

**FOR FURTHER INFORMATION CONTACT:** Ms. Ruth Rentch, Office of Project Development and Environmental Review, (202) 366-2034, [Ruth.Rentch@dot.gov](mailto:Ruth.Rentch@dot.gov), or Mr. Michael Harkins, Office of the Chief Counsel, (202) 366-4928, [Michael.Harkins@dot.gov](mailto:Michael.Harkins@dot.gov), Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This document, the notice and request for comment, and all comments received may be viewed online through the Federal eRulemaking portal at: <http://www.regulations.gov>. Electronic submission and retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 366 days this year. Please follow the instructions. An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at <http://www.archives.gov> and the Government Printing Office's Web site at <http://www.access.gpo.gov>.

**Background**

Section 6005 of SAFETEA-LU (codified at 23 U.S.C. 327) established a pilot program to allow up to five States to assume the Secretary of Transportation's responsibilities for environmental review, consultation, or other actions under any Federal environmental law pertaining to the review or approval of highway projects. In order to be selected for the pilot program, a State must submit an application to the Secretary.

On June 29, 2007, Caltrans and FHWA entered into a Memorandum of Understanding (MOU) that established the assignments to and assumptions of responsibility to Caltrans. Under the MOU, Caltrans assumed the majority of FHWA's responsibilities under the National Environmental Policy Act, as well as the FHWA's responsibilities under other Federal environmental laws for most highway projects in California.

To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) requires the Secretary to conduct semiannual audits during each of the first 2 years of State participation; and annual audits during each subsequent year of State participation. The results of each audit must be presented in the form of an audit report and be made available for public comment. The FHWA solicited comments on the sixth audit report in

a **Federal Register** Notice published on February 22, 2012, at 77 FR 10599. The FHWA received one comment from Caltrans. This notice provides the final draft of the sixth FHWA audit report for Caltrans under the pilot program.

**Authority:** Section 6005 of Pub. L. 109-59; 23 U.S.C. 315 and 327; 49 CFR 1.48.

Issued on: April 26, 2012.

**Victor M. Mendez,**  
*Administrator.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

[Docket Number FRA-2010-0060]

**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 March 12, 2012, the Norfolk Southern Railway (NS) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations. FRA assigned the petition to Docket Number FRA-2010-0060.

Pursuant to the requirements of 49 CFR Section 236.1035 (Field testing requirements), NS has submitted the Interoperable Electronic Train Management System (I-ETMS) Positive Train Control (PTC) test waiver request, Version 1.1, dated March 12, 2012, along with associated required documents for request of relief from select parts of Subparts A-G. In conjunction with those requests, per 49 CFR Section 236.1035, the NS test waiver includes requests for relief from regulations other than those contained in Subparts A-G.

I-ETMS is a vital overlay system as defined in 49 CFR Part 236, Subpart I, Section 236.1015(e)(2) and fully described in the NS I-ETMS PTC Development Plan (FRA-2010-0060-0002) found in Appendix A, and for which FRA Type Approval FRA-TA-2011-02 was issued on August 26, 2011.

The I-ETMS system is designed to support different railroads and their individual methods of operation and is intended to be implementable across a broad spectrum of railroads without significant modification. This design approach supports interoperability across railroads as I-ETMS-equipped locomotives apply consistent warning and enforcement functionality regardless of trackage ownership.

NS seeks a waiver of compliance from certain sections of 49 CFR, including Parts 216, Special Notice and Emergency Order Procedures: Railroad Track, Locomotive and Equipment; 217, Railroad Operating Rules; 218, Railroad Operating Practices; 229, Railroad Locomotive Safety Standards; 233, Signal Systems Reporting Requirements; 235, Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System or Relief from the Requirements of Part 236; and 240, Qualification and Certification of Locomotive Engineers. NS also seeks a waiver of compliance from 49 CFR Section 211.51 (Tests) to allow them to test I-ETMS, on nonrevenue trains, on the Charleston District from Charleston, SC, milepost (MP) SC 7.0, to Andrews Yard, Columbia, SC, MP SC 128.9; and on the Columbia District from Andrews Yard, Columbia, SC, MP R 108.5, to Charolette Junction, MP R0.0.

The following are the waiver requests and their justifications:

**Section 216.13, Special Notice for Repairs—Locomotive**

Waiver is requested for I-ETMS-equipped locomotives to the extent that non-operation of I-ETMS equipment installed on board, whether through malfunction or deactivation, shall not be construed as an unsafe condition requiring special notice for repairs. Waiver is also sought for non-I-ETMS-equipped locomotives operating in I-ETMS territory to the extent that the absence of I-ETMS equipment on board shall not be construed as an unsafe condition requiring special notice for repairs.

*Justification:* With or without I-ETMS equipment operating on board the controlling locomotive, a train remains subject to existing operating rules. I-ETMS tests require flexibility in installing, removing, turning on, and turning off the equipment.

