, after notice and opportunity for public comment.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert F. Schultz, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325, Email: [MCPSD@dot.gov](mailto:MCPSD@dot.gov), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

**Docket:** For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit 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., ET, Monday through Friday, except Federal holidays. The online Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

#### 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 (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines 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 decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

The HOS rules (49 CFR part 395) generally prohibit drivers from operating a CMV after the 14th hour measured from the time they come on duty following 10 consecutive hours off duty, though they must cease CMV driving at any time that they accumulate 11 hours of driving time in a duty day. The HOS rules also require operators of CMVs to maintain a RODS, or log, on board the CMV at all times (§ 395.8(a)). However, § 395.1(e)(1) provides an exception to this requirement for qualifying "short-haul" drivers. Drivers do not have to maintain a RODS on board the CMV if they (1) operate within a 100 air-mile radius of the normal work reporting location, (2) return to the work reporting location and are released from duty within 12 hours of the time they came on duty, (3) have at least 10 consecutive hours off duty separating each 12 hours on duty, (4) do not exceed 11 hours driving following 10 consecutive hours off duty, and (5) the motor carrier that employs them maintains and retains for a period of 6 months accurate and true time records showing the time the drivers reported for duty, the time they are released from duty, and the total number of hours the drivers are on duty. A driver who

expects to qualify for the short-haul exception does not maintain a RODS on board the CMV. However, if later in the day the driver discovers that he or she is not going to qualify for the short-haul exception, the HOS rules require the driver immediately to prepare a RODS reflecting his or her activities during the entire day.

##### Application for Exemption

Kreider is an interstate motor carrier engaged in the short-haul transportation of materials such as topsoil, fill, and stone. Kreider's CMV drivers do not go beyond a 100 air-mile radius of their normal work-reporting location during their duty day, but it is impossible for its drivers to complete their duty day within the 12-hour limit. Kreider believes that it is impractical to require CMV drivers to prepare a RODS at this point. Kreider states that too much non-productive driver time results from this requirement. It believes that the same level of safety would be achieved operating under the short-haul exception without regard to the 12-hour requirement as would be achieved in the absence of the exemption.

##### Public Comments and Agency Decision

On November 5, 2014, FMCSA published notice of this application and asked for public comment (79 FR 65757). Twenty-one comments were received and are available for review in the docket. Kreider indicates that its drivers are spending 10 minutes making a RODS entry for a 5-minute stop. However, Agency guidance states that short periods of time (less than 15 minutes) may be identified on the RODS by drawing a line from the appropriate on-duty (not driving) or driving line to the "remarks" section and entering the amount of time and the geographic location of the change in duty status (Guidance Statement 1, § 395.8). This should take less than one minute. In addition, the FMCSA believes that while it is appropriate to relieve drivers of the task of maintaining a RODS if they limit their duty day to 12 hours, enforcement of the 11-hour and 14-hour rules would be severely hampered if roadside officials were deprived of the RODS of drivers whose duty days have exceeded 12 hours.

The Agency reviewed Kreider's application and the public comments. By letter dated May 21, 2015, FMCSA denied the application because the Agency concluded that Kreider's operations were not likely to achieve a level of safety equivalent to or greater than the level of safety that would be achieved in the absence of the exemption [49 CFR 381.310(c)(5)]. A

copy of the denial letter is in the docket of this matter.

Issued on: June 17, 2015.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2001-9258; FMCSA-2005-20560; FMCSA-2006-24015; FMCSA-2007-27333; FMCSA-2009-0121; FMCSA-2010-0354; FMCSA-2011-0024; FMCSA-2011-0092; FMCSA-2011-0102; FMCSA-2013-0021]

#### 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 23 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 July 22, 2015. Comments must be received on or before July 24, 2015.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA-2001-9258; FMCSA-2005-20560; FMCSA-2006-24015; FMCSA-2007-27333; FMCSA-2009-0121; FMCSA-2010-0354; FMCSA-2011-0024; FMCSA-2011-0092; FMCSA-2011-0102; FMCSA-2013-0021], 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:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

#### FOR FURTHER INFORMATION CONTACT:

Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, 202-366-4001, [fmcamedical@dot.gov](mailto:fmcamedical@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:

##### I. 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.

##### II. Exemption Decision

This notice addresses 23 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 23 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Juan D. Adame, Jr. (TX), Stanley C. Anders (SD), David W. Bennett (NC), Joel A. Cabrera (FL), Sherman W. Clapper (ID), John L. Elder, III (DE), Eric Esplin (UT), Ronald R. Fournier (NY), Anthony Hall (LA), Ronald D. Jackman II (NV), Thomas W. Kent (IN), Gerald Kortesmaki (MN), John W. Locke (TX), Robert J. MacInnis (MA), Steve J. Morrison (ID), Ellie L. Murphree (AL), Steven A. Proctor (TX), Adolph L. Romero (FL), Jose Sanchez-Sanchez (KS), Robert B. Steinmetz (OR), Rodney W. Sukalski (MN), Larry D. Warneke (WA), Lonnie D. Wendinger (MN).

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.

##### III. 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 23 applicants has