

**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****[Docket Number FRA-2010-0010]****Petition for Waiver of Compliance**

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated July 11, 2011, CSX Transportation (CSX) has petitioned the Federal Railroad Administration (FRA) for reconsideration of a denied waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 236. FRA has assigned the petition Docket Number FRA-2010-0010 Reconsideration.

The application had been reviewed by the FRA Railroad Safety Board on September 9, 2010, with the decision being that more information was required. CSX was provided, by the FRA Region 3 Regional Office, with a request for the following:

- CSX to address security of dual-tone multiple frequency (DTMF) tones.
- CSX to provide FRA with an understanding of how the bridge closing without visual is safely accomplished.
- CSX to provide the proposed operating instructions of the bridge.

Subsequent to CSX failing to respond to requests for the information, FRA denied the application on February 4, 2011, and considered FRA-2010-0010 closed.

CSX has, in the enclosure to the July 11, 2011, letter, provided the requested information; FRA, therefore, considers Docket Number FRA-2010-0010 opened for reconsideration.

CSX seeks reconsideration of the proposed modification of the bridge tender controlled signals to automatic signals at Big Manatee Drawbridge in Bradenton, Florida, at Milepost AZA 915.8, in the Jacksonville Division, Palmetto Subdivision. The modification consist of the conversion of bridge tender controlled signals to automatic signals.

The reason given for the proposed change is that the drawbridge tender position is being eliminated. Train crews will request that the bridge open and close via DTMF radio. Signals will clear automatically for train movements once the bridge has been closed and locked and an approach circuit is occupied.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at <http://www.regulations.gov> and in person at the U.S. Department of Transportation's (DOT) Docket

Operations Facility, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

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 and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received by October 14, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to 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 comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC on August 23, 2011.

**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

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**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****[Docket Number FRA-2011-0064]****Petition for Waiver of Compliance**

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated July 12, 2011, the Association of American Railroads (AAR) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 229.135(b)(5) and (b)(6). FRA assigned the petition Docket Number FRA-2011-0064.

Specifically, the AAR seeks a waiver exempting railroads from meeting the 49 CFR Part 229, Appendix D, requirements until December 31, 2015, due to Positive Train Control (PTC) requirements unforeseen at the time 49 CFR 229.135(b5) and (b6) were adopted. The PTC mandate will require an entirely new event recorder module, inclusive of the Appendix D requirements. Title 49 CFR Section 229.135(b) requires that certain locomotives be equipped with an event recorder that includes a certified crashworthy event recorder memory module (ERMM). The Appendix D section prescribes the requirements for certifying ERMM as being crashworthy, including the performance criteria and test sequence for establishing the crashworthiness of the ERMM, as well as the marking of the event recorder containing the crashworthy ERMM. The railroads are spending as much as \$5,000.00 on modules that will have to be replaced prematurely when these locomotives are equipped with PTC. Therefore, a waiver of the Appendix D requirement will enable the industry to avoid the expense of this compliance for modules that will only be used for a short period of time.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at <http://www.regulations.gov> and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave., SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

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 and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

• *Fax:* 202-493-2251.

• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received by October 14, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to 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 comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), or online at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on August 23, 2011.

**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2011-0162; Notice No. 11-7]

#### Safety Notice: Transportation of DOT Special Permit Packages in Commerce

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice.

**SUMMARY:** In this safety notice, PHMSA is alerting the regulated community to

the importance of adhering to Federal requirements when offering and transporting hazardous materials in DOT Special Permit (SP) packages. PHMSA is concerned that many persons who offer or transport SP packages fail to recognize the additional requirements applicable to filling, offering, and moving SP packages. By issuing this safety notice, PHMSA is attempting to raise awareness within the hazardous materials community of the inherent characteristics of DOT SPs and underscore the possible consequences of failing to recognize an SP package and react accordingly.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding specifics on the cryogenic gas incident, please contact: Mr. John Heneghan, Director, Southern Region Office, Office of Hazardous Materials Safety, (404) 832-1135. For general questions regarding Special Permits, please contact: Mr. Ryan Paquet, Director, Approvals and Permits Division, Office of Hazardous Materials Safety, (202) 366-4512.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DOT SPs (previously known as DOT Exemptions) allow the SP grantee to perform some function contrary to, or in addition to, the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). SPs may be used to allow an exemption from provisions of the HMR. SPs can also grant permission to third parties, *i.e.*, persons who are not SP grantees or otherwise party to an SP, to receive, use, retest, or reship an SP package according to the requirements of the HMR and the additional requirements or exceptions described in the SP. SPs are commonly used to authorize: (i) Packaging construction standards that differ from a UN Standard or DOT Specification, (ii) alternative means of testing or closure, (iii) reuse of the packaging in general, (iv) alternative hazard communication requirements, (v) alternative segregation requirements, or (vi) transportation of forbidden materials.

PHMSA's purpose in authorizing the use of SPs is to allow industry to benefit from alternative technologies, materials, and/or processes while maintaining a level of safety at least equal to the safety level required under the HMR. However, PHMSA wishes to emphasize that failure to comply with SP requirements can result in breakdowns in hazard communication, packaging failures, property damage, injury, loss of life and even catastrophic events.

In many cases, maintaining an equivalent level of safety while

pursuing alternatives to the normal requirements of the HMR will require additional safety measures. For example, consider the case of a DOT 3HT cylinder that has been manufactured and re-qualified for service under an SP to be used in a fire suppression system onboard an aircraft. The SP may require the cylinder to be tested more frequently and at a different test pressure than the HMR would otherwise require. If a cylinder re-qualifier fails to recognize the cylinder's SP markings and apply the more stringent SP requirements, it might wait too long to retest the cylinder or apply the wrong test pressure. These errors put lives and property at risk when defective cylinders are improperly tested and allowed to function as part of an emergency response system, such as a fire suppression system.

Hazardous materials training is an important tool for ensuring proper hazard communication and compliance with SP and HMR requirements. Part of the training process involves learning to identify SP packages. Pursuant to the HMR, each SP package is required to be marked "DOT-SP" with a number identifying the SP associated with that package, unless specifically excepted by the SP. PHMSA expects trained employees to recognize SP packages and react accordingly by following the requirements of the HMR and the applicable SP. PHMSA recently concluded an investigation where a hazardous material shipper's failure to recognize an SP package and comply with the safety requirements of the applicable SP and HMR cost the lives of three transportation workers.

##### II. Current Regulatory Requirements

The HMR specifies that persons may offer or transport packages authorized by DOT SPs under the terms specified therein and that if an SP contains requirements applicable to a carrier of an SP package, the offeror shall provide a copy of the SP to the respective carrier (see § 173.22a), unless excepted by the SP. In addition to specific requirements contained in DOT SPs, the HMR includes requirements for hazard communication and handling of SP packages. SP packages must be:

- Plainly and durably marked "DOT-SP" followed by the SP number assigned (see §§ 172.301(c) and 172.302(c)), unless excepted by the SP; and

- Accompanied by shipping papers bearing the notation "DOT-SP" followed by the SP number assigned and clearly associated with the shipping description to which the SP applies (see § 172.203(a)), unless excepted by the SP.