**Section 217.9, Program of Operational Tests and Inspections; Recordkeeping**

Waiver is requested, exempting operation of I-ETMS equipment and procedures from the requirements for operational tests and inspections, and associated recordkeeping.

*Justification:* During the I-ETMS test phase, procedures for using I-ETMS equipment and functions will be refined and modified. Until such procedures are defined in the PTC Safety Plan (PTCSP), or associated documentation, they cannot be addressed in NS operating rules. I-ETMS is expected to have minimal impact on existing operating

rules due to its nature of overlay to existing methods of operation.

#### **Section 217.11, Program of Instruction on Operating Rules; Recordkeeping; Electronic Recordkeeping**

Waiver is requested, exempting I-ETMS testing and its equipment and procedures from the requirements for instruction and recordkeeping.

*Justification:* During the I-ETMS test phase, procedures for using I-ETMS equipment and functions will be refined and modified. Until such procedures are defined in the PTCSP, or associated documentation, they cannot be addressed in NS operating rules. I-ETMS is expected to have minimal impact on existing operating rules due to its nature of overlay to existing methods of operation.

#### **Part 218, Subpart D, Prohibition Against Tampering With Safety Devices**

Waiver is requested, exempting onboard I-ETMS equipment from the requirements of Sections 218.51, 218.53, 218.55, 218.57, 218.59, and 218.61 to the extent that I-ETMS equipment on board a locomotive shall not be considered a "safety device" subject to the provisions of this subpart at any time during the test and demonstration phase.

*Justification:* I-ETMS tests and demonstrations require flexibility in installing, removing, turning on, and turning off the onboard equipment. NS also needs the flexibility to permanently disable or remove I-ETMS equipment in the event that a revenue service system is not implemented.

#### **Section 229.7, Prohibited Acts**

Waiver is requested such for both I-ETMS equipped and non-I-ETMS equipped locomotives operating in the I-ETMS test territory during the test period.

*Justification:* Non-operation of I-ETMS equipment installed on board a locomotive, whether through malfunction or deactivation, shall not be construed as an unsafe condition subject to this section. Additionally, in the absence of I-ETMS equipment onboard, non-I-ETMS-equipped locomotives operating in I-ETMS territory shall not be construed as an unsafe condition subject to this regulation. The I-ETMS test program requires flexibility in installing, removing, turning on, and turning off the onboard equipment. NS also requires the flexibility to permanently disable or remove I-ETMS equipment in the event that a production system is not implemented. The train remains subject to the safety provisions of the existing method of

operation whether or not I-ETMS equipment on board a locomotive is functioning.

#### **Section 229.135, Event Recorders**

Waiver is requested to the extent that I-ETMS equipment on board a locomotive shall not be considered an "event recorder" subject to the provisions of this section during the test phase.

*Justification:* I-ETMS equipment by design will operate intermittently during the test phase. The data accumulated by the onboard I-ETMS equipment will be used to develop and refine I-ETMS functions. Such data can be expected to contain anomalies that do not reflect true operating conditions but, by analysis, will contribute to achieving necessary objectives in the I-ETMS design.

#### **Section 233.9, Reports**

Waiver is requested, exempting I-ETMS operations in the test phase from the reporting requirements of this section.

*Justification:* NS recognizes that a revenue service I-ETMS system is subject to the provisions of this section; however, imposition of these requirements during the test and demonstration phase would be an unnecessary paperwork burden. PTC testing should not affect the final inventory of the NS signal system, which will be included in the signal system 5-year report.

#### **Section 235.5, Changes Requiring Filing of Application**

Waiver is requested, exempting I-ETMS from the requirements of this section during the test phase.

*Justification:* I-ETMS tests require flexibility in installing, removing, modifying, turning on, and turning off the I-ETMS equipment. NS also requires the flexibility to permanently disable or remove I-ETMS equipment in the event that a revenue service system is not implemented.

#### **Section 240.127, Criteria for Examining Skill Performance**

Waiver is requested exempting I-ETMS from the testing requirements for qualification and certification of locomotive engineers during the test phase.

*Justification:* Criteria and procedures for engineer performance evaluation, as related to I-ETMS, do not yet exist; they will be identified and defined during the I-ETMS test phase and included in the PTCSP.

#### **Section 240.129, Criteria for Monitoring Operational Performance of Certified Engineers**

Waiver is requested, exempting I-ETMS from the performance monitoring procedures during the I-ETMS test phase.

*Justification:* Criteria and procedures for I-ETMS monitoring the performance of engineers using I-ETMS do not yet exist; they will be identified and defined during the I-ETMS test phase and included in the PTCSP.

