

## Background

Two individuals have requested renewal of their exemptions from the vision requirement in 49 CFR 391.41(b)(10) which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. They are Bruce T. Loughary and Leo L. McMurray. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 2-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." Accordingly, the FMCSA has evaluated the two petitions for renewal on their merits and made a determination to extend their exemptions for a renewable 2-year period.

On October 9, 1998, the agency published a notice of final disposition announcing its decision to exempt 12 individuals, including these two applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10) (63 FR 54519). The qualifications, experience, and medical condition of each applicant was stated and discussed in detail at 63 FR 30285, June 3, 1998. Three comments were received, and their contents were carefully considered by the agency in reaching its final decision to grant the petitions (63 FR 54519). The agency determined that exempting the individuals from 49 CFR 391.41(b)(10) was likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption as long as the vision in each applicant's better eye continues to meet the standard specified in 391.41(b)(10). As a condition of the exemption, therefore, the agency imposed requirements on the individuals similar to the grandfathering provisions in 49 CFR 391.64(b) applied to drivers who participated in the agency's former vision waiver program.

These requirements are as follows: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that vision in the better eye meets the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests 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 retains a copy of the certification on his/her person while

driving for presentation to a duly authorized Federal, State, or local enforcement official.

## 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 an additional 2-year period. In accordance with 49 U.S.C. 31315 and 31136(e), each of the two applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285; 63 FR 54519) and each has requested renewal of the exemption. These two applicants have submitted evidence showing that the vision in their 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 their records of safety while driving with their respective vision deficiencies over the past 2 years, indicates that 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.

## Conclusion

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA extends the exemptions from the vision requirement in 49 CFR 391.41(b)(10) granted to Bruce T. Loughary and Leo L. McMurray, subject to the following conditions: (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 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 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 2 years unless revoked earlier by the 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. 31315 and 31136(e).

## Request for Comments

The FMCSA has evaluated the qualifications and driving performance of the two applicants here and extends their exemptions based on the evidence introduced in their applications for renewal. The agency, however, will review any comments received concerning a particular driver's safety record, evaluate any new information submitted, and determine if the exemption continues to be consistent with the requirements at 49 U.S.C. 31315 and 31136(e). We will consider all comments of this nature that we receive before the close of business on the closing day indicated in the "Dates" section.

**Authority:** 49 U.S.C. 322, 31136 and 31315; and 49 CFR 1.73.

Issued on: December 4, 2000.

**Brian M. McLaughlin,**  
*Director, Office of Policy Plans and Regulations.*

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**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### Hazardous Materials Transportation: Status of Applications for Preemption Determination

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice Regarding Preemption Determinations Delayed Beyond 180 Days.

**SUMMARY:** This notice advises interested parties that RSPA's Office of the Chief Counsel maintains (on its internet website and in paper form) a chart showing the current status of each administrative proceeding on applications for a determination that Federal hazardous material transportation law preempts requirements of States, political subdivisions of States, or Indian tribes. When a decision has not been issued within 180 days after publication of a notice of the application in the **Federal Register**, this chart includes the reasons why the decision is delayed and an estimate of the additional time necessary before the decision will be

issued. This chart is intended to provide more up-to-date information on the status of preemption applications than a single notice in the **Federal Register** whenever a decision has not been issued within 180 days after publication of the notice of the application.

**FOR FURTHER INFORMATION CONTACT:**

Edward H. Bonekemper, III, Assistant Chief Counsel for Hazardous Materials Safety and Research and Technology Law, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001 (Tel. No. 202-366-4400).

**SUPPLEMENTARY INFORMATION:** Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.* (the law), provides an administrative procedure in § 5125(d)(1) for DOT to issue determinations whether a State, local, or Indian tribe requirement on the transportation of hazardous materials is preempted under the criteria set forth in § 5125(a), (b)(1), and (c). RSPA's Office of the Chief Counsel tracks the status of each preemption determination proceeding (both already decided and still pending) on a chart that is kept current on its internet website (<http://rspa-atty.dot.gov>) and in paper form.

Interested parties may access the current chart at any time by going to the website and clicking on "Preemption." A printed version of the current chart may also be obtained at any time by contacting Mr. Bonekemper at the address and telephone number set forth in "For Further Information Contact" above.

