

**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236**

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

**Block Signal Application (BS-AP)-No. 3430**

*Applicant:* CSX Transportation, Incorporated, Mr. R. M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J-350), Jacksonville, Florida 32202.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system, at Morton, Kentucky, milepost OHC-268.38, on the Earlington Cutoff, Henderson Subdivision, Chicago Service Lane, consisting of the discontinuance and removal of controlled signals 93RA and 93RL.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation, due to the previous removal of the siding.

**BS-AP-No. 3431**

*Applicant:* Southeastern Pennsylvania Transportation Authority, Mr. John LaForce, P. E., Deputy Chief Engineer Power, Signals and Communications, 1234 Market Street, Philadelphia, Pennsylvania 19107.

The Southeastern Pennsylvania Transportation Authority (SEPTA) seeks approval of the proposed modification of the automatic block signal system, on the Ivy Ridge Line, between CP Valley, milepost 4.0 and Cynwyd, milepost 6.1, near Philadelphia, Pennsylvania, consisting of the conversion of eastward leaving Signal No. 62 to a controlled signal, remotely controlled by the SEPTA "A" Tower Operator, and elimination of the Train Register function located at Jeff, milepost 4.5.

The reason given for the proposed changes is that all eastward movements from the Cynwyd Turnback can be manually controlled and will no longer require each train to stop when entering and leaving the single track, thus improving operations.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on August 6, 1997.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

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**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****Petitions for Waivers 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) received requests for waivers of compliance with certain requirements of its safety standards. The individual petitions are described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioners' arguments in favor of relief.

**CSX Transportation, Incorporated**

(Waiver Petition Docket Number H-97-4)

CSX Transportation, Incorporated (CSX) seeks approval from FRA to conduct a test program for the purpose of evaluating recent technological advancements applied to equipment used in the inspection of rail for internal flaws. Specifically, CSX proposes to test a rail inspection system in which the primary rail inspection vehicle transmits, via radio modem, chart data to a secondary (chase) vehicle for the purposes of defect verification.

CSX is seeking relief from the requirements of 49 CFR Section 213.5(a), which requires certain actions be taken once the track owner has notice

that the track does not meet all of the requirements of this part. With respect to the inspection of rail for internal defects, FRA has historically interpreted this subsection to require that suspect rail flaw indications be verified by hand test equipment, and remedial action taken, if necessary, within the same day of the test.

Present practice within the industry, as is the case with current CSX procedures, is to immediately stop the rail inspection vehicle when an indication of a possible rail flaw is received by the on-board equipment. A hand test to verify the existence of the rail flaw is then performed. CSX maintains that this procedure has limited the rail inspection vehicles to an average of five miles of testing for every hour of on-track time. CSX further states that as traffic density continues to increase, the available on-track time for activities such as rail inspection continues to decrease.

CSX's petition requests that for certain non-critical rail flaw indications, hand test verification by the secondary (chase) vehicle will be accomplished within 48 hours of the time of observation by the primary test vehicle. All critical rail flaw indications recorded by the primary test vehicle will be immediately verified by hand test, and remedial action taken if necessary. In the absence of any critical rail flaw indications, the primary rail inspection vehicle would be allowed to continue to test the rail in a non-stop mode.

CSX petitions to implement this test program with dedicated equipment over approximately 4,000 miles of connected trackage on its system. CSX maintains that the procedures outlined in this test program will result in a safety benefit by increasing its on-track test mileage as well as increasing its testing cycle frequency, therefore creating additional opportunities to find rail flaws before they grow to service failure size. Critical rail flaws will be protected as in the past, while non-critical rail flaws are unlikely to grow to service failure size in the 48 hour delay time requested for verification.

CSX anticipates that there will not be any additional cost to either the private sector, consumer, Federal, State and local governments.

**Burlington Northern Santa Fe Railroad Company**

[Waiver Petition Docket Number LI-95-14]

The Burlington Northern Santa Fe Railroad Company (BNSF) seeks a waiver of compliance from 49 CFR 229.9, Railroad Locomotive Safety Standards—Movement of non-

complying locomotives. Section 229.9(b) states: "A locomotive that develops a non-complying condition enroute may continue to utilize its propelling motors, if the requirements of paragraph (a) are otherwise fully met, until the earlier of—

- (1) The next calendar day inspection, or
- (2) The nearest forward point where the repairs necessary to bring it into compliance can be made."

