

ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the eight individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following:

(1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement 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, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

#### Discussion of Comments

FMCSA received no comments in this proceeding.

#### Conclusion

Based upon its evaluation of the eight exemption applications, FMCSA exempts Joseph A. Ellis (NY), Matthew G. Epps (FL), Brian R. Gallagher (TX), Jolene A. Gauger (WI), John F. Lynch (VT), Marcus D. Perkins (LA), Joe Ramirez (CA), and John C. Smith (IL) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked 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 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 20, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012-15758 Filed 6-26-12; 8:45 am]

BILLING CODE 4910-EX-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Notice of Decision to Grant Buy America Waiver to Washington Department of Transportation to Purchase Vossloh 101-LV Concrete Rail Ties

**AGENCY:** Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

**ACTION:** Notice of decision to grant Buy America waiver.

**SUMMARY:** FRA is issuing this notice to advise the public that it has granted the Washington Department of Transportation's (WSDOT) waiver request from the FRA Passenger Rail Investment and Improvement Act (PRIIA) Buy America requirement for the use of Vossloh 101-LV concrete ties in the Pacific Northwest Rail Corridor high-speed intercity passenger rail program funded by FRA grants. The waiver also covers three other high-speed intercity passenger rail projects being undertaken on BNSF Railway Company (BNSF) owned infrastructure in California, Texas and Illinois. The Vossloh 101-VL concrete rail ties are made in the United States but contain two components (dowel inserts and SKL-30 tension clamps) that are not manufactured in the United States. FRA has granted the waiver because dowel inserts and SKL-30 tension clamps that meet the BNSF's operational and safety needs are not produced in the United States. This waiver is conditioned on BNSF's good faith efforts to find a domestic source for the components and is time limited to two years after the effective date of this waiver or until Vossloh begins manufacturing the components in the United States, whichever occurs first.

**DATES:** Written comments on FRA's determination to grant WSDOT's Buy America waiver request should be provided to the FRA on or before July 2, 2012.

**ADDRESSES:** *Comments:* Comments related to Docket No. FRA-2012-0033 may be submitted by any of the following methods:

(1) *Web Site:* <http://www.regulations.gov>. Follow the instructions for submitting comments

on the U.S. Government electronic docket site;

(2) *Fax:* (202) 493-2251;

(3) *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M-30, Room W12-140, Washington, DC 20590-0001; or

(4) *Hand Delivery:* Room W12-140 on the first floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must make reference to the "Federal Railroad Administration" and include docket number FRA-2012-0033. Note that all submissions received, including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or visit <http://www.regulations.gov>.

*Docket:* For access to the docket to read comments received, go to <http://www.regulations.gov> at any time, or to the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please contact Mr. Chris Van Nostrand, Attorney-Advisor, FRA Office of Chief Counsel, Mail Stop 10, West Building 3rd Floor, Room W31-208, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202-493-6058) or via email at [christopher.vannostrand@dot.gov](mailto:christopher.vannostrand@dot.gov).

**SUPPLEMENTARY INFORMATION:** FRA has granted the waiver pursuant to 49 U.S.C. Section 24405(a)(2)(B). On April 10, 2012, FRA published a Notice in the **Federal Register** advising the public of its receipt of WSDOT's waiver request and seeking comments from all interested parties regarding the availability of suitable domestically manufactured products, any public interest concerns, or the potential decision to grant the Buy America waiver. FRA did not receive any comments in response to the April 10th notice during a fifteen day public comment period. FRA also conducted its own independent evaluation of the availability of domestically manufactured products and did not identify a domestic source. Pursuant to

49 U.S.C. 24405(a)(4), the agency is required to publish in the **Federal Register** a detailed written justification as to why the waiver is needed and to provide the public with an opportunity to comment for a period not to exceed 15 days. For the reasons described in the letter provided in full below, FRA is granting WSDOT's waiver request. Since FRA received no comments about the request during the April 10th fifteen day public comment period, FRA is providing a short comment period pursuant to 49 U.S.C. 24405(a)(4) and this decision to grant the waiver request will become effective three days after this Notice is published in the **Federal Register**.

The waiver decision letter provided in full below applies to the WSDOT projects receiving grant funds under FRA's High-Speed Intercity Passenger Rail (HSIPR) Program, as well as projects receiving HSIPR grant funds advanced by the California Department of Transportation, the Texas Department of Transportation, and the Illinois Department of Transportation.

