

### 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 44 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 66 FR 41656; 68 FR 44837; 70 FR 41811; 72 FR 52421; 65 FR 33406; 65 FR 57234; 67 FR 67234; 70 FR 7545; 72 FR 27624; 67 FR 76439; 68 FR 10298; 70 FR 28348; 70 FR 30997; 72 FR 180; 72 FR 9397; 72 FR 39879; 72 FR 52419) Each of these 44 applicants has requested 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 two 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, 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 September 18, 2009.

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 44 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 based on the merits of each case and 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: August 12, 2009.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35285]**

#### **CSX Transportation, Inc.—Trackage Rights Exemption—Birmingham Southern Railroad Company**

Pursuant to a written trackage rights agreement (the agreement) dated July 31, 2009, Birmingham Southern Railroad Company (BSRR) has agreed to grant trackage rights described as “generally overhead” to CSX Transportation Incorporated (CSXT) over the BSRR rail line between the crossover of CSXT and BSRR in Woodward, AL, approximately milepost 6, Station 307+00, and Bessemer, AL at the turnout to BSRR's Private Intermodal Container Facility (the ICTF), milepost 9, Station 10+00,<sup>1</sup> a distance of approximately three miles.<sup>2</sup> The transaction is scheduled to be consummated on or shortly after September 2, 2009, the effective date of

<sup>1</sup> Article 3 of the agreement provides that CSXT “\* \* \* shall not perform any local freight service whatsoever at any point located on the Subject Trackage.” CSXT is, however, permitted to also use the trackage rights to set out bad ordered cars and to “double” trains in and out of the ICTF.

<sup>2</sup> A redacted version of the trackage rights agreement between BSRR and CSXT was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(iii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

the exemption (30 days after the exemption was filed). The purpose of the trackage rights is to enable CSXT to improve direct intermodal container access to and from the Mercedes Benz USA facility in Bessemer, AL, through use of the ICTF. Under the agreement, in addition to overhead intermodal service, CSXT will be permitted, as required, to occupy the line for purposes of doubling trains in and out of the ICTF and for setting out any bad ordered cars within the premises of the ICTF.

As a condition to this exemption, any employee affected by the acquisition of the temporary 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)(8). If the notice 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 effectiveness of the exemption. Stay petitions must be filed by August 26, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term “solid waste” is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35285, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

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

Decided: August 14, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Kulunie L. Cannon,**  
*Clearance Clerk.*

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