BNSF is requesting an exemption to the requirement of Section 229.9(b) for locomotives that have traction motor failures enroute, specifically, one or more traction motors cut out, between points in Illinois and the West Coast of the United States. BNSF would like to continue the non-complying, cut out traction motor past Argentine Yard in Kansas City, Kansas. BNSF maintains facilities at Argentine Yard capable of making the required repairs to bring the locomotive into compliance. BNSF believes that the waiver, if granted, would greatly increase the efficiency of its locomotive utilization without adversely affecting safety.

#### **Union Pacific Railroad Company**

[Waiver Petition Docket Numbers LI-97-1 and PB-97-1]

The Union Pacific Railroad Company (UP) seeks a waiver of compliance from certain regulatory provisions and sections of 49 CFR Part 229, Railroad Locomotive Safety Standards, and Part 232, Railroad Power Brakes and Drawbars. Specifically, UP is seeking a waiver of 49 CFR 229.49(a)(1) and 232.10(j)(4) which require the main reservoir system of each locomotive to be equipped with at least one safety valve that shall prevent an accumulation of pressure of more than 15 pounds per square inch above the maximum working air pressure fixed by the chief mechanical officer of the carrier operating the locomotive; and, the main reservoir system of each unit being equipped with at least one safety valve, the capacity of which shall be sufficient to prevent an accumulation of pressure of more than 10 pounds per square inch above the maximum setting of the compressor governor fixed by the chief mechanical officer of the carrier operating the locomotive.

This waiver would apply to the entire UP system (including the Southern Pacific Railroad (SP) which recently merged with UP). UP seeks a waiver permitting continued operation of 150 psi main reservoir safety valve setting with 125 psi maximum working air pressure.

Since the late 1970's, UP reduced its maximum working pressure from the

traditional 135 psi to 125 psi, changing the air compressor governor setting accordingly to a cut in/out pressure of 120/130 psi as appropriate under Sections 229.49(b) and 232.10(j)(5). This change was made in the wake of the oil shortages of the 1970's in an effort to conserve fuel. As all railroads did not make this change, it was necessary to leave the safety valve set for 150 psi so that the valves did not pop continuously when UP locomotives were operated in multiple with those of foreign lines with the higher working air pressure settings.

In addition, SP had its safety valves set for 155 psi, with 135 psi working air pressure. It is further requested in the waiver that this practice be continued until these locomotives can be brought into UP's standard, which should be no later than three years after the waiver is granted. Implementation will be immediately upon approval of this waiver. There are no anticipated changes in operating practices. UP claims that no adverse effects are expected on the safety of operations. The conditions for UP's setting of the safety valve and maximum working pressure have existed for at least 20 years with no identified problems. UP believes a greater margin of safety is provided between the maximum working air pressure and the safety valve setting, going from a margin of 15 psi to 25 psi. Safety is not believed to be sacrificed in any manner. The maximum pressure that may exist in the main reservoir remains at the same levels that have always existed—150 psi (155 psi in SP's case). The main reservoirs were not modified; they carry the same burst pressure limits for which they were originally designed. The required differentials between maximum brake pipe pressure and air compressor cut in/cut out have been maintained. The reduction of the maximum working air pressure is not an issue of consideration as this is set by the carrier's chief mechanical officer. It is also asserted that fuel consumption will be favorably affected by approval of this waiver request, due to not having the air compressor cut in for longer periods in order to maintain higher air pressure. The environment (emissions) is also benefited through the consumption of less fuel.

#### **Iowa Railroad Historical Society**

[Waiver Petition Docket Number PB-96-1]

The Iowa Railroad Historical Society, Boone & Scenic Valley Railroad (BSV), seeks a permanent waiver of compliance from 49 CFR Part 232, Section 17(b)(2), on a passenger car equipped with U type air brakes by extending the clean,

oil, test, and stencil (COT&S) period from 15 calendar months to 15 operating months.

