installed such as an ignition cut-off switch, or carried on board, such as a fire extinguisher, and/or stricter blood alcohol concentration (BAC) standards for drivers, etc.), equipment approval, and/or equipment carriage requirements (*e.g.* fire extinguishers and flares).

cc. Special local regulations issued in conjunction with a motor vehicle rodeo or motor vehicle parade; provided that, if a permit is required, the environmental analysis conducted for the permit included an analysis of the impact of the regulations.

dd. Regulations concerning rules of the road, traffic services, and marking of intelligent transportation systems.

7. Recreational Activities and Events

a. Approval of recreational activities or events (such as an FMCSA picnic) at a location developed or created for that type of activity.

b. Approvals of motor vehicle rodeo and motor vehicle parade event permits for the following events:

(1) Events that are not located in, proximate to, or above an area designated environmentally sensitive by an environmental agency of the Federal, State, or local government. For example, environmentally sensitive areas may include such areas as critical habitats or migration routes for endangered or threatened species or important fish or shellfish nursery areas.

(2) Events that are located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, State, or local government and for which the FMCSA determines, based on consultation with the Governmental agency, that the event will not significantly affect the environmentally sensitive area.

Authority: NEPA, the National Environmental Quality Improvement Act of 1970, as amended [42 U.S.C. 4321, *et. seq.*]; the Council on Environmental Quality Regulations at 40 CFR Parts 1500–1508; DOT Order 5610.1C, as amended on July 13, 1982 and July 30, 1985; and 49 CFR 1.73.

Issued on: September 22, 2003.

Annette M. Sandberg,

Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR), §§ 211.9 and 211.41 notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance from certain requirements of Federal railroad safety regulations. The individual petition is described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Burlington Northern and Santa Fe Railway Company

[Docket Number FRA–2003–15432]

The Burlington Northern and Santa Fe Railway Company (BNSF) seeks a waiver of compliance from certain sections of 49 CFR 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; 236, Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances; and 240, Qualification and Certification Of Locomotive Engineers, under § 211.51, Tests, to allow them to develop, implement, and test technology designed to prevent train authority violations, overspeed violations and accidents caused by passing restricted signals and open switches. The program will enable BNSF to demonstrate and validate Wabtec Railway Electronics technology, referred to as Electronic Train Management System (ETMS), before it is implemented on a larger scale.

ETMS is a non-vital safety overlay that works in conjunction with existing methods of operation and signal and control systems to protect against the consequences of human error. This approach provides a ''safety net'' for train operations while retaining the existing systems as a primary means of control. Because these systems continue in operation, a failure or deactivation of the ETMS has the effect only of suspending the safety enhancements associated with the ETMS, without compromising the underlying safety provisions of existing systems and operating rules.

The ETMS safety enhancements are achieved through a communication-based system that enforces movement authority and speed restrictions for ETMS equipped trains. Four segments work together to provide the enforcement: The location segment, the locomotive segment, the dispatcher system segment and the communications segment. The dispatcher segment delivers the enforceable authority and temporary speed limits for each train under ETMS control. This information is delivered through the communications segment to the locomotive segment. Procedures are implemented to ensure the data received is complete and correct. Failsafe design dictates that an undelivered message will stop the train at the end of its active authority. The locomotive segment confirms the locomotive's location and enforces a train's movement and speed limits by monitoring the train's location and speed and applying the brakes to stop the train if necessary to prevent a violation.

The ETMS will be tested and demonstrated on the BNSF's Wichita Falls subdivision in the State of Texas between Fort Worth, milepost 0 and Valley Junction, milepost 118.4. In addition the system will be tested and demonstrated on the Brookfield subdivision in the State of Illinois between Galesburg, milepost 168 and West Bushnell, milepost 192.4. Finally, the system will be tested and demonstrated on the Beardstown subdivision in the State of Illinois and the Commonwealth of Kentucky between Bushnell, Illinois, milepost 159.6 and Paducah, Kentucky, milepost 239.0. The combined distance of the test territory is 439.3 miles. The present method of operation on the BNSF is by Track Warrant Control and Centralized Traffic Control. These methods of operation will not be affected during the ETMS test period.

ETMS testing may require temporary changes of a benign nature in operating practices, but only on ETMS equipped trains and only when a test is in progress. Such changes in operating practices will include ETMS initialization procedures, digital transmission and on-board display of text authorities and restrictions, on-board display of signal aspect, on-board display of monitored switches, enforcement limits of authority and speed limits/restrictions through automatic brake applications, and procedures for recovery following an enforcement action.

The waiver is requested for a testing period commencing August 1, 2003, and extending to the conclusion of the test phase. The testing period is not expected to exceed one year and will terminate August 1, 2004, unless BNSF notifies FRA of an earlier termination date.

The following are the current waiver requests and their justifications.

