

in 49 CFR 380.605; and (2) the requirement in 49 CFR 380.609(a) that an individual who applies for the first time for a Class A or B CDL, or who upgrades to a Class A or B CDL, must complete training from a provider listed on the TPR.

Mr. Towle explains that he is an incarcerated inmate in the New Hampshire State Prison. According to Mr. Towle, the New Hampshire Department of Corrections operates a Special School District, Granite State High School (GSHS), that provides a CDL training class. Mr. Towle states that the requested exemptions would allow eligible students at GSHS to receive the requisite theory instruction in order to obtain their Commercial Learner's Permit as a step towards job-readiness as part of their community re-entry plan.

#### IV. Method To Ensure an Equivalent or Greater Level of Safety

In support of his argument that an equivalent level of safety will be achieved, Mr. Towle notes that New Hampshire is operating under a pilot model to continue using revised CDL pre-trip vehicle inspection and revised controls skills test procedures following the completion of field tests conducted under a waiver granted by the Agency. He argues that the revised skills test would "provide a comparable level of rigor as the current tests to ensure that participating CDL applicants demonstrate a level of knowledge and skills required to operate CMVs safely." The tests would be administered in a controlled setting, located within its skills testing facilities. All other safety requirements, such as requiring the applicant to pass the traditional on-road test segment of the skills test would continue to apply. According to Mr. Towle, "New Hampshire will continue to be prohibited from using CDLs to field test applicants unless the applicant passes all the required segments of the skills test."

#### V. Public Comments

FMCSA published a notice requesting public comment on Robert Towle's application on December 1, 2022 [87 FR 73803]. The Agency received eight comments; seven opposed granting the exemption and one supported it. The Truck Safety Coalition, Citizens for Reliable and Safe Highways, and Parents Against Tired Truckers jointly filed comments in opposition stating, "Reducing the experience level and quality of training provided by verified, qualified instructors unnecessarily risks the lives of all roadway users and fails to provide Mr. Towles with the quality

of education needed to best set him up for success as a professional truck driver. The best course of action for all parties is for GSHS to take the measures necessary to fully comply with ELDT training requirements in the provision of its CDL training class."

The one commenter in support of granting the exemption stated: "If we are serious about rehabilitation and preparing our incarcerated, who desire to move on with their lives, and wanting to provide for their families, promote the justice system and become fruitful and "normal" citizens, I wholeheartedly agree with this and wish for the FMCSA to grant this exemption and promote it to all educational systems in prisons who are providing this training."

#### VI. FMCSA Safety Analysis and Decision

Under 49 U.S.C. 31315(b)(1), to grant an exemption, FMCSA must "find that the exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." Among other requirements, 49 CFR 381.310(c)(5) requires a person seeking an exemption to explain how the exemption would likely achieve an equivalent level of safety.

FMCSA evaluated Robert Towle's application and the public comments. The Agency denies his request for exemption from the definition of "theory instructor" in 49 CFR 380.605; definitions are not, in and of themselves, regulatory requirements and are therefore not subject to exemption. The Agency believes that the requisite two years' experience in operating a CMV for which training is to be provided, or in providing BTW instruction for the operation of the CMV, is essential in providing appropriate theory instruction to entry-level drivers. These core qualification requirements are embedded in the definition of "theory instructor" and, under 49 CFR 380.703(a)(4), ELDT providers must use theory instructors meeting the criteria set forth in 49 CFR 380.713 (which cross-references 49 CFR 380.605).

The Agency also denies the request for exemption from 49 CFR 380.609(a) because Mr. Towle did not provide sufficient evidence to establish that the exemption would provide an equivalent level of safety as compliance with the existing requirement that applicants obtain theory instruction from a training provider listed on the TPR. Mr. Towle states that, under the requested exemption, an equivalent level of safety would be achieved because the State of New Hampshire is currently

participating in a CDL skills test pilot program, which provides a "comparable level of rigor" to the current CDL skills test. The State's participation in the pilot program, however, is entirely unrelated to the requirement that a CDL applicant receive *theory* training from a provider listed on the TPR, as set forth in 49 CFR 380.609(a).

Further, a potential training provider must meet all of the applicable eligibility requirements to be listed on the TPR, including the use of qualified theory instructors (as defined in 49 CFR 380.605), as set forth in 49 CFR 380.703(a)(4). Again, the applicant did not provide information establishing that an equivalent level of safety would be maintained by allowing an individual to receive theory instruction from a training provider that is not listed on the TPR. The TPR is a critical piece of the ELDT program, ensuring that ELDT providers meet the eligibility requirements in 49 CFR part 380, subpart G. The TPR, by receiving and retaining driver certification information from training providers and relaying it to States prior to the issuance of a Class A or Class B, also ensures that individual CDL applicants receive ELDT from a qualified training provider.