On December 6, 1996, BSV was granted a waiver of compliance (Docketed PB-96-1) from the requirements to perform COT&S every 15 calendar months as required by Section 232.17(b)(2) and as specified in Standard S-045 in the Manual of Standards and Recommended Practices of the Association of American Railroads A-III-256, Section 2.1.2. The waiver applies to only the eight cars BSV specified in the original request and extends the COT&S period from 15 calendar months to 24 calendar months, with a single car test required every 12 months. BSV inadvertently left out Lackawana car 3218 in the original request and hereby requests that this car be included under the same requirements as specified for the eight cars in the original waiver.

BSV is a non-profit tourist line that operates only six months a year, with one trip per day during the week and three trips on Saturday and Sunday over a 15-mile captive service route originating in Boone, Iowa. BSV explains that they have been performing the COT&S every 12 calendar months at a considerable expense for six months of operation, and that by granting this waiver they would perform the COT&S every 24 months for 12 months of operation.

#### **Port of Pend Oreille dba Pend Oreille Valley Railroad**

[Waiver Petition Docket Number RSGM-96-2]

The Port of Pend Oreille dba Pend Oreille Valley Railroad (POVA) seeks a waiver of compliance from 49 CFR 223.11(c) which requires that locomotives built or rebuilt prior to July 1, 1980, be equipped with certified glazing in all locomotive cab windows. POVA requests a permanent waiver of compliance for its locomotive POVA 103, built by General Electric in December 1956, which is not equipped with certified glazing. The locomotive will be utilized in work train service.

#### **Electric Transport of America, Incorporated**

[Waiver Petition Docket Number RSGM-96-12]

Electric Transport of America, Incorporated, (ETA) seeks a waiver of compliance from 49 CFR 223.9(a) which requires that locomotives, including yard locomotives, built or rebuilt after June 30, 1980, be equipped with certified glazing in all locomotive cab windows. ETA requests a waiver for one locomotive imported from the Czech

Republic. It is a 49 ton diesel-electric locomotive. ETA intends to market the switcher locomotive to industrial operators in North America. The Ohio Central Railroad has agreed to allow the locomotive to be demonstrated within its Coshocton Yard, Coshocton, Ohio.

#### **Austin & Texas Central Railroad**

[Waiver Petition Docket Number RSGM-97-2]

The Austin & Texas Central Railroad (ATCX) seeks a permanent waiver of compliance with the Safety Glazing Standards, 49 CFR Part 223.15(c), which requires certified glazing in all windows of passenger cars and at least four emergency windows, for its three passenger coach cars: former NKP-151, known as the City of Chicago; former MP-640, known as the Eagle Cliff; and former ATSF-1343, known as the Red Rock. These cars have double pane glazing consisting of a sheet of laminated safety plate as the inside sheet, and a sheet of Polycarbonate laminated safety plate or polished plate as the outer sheet in the lounge areas and hallways. ATCX is a museum type excursion operation which is a project of the Austin Steam Train Association, a 501-(c)(3) non-profit corporation. Since 1992, operation has been on weekends for 10 months each year along with some weekday operation. During this time period, the railroad reports that there have been no acts of vandalism involving any glazing location associated with the operation of a train.

ATCX proposes that any time a glazing location must be renewed, for any reason, the glazing location will be renewed with certified glazing, if mechanically possible, without alterations to the structure or function of the car.

#### **Gettysburg Railway Company**

[Waiver Petition Docket Number RSGM-97-3]

The Gettysburg Railway Company (GETY) seeks a waiver of compliance from 49 CFR Part 223.9(a) which requires that locomotives, including yard locomotives, built or rebuilt after June 30, 1980, be equipped with certified glazing in all locomotive cab windows. GETY requests a waiver for two rebuilt F-7 locomotives. GETY intends to use these locomotives in low speed (20 mph) passenger excursions in Gettysburg, Pennsylvania.

#### **Union Pacific Railroad Company**

[Waiver Petition Docket Number RST-97-2]

Union Pacific Railroad Company (UP) seeks approval from FRA to electronically submit and maintain track

inspection records. UP is requesting that FRA waive the requirements of 49 CFR 213.241, Inspection records, and permit it to use an electronic reporting system for submitting and maintaining track inspection records. Relief is sought from the requirement that each record shall be signed by the person making the inspection.