Mr. David Smelser  
Washington State Department of  
Transportation  
310 Maple Park Ave SE  
Olympia, WA 98504-7300

Dear Mr. Smelser:

This letter is in response to your March 19, 2012, request that the Washington State Department of Transportation (WSDOT) be granted a waiver from the Federal Railroad Administration's (FRA) Buy America provision, at 49 U.S.C. § 24405(a). Your waiver request contained a justification letter from the BNSF Railway Company (BNSF) which owns the infrastructure WSDOT intends to improve as part of the Pacific Northwest Rail Corridor program funded by an FRA grant. Such a waiver would permit WSDOT to purchase and have installed American-made Vossloh 101-VL concrete rail ties which contain two components that are not manufactured in the United States.

The FRA also received the BNSF justification letter from the California Department of Transportation (Caltrans), the Texas Department of Transportation (TXDOT), the Illinois Department of Transportation (IDOT) (with WSDOT, collectively "grantees") all of whom received grant funding under FRA's High-Speed Intercity Passenger Rail (HSIPR) Program. The BNSF justification letter covers the following projects: the Pacific Northwest Rail Corridor Program, the Amtrak Quad Cities to Chicago Service Initiation Project, the Tower 55 At-Grade Improvement Project Section, and the

Los Angeles to Fullerton Triple Track—Segment 7 Project.<sup>1</sup>

Section 24405(a) authorizes the Secretary of Transportation to obligate certain grant funds only if the steel, iron, and manufactured goods used in the project are produced in the United States. The Secretary (delegated to the FRA Administrator) may waive the Buy America requirement only if he or she finds that: (A) Applying it would be inconsistent with the public interest; (B) the steel, iron, and goods manufactured in the United States are not produced in sufficient and reasonably available amount or are not of a satisfactory quality; (C) rolling stock or power train equipment cannot be bought or delivered to the United States within a reasonable time; (D) or including domestic material will increase the cost of the overall project by more than 25 percent. 49 U.S.C. § 24405(a)(2)(A)–(D). In its justification letter BNSF asserts that two components of the Vossloh 101-L concrete ties—a dowel insert and SKL-30 tension clamps—are not produced in the United States in sufficient and reasonably available amounts and are not of a satisfactory quality and that therefore a waiver is warranted under 49 U.S.C. § 24405(a)(2)(B).

For the following reasons, I am granting WSDOT's request. According to the justification letter, since it began installing concrete ties in the 1970's, BNSF has worked closely with manufacturers to evaluate and test various concrete tie products and technologies. As described in its justification letter, as concrete tie technology advanced and became a more viable alternative to wooden ties, BNSF intensified its efforts to test all available products in an effort to establish a standard for use across its system. As a result, BNSF selected the Vossloh 101-LV tie as the standard concrete tie for use on BNSF's network in 2008. The Vossloh 101-LV concrete tie was selected as BNSF's standard for the following reasons:

- Vossloh concrete ties meet or exceed the technical standards of the American Railway Engineering and Maintenance-of-Way Association ("AREMA");
- BNSF's performance testing of the Vossloh concrete tie system demonstrated excellent results across all measured criteria, including longitudinal restraint, maintenance of

gage, freedom of motion, thermal expansion and failure rates;

- Vossloh concrete ties feature several unique design elements, such as the lack of a shoulder and a field side angle guide plate that matches the width of the tie, which result in reduced wear, reduced maintenance costs and longer product life; and

- Installation and maintenance of Vossloh concrete ties can be largely automated compared to other concrete tie systems, which improves safety and efficiency while reducing overall maintenance time and cost.

As stated in its justification letter, BNSF has searched for domestically manufactured dowel inserts and SKL-30 clamps that are compatible with the American-made Vossloh 101-LV concrete tie system. In addition, while there are alternative concrete tie systems available in the market, they do not meet BNSF's specific operational and maintenance needs.

Through its justification letter and during conversations with FRA staff, BNSF maintains that the selection of the Vossloh concrete tie system as the standardized concrete tie system used on BNSF infrastructure was based on the criteria above and occurred in 2008 prior to the obligation of FRA grant funding. Additionally, BNSF suggests that installing different products would pose potentially insurmountable technical complications. For example, alternative rail ties if used in the FRA-funded projects would not be consistent with BNSF's existing concrete tie system or corresponding maintenance and installation equipment and procedures employed by BNSF. Requiring BNSF to procure and install such alternative concrete ties would require BNSF to purchase specialized installation and maintenance equipment at a substantial cost, as BNSF's current equipment is designed for the installation and maintenance of the Vossloh tie and would not be compatible with alternative rail ties. As such, while there are other concrete tie systems available, such systems are not compatible with BNSF's existing infrastructure and for that reason are not of satisfactory quality for installation in the FRA-funded projects.

