



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2019-0106]**

**Hours of Service of Drivers: Kimble Recycling & Disposal, Inc.; Application for Exemption**

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

**ACTION:** Notice of Final Disposition.

**SUMMARY:** FMCSA announces its decision to grant Kimble Recycling & Disposal, Inc.'s (KRD) request for an exemption from the 12-hour limit of the hours-of-service (HOS) short-haul exception. The exemption enables all KRD's drivers who operate commercial motor vehicles (CMVs) to collect waste and recycling materials to use the short-haul exception but return to their work-reporting location within 14 hours instead of the usual 12 hours without losing their short-haul status. FMCSA has analyzed the application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

**DATES:** This exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and expires [INSERT DATE 5 YEARS FROM PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:**

Docket: For access to the docket to read background documents or comments, 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 on-line FDMS is available 24 hours each day, 365 days each year.

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:** Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325. E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Public Participation**

###### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to [www.regulations.gov](http://www.regulations.gov) and insert the docket number, "FMCSA-2019-0106" in the "Keyword" box and click "Search." Next, click the "Open Docket Folder" button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

## **II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain 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 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 Agency's 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 specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

## **III. Request for Exemption**

KRD seeks an exemption for approximately 320 drivers who operate CMVs to collect waste and recycling materials. These drivers qualify routinely for the short-haul exception in 49 CFR 395.1(e)(1); however, occasionally they cannot complete their duty day within 12 hours. KRD seeks an exemption to allow its drivers to continue to qualify for the short-haul exception up to the 14<sup>th</sup> hour after coming on duty.

KRD states that ELDs delay and distract its drivers working to collect waste and recycling materials because they require excessive interaction. The exemption application states

that, because of frequent stops to pick up trash, its drivers are required to interact with the ELD “hundreds if not thousands of times a day.” KRD asserts that ELDs are not designed to accommodate operations such as theirs.

KRD notes that certain short-haul CMV drivers already operate up to 14 hours without forfeiting short-haul status. Drivers in the ready-mixed concrete industry enjoy a statutory exemption [49 CFR 395.1(e)(1)(ii)(B)], and FMCSA has granted an exemption for the asphalt-paving business [83 FR 3864, Jan. 26, 2018]. KRD asserts that its operations are similar to these industries as its drivers spend a significant portion of their days conducting non-driving duties.

#### **IV. Method to Ensure an Equivalent or Greater Level of Safety**

In its application, KRD lists the following fatigue management programs and processes it would implement were the exemption granted: Observation Program; Routeware DriveCam Video Event Recorder Program; and the KRD Fatigued Driver Process. KRD noted that it incorporated elements of the North American Fatigue Management Program into its Fatigued Driver Process. Details of these plans are provided in KRD’s application for exemption, available for review in the docket for this notice.

#### **V. Public Comments**

On May 28, 2019, FMCSA published notice of this application and requested public comment [84 FR 24592]. The Agency received six comments. One commenter, Mr. Chuck Simmons, supported the exemption, writing that “First and foremost, this is a company that takes Safety, and specifically fatigue management, very seriously. In fact, they ‘get it’ far more than many other motor carriers that I’ve encountered in my 17 years in this industry. It seems readily apparent that there would be no adverse safety impact by granting the requested exemption.”

Three commenters opposed the exemption; KRD wrote responses to those commenters. Mr. Michael Millard wrote, “As local 100-air-mile radius drivers Kimble Recycling and Disposal, Inc., has no SMS data to determine HOS compliance.” Mr. Millard asserted that KRD operated wholly in intrastate commerce and was not subject to the hours of service rules for interstate commerce. Mr. Millard concluded his comments by saying, “Based on roadside inspection data I do not believe it is warranted for the FMCSA to issue an exemption as requested.”

In response to Mr. Millard’s comments, KRD explained that it operates in interstate commerce and serves customers in both West Virginia and Ohio and that its SMS data is available on the internet. KRD indicated that it has no HOS violations.