Section 216.13

Special notice for repairs—locomotive. Waiver is requested for ETMS locomotives to the extent that

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

Justification: With or without ETMS equipment operating on board the controlling locomotive, a train remains subject to existing signal and control systems and to railroad operating rules. (ETMS is an overlaid system, enhancing current safety without affecting the operation of existing systems.) ETMS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. The ETMS tests will involve only a small subset of locomotives operating in the pilot territory.

Section 217.9

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

Justification: The ETMS pilot is a test program during which procedures for using ETMS equipment and functions will be refined and modified. Until such procedures are defined, they cannot be addressed in the code of operating rules, timetables, and timetable special instructions to which this section applies.

Section 217.11

Program of instruction on operating rules; recordkeeping; and electronic recordkeeping. Waiver is requested exempting operation of ETMS equipment and procedures from the requirements for instruction and associated record keeping.

Justification: The ETMS pilot is a test program during which procedures for using ETMS equipment and functions will be refined and modified. Until such procedures are defined, they cannot be addressed in the code of operating rules.

Part 218

[Subpart D] Prohibition Against Tampering With Safety Devices. Waiver is requested exempting on-board ETMS equipment from the requirements of §§ 218.51, 218.53, 218.55, 218.57, 218.59, and 218.61 to the extent that 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 pilot program.

Justification: The ETMS pilot is a test program. ETMS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. BNSF requires the flexibility to permanently disable or remove ETMS equipment in the event that a production system is not implemented.

Section 229.135

Event recorders. Waiver is requested to the extent that ETMS equipment on-board a locomotive shall not be considered an ''event recorder'' subject to the provisions of this section.

Justification: ETMS equipment by design will operate intermittently during the pilot program. ETMS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. BNSF requires the flexibility to temporarily or permanently disable on-board ETMS equipment.

Section 233.9

Reports. Waiver is requested exempting ETMS operations in the pilot program from the reporting requirements of this section.

Justification: While an ETMS production system may belong to the category of ''other similar appliances, methods, and systems'' specified in 233.1, this requirement would impose an unnecessary paperwork burden for a test program.

Section 235.5

Changes requiring filing of application. Waiver is requested exempting the ETMS pilot program from the filing requirements of this section.

Justification: The ETMS pilot is a test program. ETMS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. BNSF requires the flexibility to permanently disable or remove on-board ETMS equipment in the event the ETMS system is not implemented.

Section 236.4

Interference with normal functioning of device. Waiver is requested to the extent that ETMS equipment shall be excluded from this requirement during the pilot program.

Justification: The ETMS pilot is a test program through which the normal functioning of ETMS will be defined and redefined. ETMS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. With or without ETMS; equipment on-board the controlling locomotive, the train remains subject to the provisions of the existing signal and control systems and to the BNSF operating rules.

Section 236.5

Design of control circuits on closed circuit principle. Waiver is requested excepting ETMS equipment from the closed circuit design requirement.

Justification: ETMS is composed of solid-state components that are software driven. Neither the hardware nor software can technically be designed to meet the provisions of this section.

Section 236.11

Adjustment, repair, or replacement of component. Waiver is requested exempting ETMS components on-board a locomotive from the requirements of this section.

Justification: ETMS tests require flexibility in installing, removing, modifying, turning on and turning off equipment. Failure of a component during the test phase will not jeopardize the safety of train operations. With or without ETMS equipment operating on-board the controlling locomotive, the train remains subject to the provisions of the rules governing the existing method of operation.

Section 236.15

Timetable instructions. Waiver is requested exempting the ETMS pilot territory from the timetable designation requirement of this section.

Justification: Since the pilot program will consist of tests and demonstrations, identifying the test territory in the timetable as ''ETMS'' (or some similar label) would be both premature and an unnecessary paperwork burden.

Section 236.23

Aspects and indications. Waiver is requested to the extent that the ETMS display on-board an equipped locomotive shall not be construed to represent or correspond to signal aspects or indications subject to the requirements of this section.

Justification: The ETMS design excludes any visual display of signal aspects or indications. ETMS enforceable authorities which may or may not derive from signal indications are on-board. Text authorities such as name of signal or track bulletins are displayed to the train crew. Information on the ETMS display will correspond with authority conveyed through wayside signals.

Section 236.76

Tagging of wires and interference of wires or tags with signal apparatus.

Waiver is requested exempting ETMS equipment from the wire-tagging requirement.

Justification: ETMS hardware consists of computers, computer peripherals, and communication devices. While the inapplicability of this section to circuit boards, connectors, and cables would appear obvious, waiver is sought for clarification.

Section 236.101

Purpose of inspection and tests; removal from service of relay or device failing to meet test requirements. Waiver is requested exempting ETMS equipment from the requirement for removal of failed equipment from service.