Furthermore, the selection of the Vossloh 101-LV concrete tie system was made on technical, safety, and economic considerations rooted in BNSF's long experience installing and maintaining rail tie systems for use by both freight and intercity passenger trains. The FRA therefore finds that BNSF has made an adequate showing that the manufactured products meeting BNSF's appropriate specifications are not

<sup>1</sup> This decision on WSDOT's Buy America waiver request will also apply to the HSIPR projects advanced by IDOT, TXDOT, and Caltrans on BNSF infrastructure using the Vossloh 101-VL concrete rail tie.

produced in a sufficient and reasonably available amount.

The FRA also solicited public comments on the waiver request for a period of 15 days. The waiver request was made available for public review on FRA's Web site and through a notice published in the **Federal Register**. The **Federal Register** notice requested the public's views on the waiver request and for any information regarding the availability of suitable domestically manufactured products. FRA did not receive any comments on the waiver request or any information regarding the availability of suitable domestically manufactured products.

The WSDOT and BNSF began discussions with FRA concerning the Vossloh concrete tie in late 2011. Since then, WSDOT and BNSF have consulted with FRA's legal and technical staff in determining how FRA's Buy America requirements apply to the Vossloh concrete tie and to other FRA investments on BNSF infrastructure. As part of this consultation, BNSF participated in calls with the U.S. Department of Commerce, National Institute of Standards and Technology, Hollins Manufacturing Extension Program (NIST-MEP), an agency that helps encourage the development of a domestic supply base to support intermodal transportation in the United States, including rail infrastructure. These conversations led to BNSF's commitment to help facilitate conversations between NIST-MEP and Vossloh.

The FRA understands that BNSF is one of the largest users of concrete ties in North America with over 11 million concrete ties currently in track. Consequently, FRA acknowledges that BNSF has a substantial interest in ensuring that the concrete ties installed on its system meet BNSF's specific needs in terms of performance, durability and cost efficiency. However, as demonstrated in the waiver request, BNSF also recognizes that as a "large supplier of rail infrastructure and construction materials it is uniquely situated to encourage American manufacturing of those products." The FRA appreciates that BNSF has committed to working with Vossloh to explore the feasibility of having the foreign components made in the United States and to continue an ongoing dialog with FRA and NIST-MEP. Further, FRA is encouraged to hear that Vossloh has separately begun the process to identify potential suitable locations on which to construct a manufacturing facility for the dowels and SKL-30 tension clamps.

For the foregoing reasons, FRA is granting WSDOT's Buy America waiver

request.<sup>2</sup> The waiver is conditioned on BNSF's good faith efforts to facilitate conversations between NIST-MEP, FRA and Vossloh in order to explore the feasibility of having the dowel and SKL-30 tension clamps made in the United States. Pursuant to 49 U.S.C. § 24405(a)(4), FRA will publish a detailed written justification in the **Federal Register** and provide notice of such finding and an opportunity for public comment after which this waiver will become effective. This waiver is granted only because of the specific facts of these projects; any future requests for a waiver regarding this product will not be granted without a specific showing that domestic products for that particular project also are not reasonably available at that time. Additionally, unless otherwise approved by FRA in writing, this waiver is time limited to two years after the effective date of this waiver or until Vossloh begins manufacturing the components in the United States, whichever occurs first.

Sincerely,  
Joseph C. Szabo  
Administrator

Issued in Washington, DC on June 25, 2012.

Melissa Porter,  
Chief Counsel.

[FR Doc. 2012-15865 Filed 6-26-12; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD 2012 0072]

#### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PISCES; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

<sup>2</sup> This waiver applies to the SKL-30 tension clamp and the dowel insert manufactured in Germany and does not apply to any other component of the Vossloh 101-LV concrete rail tie that might be available from both foreign and domestic sources.

**DATES:** Submit comments on or before July 27, 2012.

**ADDRESSES:** Comments should refer to docket number MARAD-2012-0072. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979, Email [Joann.Spittle@dot.gov](mailto:Joann.Spittle@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel PISCES is:

INTENDED COMMERCIAL USE OF VESSEL: "Yacht racing support and coastal photography."  
GEOGRAPHIC REGION: "Rhode Island, Massachusetts, Connecticut, California."

The complete application is given in DOT docket MARAD-2012-0072 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

#### 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