UP states that the electronic system for creating and maintaining track inspection records will provide for the integrity and security of each record. The system will provide for several levels of security to uniquely identify the person as the author of that record with a date and time stamp that the record was created. Once a record is created, it cannot be modified. UP believes that the electronic system will not only be beneficial economically, but will be more flexible for Federal and State track inspectors who inspect the records.

#### **Yakima Valley Rail and Steam Museum**

[Waiver Petition Docket Number SA-93-1]

The Yakima Valley Rail and Steam Museum (YVRX) seeks a waiver of compliance from 49 CFR 231.30 (c) and (f), which requires that a locomotive used in switching service be equipped with four switching steps and must have means for operating the uncoupling mechanism safely from the switching step as well as from ground level, for its locomotive #4. Locomotive #4 is a Plymouth locomotive built in 1943. YVRX states that the rear of the locomotive is not equipped with corner stairways or switching steps, and the uncoupling mechanism must be operated from the ground. If the waiver is granted, the locomotive will be utilized to haul approximately 100 cars a year from Toppenish, Washington, to Harrah, Washington, a distance of about 10 miles, and 4 cars per year between Toppenish, Washington, and White Swan, Washington, a distance of 21 miles.

#### **Napa Valley Wine Train, Incorporated**

[Waiver Petition Docket Number SA-94-7]

The Napa Valley Wine Train, Incorporated, (NVR) seeks a waiver of compliance from 49 CFR 231.30 (c) and (f), which requires that a locomotive used in switching service be equipped with four switching steps with a minimum width of eighteen inches (locomotives built prior to April 1, 1977) and that the uncoupling mechanisms be safely operated from the switching steps as well as ground level, for their locomotive #52. Locomotive #52 is a General Electric locomotive built in 1943. NVR states that the

switching steps at all four locations are 14 inches wide. The locomotive uncoupling mechanisms are not equipped to allow for uncoupling from the switching steps and must be operated from the ground. If the waiver is granted, NVR states the locomotive will occasionally be utilized in interchange freight service.

#### **Union Pacific Railroad Company**

[Waiver Petition Docket Number SA-97-1]

The Union Pacific Railroad Company (UP) seeks a waiver of compliance from 49 CFR Part 231.27, Box and other house cars without roof hatches or placed in service after October 1, 1966, which requires in part that cars be equipped with end platforms and end platform handholds in addition to 16 end and 16 side handholds. UP is requesting that it be permitted to operate 273 high side gondola cars with removable fiberglass covers. The cars, UP 97700 through 97489 and UP 97850 through 97999, were originally constructed and approved in accordance with 49 CFR 231.2, Hopper cars and high-side gondolas with fixed ends, which requires side and end ladders in addition to side and end handholds, but does not require end platforms, end platform handholds, nor the 16 end or 16 side handholds.

The cars were subsequently equipped with temporary removable fiberglass covers to protect contaminated earth for movement solely by UP from Chicago, Illinois, to Clive, Utah, a distance of about 1700 miles. UP states that these cars are in captive service and have operated more than two years without incident. UP also states that upon expiration of the three year contract to haul the contaminated earth, the fiberglass covers will be removed and scrapped with the cars being returned to general service. Additionally, UP states that it would be an unjustified economic loss to modify the cars to comply with Section 231.27, then upon expiration of the contract remedy them to comply with Section 231.2.

#### **Belfast & Moosehead Lake Rail Road Company**

[Waiver Petition Docket Number SA-97-2]

The Belfast & Moosehead Lake Rail Road Company seeks a waiver of compliance from 49 CFR Section 231.15(b), Railroad Safety Appliance Standards—Steam locomotives used in road service, Pilot sill-steps. Section 231.15(b) states that each steam locomotive used in road service shall be equipped with two pilot sill steps mounted on or near each end of buffer-beam outside of the rail and not more

then sixteen inches above the top of the rail.