For reasons stated Robert Towle's exemption application is denied.

**Robin Hutcheson,**  
Administrator.

[FR Doc. 2023-15280 Filed 7-18-23; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA-2018-0045]

#### Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on May 4, 2023, Burlington Junction Railway (BJRY) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 223 (Safety Glazing Standards—Locomotives, Passenger Cars and Caboose). The relevant Docket Number is FRA-2018-0045.

Specifically, BJRY requests relief from § 223.11(a), *Requirements for Existing Locomotives*, for one locomotive, BJRY 3236, for operation on BJRY in Burlington, Iowa. In support of its petition, BJRY provided documentation

from the City of Burlington, Iowa, Police Department and costs of FRA-approved glazing on the locomotive.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at [www.regulations.gov](http://www.regulations.gov).

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 and a public hearing, 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 at <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Communications received by September 18, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of [www.regulations.gov](http://www.regulations.gov).

Issued in Washington, DC.

**John Karl Alexy,**

Associate Administrator for Railroad Safety,  
Chief Safety Officer.

[FR Doc. 2023-15298 Filed 7-18-23; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA-2010-0028, -0029, -0039, -0042, -0043, -0045, -0048, -0049, -0051, -0054, -0056, -0057, -0058, -0059, -0060, -0061, -0062, -0064, -0065, and -0070]

### Railroads' Joint Request to Amend Their Positive Train Control Safety Plans and Positive Train Control Systems

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

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** This document provides the public with notice that on June 28, 2023, twenty host railroads submitted a joint request for amendment (RFA) to their FRA-approved Positive Train Control Safety Plans (PTCSP). The RFA proposes an alternative to the definition of "initial terminal." As this joint RFA involves a request for FRA's approval of a proposed material modification to FRA-certified positive train control (PTC) systems, FRA is publishing this notice and inviting public comment on the railroads' joint RFA to their PTCSPs.

**DATES:** FRA will consider comments received by August 8, 2023. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to PTC systems.

#### ADDRESSES:

*Comments:* Comments may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and the applicable docket number. The relevant PTC docket numbers for the host railroads that filed a joint RFA to their PTCSPs are cited above and in the Supplementary Information section of this notice. For convenience, all active PTC dockets are hyperlinked on FRA's website at <https://railroads.dot.gov/research-development/program-areas/train-control/ptc/railroads-ptc-dockets>. All comments received will be posted without change to <https://www.regulations.gov>; this includes any personal information.

#### FOR FURTHER INFORMATION CONTACT:

Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816-516-7168, email: [Gabe.Neal@dot.gov](mailto:Gabe.Neal@dot.gov).

**SUPPLEMENTARY INFORMATION:** In general, Title 49 United States Code (U.S.C.)

Section 20157(h) requires FRA to certify that a host railroad's PTC system complies with Title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that the twenty host railroads' recent, joint RFA to their PTCSPs is available in their respective public PTC dockets, and this notice provides an opportunity for public comment. The RFA proposes an alternative to the definition of "initial terminal" as set forth in 49 CFR 236.829.

On June 28, 2023, the following twenty host railroads jointly submitted an RFA to their respective PTCSPs for their Interoperable Electronic Train Management Systems (I-ETMS): Alaska Railroad; The Belt Railway Company of Chicago; BNSF Railway; Caltrain; Canadian National Railway; Canadian Pacific Railway; Consolidated Rail Corporation; CSX Transportation, Inc.; Kansas City Southern Railway; Kansas City Terminal Railway; National Railroad Passenger Corporation (Amtrak); New Mexico Rail Runner Express; Norfolk Southern Railway; North County Transit District; Northeast Illinois Regional Commuter Railroad Corporation (Metra); Northern Indiana Commuter Transportation District; South Florida Regional Transportation Authority; Southern California Regional Rail Authority (Metrolink); Terminal Railroad Association of St. Louis; and Union Pacific Railroad. Their joint RFA is available in Docket Numbers FRA-2010-0028, -0029, -0039, -0042, -0043, -0045, -0048, -0049, -0051, -0054, -0056, -0057, -0058, -0059, -0060, -0061, -0062, -0064, -0065, and -0070. Interested parties are invited to comment on this RFA by submitting written comments or data. During FRA's review of these railroads' joint RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to PTC systems. See 49 CFR 236.1021; see also 49 CFR 236.1011(e). Under 49 CFR 236.1021,