The Commercial Vehicle Safety Alliance (CVSA) neither opposed nor supported the application. CVSA wrote that “When considering this exemption request, FMCSA should consider its impacts on safety and the enforcement process.” CVSA explained that exemptions have the potential to undermine safety while complicating the enforcement process. Additionally, CVSA said, “If this exemption is granted, all drivers, managers, dispatchers and relevant staff should be required to complete the North American Fatigue Management Program training developed in partnership by FMCSA, Transport Canada and industry stakeholders as a comprehensive approach for managing fatigue. Required participation in the program will aid in mitigating any impact on safety additional exposure to fatigue causes.”

## **VI. FMCSA Response and Decision**

FMCSA has evaluated KRD’s application and the public comments and decided to grant the exemption. The Agency believes that KRD’s CMV drivers collecting waste and recycling materials who are exempted will likely achieve a level of safety that is equivalent to or greater

than the level of safety achieved without the exemption [49 CFR 381.305(a)]. The exemption will allow KRD's drivers to use the short-haul RODS exception, but with a 14-hour duty period instead of 12 hours. The Agency has granted similar exemptions to the National Asphalt Pavement Association, Inc. [83 FR 3864, Jan.26, 2018] and Waste Management Holdings, Inc. [83 FR 53940, Oct. 25, 2018]. FMCSA has no evidence that the safety of their operations has deteriorated.

Regarding the recommendation from CVSA for KRD's relevant staff to complete the North American Fatigue Management Program training, KRD reported in its application that it has reviewed and incorporated elements of the program into its Fatigued Driver Process.

The Agency emphasizes that this exemption does not allow any additional driving time during the work shift nor does it allow driving after the 14<sup>th</sup> hour from the beginning of the work shift. Drivers remain limited by the weekly limits and the employer must maintain accurate time records concerning the time the driver reports for work each day, the total number of hours the driver is on duty each day, and the time the driver is released from duty each day. As KRD explained, drivers usually return to the work reporting location within 12 hours but the demands during certain periods necessitate work shifts going beyond 12 hours. Therefore, the exemption application should not be construed as a mechanism for the applicant to implement a new business model with all its drivers routinely extending their maximum work shifts from 12 to 14 hours. The exemption provides limited relief to the recordkeeping requirements for HOS for short-haul drivers who find it necessary to exceed the 12-hour limit, which impacts the type of HOS records required.

## **VII. Terms and Conditions for the Exemption**

- KRD drivers must have a copy of this notice in their possession while operating under the terms of the exemption. This notice serves as the exemption document and must be presented to law enforcement officials upon request.
- KRD drivers must return to the work reporting location and be released from work within 14 consecutive hours.

### Extent of the Exemption

This exemption is limited to the provisions of 49 CFR 395.1(e)(1)(ii)(A). KRD drivers must comply will all other applicable provisions of the FMCSRs.

### Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

### Notification to FMCSA

Any motor carrier utilizing this exemption must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must include the following information:

- (a) Identity of the exemption: "Kimble Recycling & Disposal, Inc;"
- (b) Name of operating motor carrier;
- (c) Date of the accident;
- (d) City or town, and State, in which the accident occurred, or closest to the accident scene;
- (e) Driver's name and license number;

- (f) Vehicle number and State license number;
- (g) Number of individuals suffering physical injury;
- (h) Number of fatalities;
- (i) The police-reported cause of the accident;
- (j) Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations; and
- (k) The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be emailed to [MCPSD@DOT.GOV](mailto:MCPSD@DOT.GOV).

#### **VIII. TERMINATION**

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. Interested parties or organizations possessing information that would otherwise show that this motor carrier is not achieving the requisite statutory level of safety should immediately notify FMCSA. FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will revoke the exemption immediately for failure to comply with its terms and conditions.

Issued on: November 14, 2019

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Jim Mullen  
Deputy Administrator

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