In addition, NS is requesting a waiver of compliance from certain portions of 49 CFR Part 236, Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances; for information only and of which FRA is not receiving comments. Those sections are:

- 236.11, Adjustment, repair, or replacement of component.
- 236.15, Timetable instructions.
- 236.23, Aspects and indications.
- 236.76, Tagging of wires and interference of wires or tags with signal apparatus.
- 236.101, Purpose of inspection and tests; removal from service of relay or device failing to meet test requirements.
- 236.109, Time releases, timing relays and timing devices.
- 236.110, Results of tests.
- 236.501, Forestalling device and speed control.
- 236.552, Insulation resistance; requirement.
- 236.566, Locomotive of each train operating in train stop, train control or cab signal territory; equipped.
- 236.567, Restrictions imposed when device fails and/or is cut out en route.
- 236.586, Daily or after trip test.
- 236.587, Departure test.
- 236.588, Periodic test.

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) 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 June 18, 2012 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 April 26, 2012.

**Ron Hynes,**

*Acting Deputy Associate Administrator for Regulatory and Legislative Operations.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA-2010-0028]

#### 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 February 16, 2012, CSX Transportation, Inc. (CSX) 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 part 236. FRA assigned the petition to Docket Number FRA-2010-0028.

Pursuant to the requirements of 49 CFR Section 236.1035, Field testing requirements, CSX has submitted the Interoperable Electronic Train Management System® (I-ETMS) Positive Train Control (PTC) Test Waiver Request, Version 1.0, dated February 16, 2012, along with associated required documents for request of relief from select parts of Subparts A-G. In conjunction with those requests, CSX test waiver includes requests for relief from regulations other than that contained in Subparts A-G.

I-ETMS is a vital overlay system as defined in 49 CFR part 236, subpart I, Section 236.1015(e)(2) and fully described in the CSX I-ETMS PTC Development Plan found in Appendix A, and for which FRA Type Approval, FRA-TA-2011-02, was issued on August 26, 2011.

The I-ETMS system is designed to support different railroads and their individual methods of operation, and is intended to be implementable across a broad spectrum of railroads without significant modification. This design approach supports interoperability across railroads, as I-ETMS equipped locomotives apply consistent warning and enforcement functionality regardless of trackage ownership.

CSX seeks a waiver of compliance from certain parts of 49 CFR (Parts 216, *Special Notice and Emergency Order Procedures: Railroad Track, Locomotive and Equipment*; Part 217, *Railroad Operating Rules*; Part 218, *Railroad Operating Practices*; Part 229, *Railroad Locomotive Safety Standards*; Part 233, *Signal Systems Reporting Requirements*; Part 235, *Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System or Relief from the Requirements of Part 236*; and Part 240, *Qualification and Certification of Locomotive Engineers*), under Section 211.51 (Tests), to allow them to test I-ETMS on nonrevenue trains on the Aberdeen Subdivision (between Raleigh and Hamlet, NC) from Southern Junction (Milepost (MP) South 156.8) to Marston (MP South 241.6), and on the Wilmington Subdivision (between Hamlet and Wilmington, NC) from NE East Junction (MP Southeast 254.1) to end of main track (MP Southeast 354.0).

The following sections include the waiver request and justification:

- Section 216.13, Special notice for repairs—locomotive. A waiver is requested for I-ETMS-equipped locomotives to the extent that non-operation of I-ETMS equipment installed on board, whether through malfunction or deactivation, shall not be

construed as an unsafe condition requiring special notice for repairs. A waiver is also sought for non-I-ETMS-equipped locomotives operating in I-ETMS territory to the extent that the absence of I-ETMS equipment on board shall not be construed as an unsafe condition requiring special notice for repairs.

Justification: With or without I-ETMS equipment operating on board the controlling locomotive, a train remains subject to existing operating rules. I-ETMS tests require flexibility in installing, removing, turning on, and turning off the equipment.

- Section 217.9, Program of operational tests and inspections—recordkeeping. A waiver is requested exempting operation of I-ETMS equipment and procedures from the requirements for operational tests and inspections, and associated recordkeeping.

Justification: During the I-ETMS test phase, procedures for using I-ETMS equipment and functions will be refined and modified. Until such procedures are defined in the PTC Safety Plan (PTCSP) and associated documentation, they cannot be addressed in CSX Operating Rules. I-ETMS is expected to have minimal impact on existing operating rules due to its nature of overlay to existing methods of operation.

- Section 217.11, Program of instruction on operating rules; recordkeeping; electronic recordkeeping. A waiver is requested exempting I-ETMS testing and its equipment and procedures from the requirements for instruction and recordkeeping.

Justification: During the I-ETMS test phase, procedures for using I-ETMS equipment and functions will be refined and modified. Until such procedures are defined in the PTCSP and associated documentation, they cannot be addressed in CSX Operating Rules. I-ETMS is expected to have minimal impact on existing operating rules due to its nature of overlay to existing methods of operation.

- Part 218, Subpart D—*Prohibition Against Tampering With Safety Devices*. A waiver is requested exempting onboard I-ETMS equipment from the requirements of Sections 218.51, 218.53, 218.55, 218.57, 218.59, and 218.61 to the extent that I-ETMS equipment on board a locomotive shall not be considered a “safety device” subject to the provisions of this subpart at any time during the test and demonstration phase.

Justification: I-ETMS tests and demonstrations require flexibility in