RSPA also uses this chart to meet the statutory requirement in 49 U.S.C. 5125(d)(1) to advise the public of the reasons for delay, and an estimate of the time when a decision will be made, whenever a decision is not issued within 180 days after the date of publication in the **Federal Register** of a notice of having received an application for a preemption determination. Because this chart will be kept current, RSPA does not intend to publish a new notice in the **Federal Register** each time the 180-day period is exceeded in a preemption proceeding. By keeping this chart up-to-date, RSPA will be providing interested parties with more current and complete information than they would have if RSPA published only a single notice in each proceeding advising that a decision would not be issued within 180 days.

Issued in Washington, DC on December 1, 2000.

**Elaine E. Joost,**

*Acting Chief Counsel, Research and Special Programs Administration.*

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**DEPARTMENT OF TRANSPORTATION**

**Surface Transportation Board**

**[STB Finance Docket No. 33962]**

**CSX Transportation, Inc.—Trackage Rights Exemption—Ohio Southern Railroad, Incorporated**

Ohio Southern Railroad, Incorporated (OSRR) has agreed to grant overhead and local trackage rights to CSX Transportation, Inc. (CSXT), over approximately 1.5 miles of rail line and appended trackage formerly known as CSXT's Zanesville Industrial Track, located between milepost 16.7 and milepost 18.2 in Zanesville, Muskingum County, OH, as part of the sale of CSXT's interest in the line to OSRR.<sup>1</sup>

The transaction was scheduled to be consummated on November 29, 2000, or as soon thereafter as the parties may agree and/or the time required for any necessary labor notice is given.<sup>2</sup>

The purpose of the trackage rights is to allow CSXT to continue to serve the line's existing and future rail customers after the sale of the line to OSRR.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

<sup>1</sup> OSRR's purchase of the track from CSXT was the subject of a notice of exemption in *Ohio Southern Railroad, Incorporated—Acquisition and Operation Exemption—CSX Transportation, Inc.*, STB Finance Docket No. 33955.

<sup>2</sup> Under 49 CFR 1180.4(g)(1), a trackage rights exemption is effective 7 days after the notice is filed. Although the applicant indicated that the proposed transaction would be consummated on November 27, 2000, the notice was not filed until November 22, 2000, and thus the proposed transaction could not be consummated before the November 29, 2000 effective date. CSXT's representative has been informed by telephone that the transaction may not be consummated prior to November 29, 2000.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33962, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Natalie S. Rosenberg, CSX Transportation, Inc., 500 Water Street (J150), Jacksonville, FL 32202.

Board decisions and notices are available on our website at <http://www.stb.dot.gov>.

Decided: December 1, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. 00-31231 Filed 12-7-00; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Surface Transportation Board**

**[STB Docket No. AB-55 (Sub-No. 584X)]**

**CSX Transportation, Inc.—Discontinuance Exemption—in Hudson County, NJ<sup>1</sup>**

On November 20, 2000, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from 49 U.S.C. 10903 to discontinue service over approximately 3.84 miles of the Weehawken Branch<sup>2</sup> and approximately 6.95 miles of the River Line<sup>3</sup> in Hudson County, NJ. The

<sup>1</sup> The petition is related to two abandonment applications filed on November 14, 2000, by Conrail under section 308 of the Regional Rail Reorganization Act of 1973 (3-R Act), 45 U.S.C. 748, a provision added to the 3-R Act by the Northeast Rail Service Act of 1981 (Pub. L. No. 97-35). See *Conrail—Abandonment of the Weehawken Branch—in Hudson County, NJ*, STB Docket No. AB-167 (Sub-No. 766N); and *Conrail—Abandonment of the River Line—in Hudson County, NJ*, STB Docket No. AB-167 (Sub-No. 1067N). Conrail has requested that the applications be considered together because the Weehawken Branch and the River Line are operated as a single line due to changes made to track alignment and operations. Where appropriate, the two lines will be referenced as the River Line.

Notices of Insufficient Revenues were timely filed on October 31, 1983, and October 31, 1985, respectively. The Board must grant the applications within 90 days after their filing date (i.e., by February 12, 2001) unless offers of financial assistance (OFA) are filed within the 90-day period. See sections 308(c) and (d).

<sup>2</sup> The 3.84-mile segment extends from the point of switch in Jersey City (approximately MP 0.00), to the southerly R.O.W. line of Baldwin Avenue, in Weehawken (approximately MP 2.84), and includes the former DL&W Railroad Lead to the Hoboken Freight Yard in Jersey City.

<sup>3</sup> The 6.95-mile segment is divided into in two parts: (1) from the connection to the Passaic and

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