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These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard 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 provide 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 retain 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 Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was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. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 44 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285, 63 FR 54519, 64 FR 68195, 65 FR 20251, 65 FR 20245, 65 FR 57230, 65 FR 33406, 65 FR 45817, 65 FR 77066), and two of the applicants have previously satisfied the conditions for renewing an exemption (65 FR 66293, 65 FR 77069). Each of these 44 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard 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 2 years

indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption for each renewal applicant.

Comments

The 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. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 2, 2003.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: November 22, 2002.

Brian M. McLaughlin,

Associate Administrator, Policy and Program Development.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received

a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below including, the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian National Railway Company

[Docket Number FRA-2002-13570]

The Canadian National Railway Company and its wholly owned U.S. subsidiaries, Illinois Central Railroad Company, Wisconsin Central, LTD., Grand Trunk Western Railroad Company, Chicago Central & Pacific Railroad Company, and Duluth, Winnipeg & Pacific Railway Company (hereafter "CN"), seeks a waiver of compliance from certain provisions of the Railroad Operating Practices regulations, 49 CFR Part 218, regarding blue signal protection of workers. Specifically, CN seeks to permit train and yard crew members, and utility employees to remove and replace batteries in two-way end-of-train telemetry devices (EOT) while the EOT is in place on the rear of the train the individual has been called to operate, without establishing any blue signal protection. CN's waiver request is identical to the waiver granted to the Burlington Northern and Santa Fe Railway, FRA-2001-10660. CN's waiver request is only for the replacement of batteries in EOTs manufactured by Digitair PULSE and is not for any other EOT device.

Section 218.5 defines worker as "any railroad employee assigned to inspect, test, repair, or service railroad rolling equipment or their components, including brake systems. Members of train and yard crews are excluded except when assigned such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate (or assigned to as "utility employees"). Utility employees assigned to and functioning as temporary members of a specific train or yard crew (subject to the conditions set forth in § 218.22 of this chapter), are excluded only when so assigned and functioning." Both § 218.25 and § 218.27, require blue signal protection when workers are on, under, or between rolling equipment on main track or other than main track. Section 218.22(b) states in part: "A utility employee may

be assigned to serve as a member of a train or yard crew without the protection otherwise required by subpart D of part 218 of this chapter only under the following conditions * * * (5) The utility employee is performing one or more of the following functions: * * * inspect, test, install, remove or replace a rear marking device or end of train device. Under all other circumstances a utility employee working on, under, or between railroad rolling equipment must be provided with blue signal protection in accordance with § 218.23 through § 218.30 of this part.”

The FRA has determined that removing or replacing a battery in an EOT, while the device is in place on the rear of a train, requires blue signal protection since this task is a service and repair to the device. Therefore, the only way a utility employee or a train and yard crew member can legally remove or replace the EOT battery without establishing blue signal protection, is to remove the EOT from the rear of the train and perform the battery work outside the area normally protected by the blue signal.

CN contends that safety would be enhanced if the individual were allowed to perform the battery work without removing the device from the rear of the train. Exposure to injury is greatly reduced because the individual would be handling a battery pack that weighs 10.1 pounds or less, as opposed to lifting the EOT device that weighs 32–34 pounds. Also, it takes approximately five minutes to remove and then re-install the EOT device, as opposed to removing and replacing a battery pack that takes less than one minute to complete. CN contends that the time the employee is performing the safety sensitive task is reduced by 80 percent. Coupling and uncoupling the air hose between the car and EOT also poses a risk of a striking injury from the air hose, if the air pressure has not been completely released. CN also believes that there is potential for reduction in train delays if this waiver is granted, which could contribute to increased train velocity, efficiency of operations, and to CN’s ongoing fuel conservation initiatives. In analyzing safety risks and benefits, CN believes that there are no adverse consequences or costs that will accrue from granting this petition. Also, there are no anticipated costs to the private sector, to the consumer, or to federal, state, and local governments if this waiver is granted.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate

scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2002–13570) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level) 400–7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility’s Web site at <http://dms.dot.gov>.

Issued in Washington, DC on November 25, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner’s arguments in favor of relief.

Norfolk Southern Corporation

(Docket Number FRA–2002–13096)

The Norfolk Southern Corporation (NS), on behalf of itself and its subsidiaries and affiliates, seeks a permanent waiver of compliance from the requirements of Railroad Workplace Safety Standards, 49 CFR part 214. The NS intends this waiver to cover all “railroad bridge workers” or “bridge

workers” (as those terms are defined by 49 CFR 214.7) employed by NS or its contractors, including track inspectors and signal maintainers who perform their duties on bridges. The waiver would apply to all installations and locations, and related equipment where the NS is responsible for the construction, inspection, testing, or maintenance of a bridge.

Bridge workers employed by or contracting with the NS are required by § 214.107 to wear life vests or buoyant work vests and to have available ring buoys and lifesaving skiffs when working “over or adjacent to water with a depth of four feet or more, or where the danger of drowning exists.” These requirements apply even where bridge workers are otherwise exempt from wearing fall protection, such as where satisfactory walkways and railings (§ 214.103(c)(1)) exist on the bridge, where workers remain at least six feet from the edge of a roadway deck or any opening (§ 214.103(c)(2)), or where workers perform a repair or inspection of a minor nature that is completed by working exclusively within the gauge of the rail (§ 214.103(d)). There appear to be no exceptions to the requirements for ring buoys and lifesaving skiffs where a bridge worker is working alone on or near a bridge. Accordingly, the NS requests a waiver of § 214.107 in those situations where (1) bridge workers are not at risk of falling from a bridge, or (2) the risk of falling is so minimal that fall protection is not required. Specifically, the NS requests a waiver of drowning protection requirements under the same conditions where the exceptions to the fall protection requirements set forth in §§ 214.103(c) and (d) apply.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2002–13096) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, 400–7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as