

Programs Division, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@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:

##### 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.

##### Exemption Decision

This notice addresses 10 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 10 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Ronald G. Austin (AL)  
 Morris R. Beebe, II (CO)  
 Martiniano L. Espinosa (FL)  
 James G. LaBair (MI)  
 Norman R. Lamy (MA)  
 Lonnie Lomax, Jr. (IL)  
 John D. McCormick (WY)  
 Eugene C. Murphy (ME)  
 John H. Voigts (AZ)  
 Daniel G. Wilson (IL)

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rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was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.

##### 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 10 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 45817; 65 FR 77066; 66 FR 53826; 66 FR 66966; 67 FR 71610; 68 FR 37197; 68 FR 48989; 68 FR 61857; 68 FR 69434; 68 FR 75715; 70 FR 25878; 70 FR 42615; 70 FR 57353; 70 FR 72689; 70 FR 74102; 71 FR 646; 72 FR 40360; 72 FR 62897; 72 FR 71993; 72 FR 71998; 74 FR 34632; 74 FR 64124; 74 FR 60021; 74 FR 65846). Each of these 10 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement 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 two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

##### Request for Comments

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. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 18, 2012.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then

requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 10 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: December 14, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA-2011-0085]

#### 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) has received a request for a waiver of compliance from 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. The petition has been assigned Docket Number FRA-2011-0085.

The BNSF Railway Company (BNSF) hereby petitions FRA for a waiver from 49 CFR Section 213.109(d)(6) to allow for the use of concrete crossties with one shoulder broken off where, if turned end for end, every other crosstie is

fastened 100 percent on both rails. BNSF claims they have used these “three-quarter” (¾) crossties in Class 1 and 2 track for many years, and have demonstrated that this method is safe and results in a stronger track structure in comparison with wood crossties under similar train operations. BNSF proposes that FRA grant BNSF a waiver of compliance that will effectively “grandfather” BNSF’s continued use of these types of crossties at various locations throughout the BNSF operating system. BNSF also claims that: (1) The performance of ¾ crossties has not resulted in any derailments due to gage or crossties defects in over 20 years of use; (2) FRA has taken no exception to BNSF’s use of ¾ concrete crosstie condition in the past; (3) it is unreasonable to expect BNSF to acquire and install approximately 33,000 wood or concrete crossties at an estimated cost of \$6,600,000 by the mandated compliance date of November 8, 2011; (4) the removal of service of the existing tracks would cause an adverse impact to customers and operations; (5) the Gage Restraint Measurement System (GRMS) testing of the concrete crossties has confirmed that the installation of ¾ crossties meets the conditions contained in 49 CFR Section 213.110; (6) the ¾ crossties are environmentally sound; (7) BNSF will identify and inventory locations where ¾ crossties are currently installed, and when crosstie replacement is performed through normal maintenance cycles (identified locations will comply with 49 CFR Sections 213.109 and 213.127, accordingly); and (8) walking inspections of ¾ crosstie locations will be performed annually, except where GRMS testing is performed.

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–2011–0085) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200

New Jersey Avenue SE., W12–140, Washington, DC 20590.

- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

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 a.m.–5 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://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on December 14, 2011.

**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA–2011–0015]

#### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated February 10, 2011, Drake Switching Company, LLC (DSC) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 223. FRA assigned the petition Docket Number FRA–2011–0015.

DSC seeks a waiver of compliance from certain provisions of the Safety Glazing Standards–Locomotives, Passenger Cars and Caboose, 49 CFR part 223, which requires certified glazing in all windows.

This request is for a shuttlewagon (Car Number SWX735), which is used as a locomotive. DSC states that this shuttlewagon is equipped with DOT–002 and DOT–22 glazings, instead of the FRA Type I and II glazing required by 49 CFR part 223. Drake Cement Company’s operation requires inbound and outbound rail car movement for raw materials. In order to serve the plant, Drake Cement Company acquired and built approximately 4 miles of yard track and established DSC. The 4-mile track allows the BNSF Railway Company (BNSF) to interchange traffic to and from Drake Cement Company at Drake, AZ. DSC has operating authority from the Surface Transportation Board (STB). DSC also trained its personnel for all rail operations involved in handling the switching. DSC purchased a new shuttlewagon, SWX735, for its self-propelled power (locomotive).

DSC obtained a quote for modifying the shuttlewagon to compliant glazing. DSC believes this cost is not justified because DSC uses it once or twice a week and 100 percent of the use of the shuttlewagon is restricted to yard movement with speeds less than 10 mph.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at <http://www.regulations.gov> and in person at the U.S. Department of Transportation’s (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

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 and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140,