The Belfast & Moosehead Lake Rail Road Company is requesting an exemption to the requirement of these steps (2) for their steam locomotive #1149. The railroad states that due to the design and placement of the locomotive cylinders and pilot truck, the steps cannot be applied without substantially rebuilding the front of the locomotive. Also, application of the pilot sill steps would block access to the pilot truck journal boxes, make inspections more difficult, and possibly interfere with the movement of the locomotive's outside-frame pilot truck. Employees of the Belfast & Moosehead Lake Rail Road Company are not permitted to ride the pilot of the locomotive.

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 H-97-4) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590. Communications received within 30 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 (9:00 a.m.-5:00 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, N.W., Room 7051, Washington, D.C. 20005.

Issued in Washington, D.C. on August 6, 1997.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[FRA Docket No. SBR 97-1, Notice 1]

RIN NO. 2130-AB15

### Interim Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws

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

**ACTION:** Notice of interim statement of agency policy concerning small entities subject to the railroad safety laws.

**SUMMARY:** In this notice, FRA explains its communication and enforcement policies and programs concerning small businesses subject to the federal railroad safety laws. These policies are being published pursuant to requirements set forth in the Small Business Regulatory Enforcement Fairness Act of 1996. FRA has in place programs that devote special attention to the unique concerns and operations of small entities in the administration of the national railroad safety compliance and enforcement program. FRA expects that publication of these policies and programs will enhance safe operations for small railroads, contractors, and shippers, and improve communication between FRA and small entities.

**DATES:** *Effective Date:* This Interim Statement of Policy is effective October 10, 1997.

*Written Comments:* Written comments must be submitted to FRA before November 30, 1997.

#### FOR FURTHER INFORMATION PLEASE CONTACT:

(1) *Principal Program Person:* Mark Weihofen, Office of Safety, Planning and Evaluation Staff Director, RRS-21, Federal Railroad Administration, 400 Seventh Street, SW, Stop 25, Washington, D.C., 20590; telephone 202-632-3303.

(2) *Principal Attorney:* Christine Beyer, Office of Chief Counsel, RCC-11, Federal Railroad Administration, 400 Seventh Street, SW, Stop 10, Washington, D.C., 20590; telephone 202-632-6189.

#### SUPPLEMENTARY INFORMATION:

##### I. Legislative Background

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. No. 104-121) (SBREFA) establishes new requirements for federal agencies to follow with respect to small businesses, creates new duties for the Small Business Administration (SBA), and

amends portions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and the Equal Access to Justice Act (EAJA) (5 U.S.C. 501, *et seq.*). The primary purposes of SBREFA are to implement recommendations developed at the 1995 White House Conference on Small Business, to provide small businesses enhanced opportunities for judicial review of final agency action, to encourage small business participation in the regulatory process, to develop accessible sources of information on regulatory requirements for small business, to create a cooperative regulatory environment for small business, and to make federal regulators accountable for "excessive" enforcement actions.

In order to accomplish these goals, SBREFA, among other things, requires federal enforcement agencies to institute two new policies. The first is a communication policy, described in section 213 of the legislation, in which each agency must "answer inquiries by small entities concerning information on, and advice about, compliance with" statutes and regulations within the agency's jurisdiction, "interpreting and applying the law to specific sets of facts supplied by the small entity." The second is an enforcement policy, required by section 223 of SBREFA, which requires each agency to establish a policy or program

to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining assessments on small entities.

This enforcement policy must include conditions or exclusions, such as requiring a small entity to correct the violation within a reasonable time; excluding small businesses that have been subject to several enforcement actions by the agency; excluding actions that involve willful or criminal conduct; excluding actions that pose serious health, safety, or environmental threats; and requiring a good faith effort to comply with the law.

SBREFA incorporates the definition for "small entity" that is established by existing law (5 U.S.C. 601, 15 U.S.C. 632, 13 CFR part 121) for those businesses to be covered by the agency policies. Generally, a small entity is a business concern that is independently owned and operated, and is not dominant in its field of operation. Also, "small governmental jurisdictions" that serve populations of 50,000 or less are small entities. (Commuter railroads are governmental jurisdictions, and some may fit within this statutory delineation