Justification: ETMS requires flexibility in installing, removing, turning on, and turning off the equipment. With or without ETMS equipment operating on-board, a train remains subject to the provisions of the rules governing the existing methods of operation.

Section 236.107

Ground tests. Waiver is requested exempting ETMS equipment from the requirement for ground testing during the test phase.

Justification: ETMS hardware consists of computers, computer peripherals, and communication devices. Ground tests would serve no purpose in ensuring safety and could be damaging to the equipment.

Section 236.109

Time releases, timing relays and timing devices. Waiver is requested exempting ETMS equipment from the testing requirement of this section during the test phase.

Justification: The timing devices in ETMS equipment are software-driven, have no moving parts, and are far more reliable than the devices for which this regulation was promulgated to address.

Section 236.110

Results of tests. Waiver is requested exempting ETMS tests from the record keeping requirements of this section.

Justification: The ETMS pilot is a test program during which the types of tests needed to ensure appropriate levels of maintenance will be defined.

Section 236.501

Forestalling device and speed control. Waiver is requested exempting ETMS from the requirement for medium-speed restriction.

Justification: ETMS will not be connected to a signal system, but will receive input from the signal system and operate to perform its intended function in the event of failure of the engineer to obey a restrictive condition displayed in the cab. ETMS will enforce speed restrictions reflected in the track database or issued through the dispatcher system.

Section 236.504

Operation interconnected with automatic block-signal system. Waiver is requested exempting ETMS from the requirement of interconnection with an automatic block-signal system.

Justification: The ETMS system will have no connection to the signal system; however, ETMS will receive input from the signal system and operate to perform its intended function in the event of failure of the engineer to obey a restrictive condition displayed in the cab.

Section 236.511

Cab signals controlled in accordance with block conditions stopping distance in advance. Waiver is requested exempting the ETMS on-board display from the cab-signal requirements in this section.

Justification: ETMS is not an automatic cab signal system and will have no connection to a signal system but will receive input from the signal system and display the signal name that forms the basis for limits of authority that will be depicted on the display.

Section 236.514

Interconnection of cab signal system with roadway signal system. Waiver is requested exempting ETMS from the requirement of interconnection with a roadway signal system.

Justification: The ETMS system is not a cab signal system and will have no connection with the signal system. However, ETMS will receive input from the signal system and display the signal name that forms the basis for limits of authority.

Section 236.515

Visibility of cab signals. Waiver is requested exempting the ETMS display from the visibility requirement of this section during the test phase.

Justification: ETMS is not a cab signal system. However, ETMS receives input from the signal system and displays the signal name governing the movement. The visibility requirements of this rule will be met in the ETMS production system.

Section 236.534

Entrance to equipped territory; requirements. Waiver is requested exempting ETMS from the requirements of this section during the test phase.

Justification: ETMS tests require flexibility in installing, removing, turning on, and turning off ETMS equipment.

Section 236.552

Insulation resistance; requirement. Waiver is requested exempting ETMS equipment from the insulation resistance requirement of this section.

Justification: ETMS equipment consists of computers, computer peripherals, and communications equipment. Insulation resistance tests could be damaging to such components.

Section 236.553

Seal, where required. Waiver is requested exempting ETMS from the seal requirement of this section.

Justification: ETMS tests require flexibility in installing, removing, turning on, and turning off ETMS equipment.

Section 236.566

Locomotive of each train operating in train stop, train control or cab signal territory; equipped. Waiver is requested to the extent that the equipment requirements in this section shall not apply to ETMS during the test phase.

Justification: A small subset of locomotives operating in the test territory will be ETMS equipped; the majority of trains will not be equipped. ETMS tests require flexibility in installing, removing, turning on and turning off the on-board equipment. In any case, all ETMS tests will be conducted under the provisions of the rules governing the existing methods of operation.

Section 236.567

Restrictions imposed when device fails and/or is cut out enroute. Waiver is requested exempting ETMS tests from the restrictions associated with device failure or cutout. Tests require flexibility in installing, removing, turning on and turning off the on-board equipment.

Justification: ETMS tests require flexibility in installing, removing, turning on and turning off the onboard equipment. All ETMS tests will be conducted under the provisions of the rules governing the existing methods of operation. A failure or deactivation of ETMS equipment will not jeopardize safety of train operations.

Section 236.586

Daily or after trip test. Waiver is requested exempting the ETMS from the requirements of this section during the test phase.

Justification: During the ETMS test phase, the requirements for a daily or

after trip test, if necessary, will be defined. An objective is to perform this test without human intervention.

Section 236.587

Departure test. Waiver is requested exempting the ETMS from the requirements of this section during the test phase.

Justification: During the ETMS test phase, the requirements for a departure test will be defined. An objective is to perform this test without human intervention.

Section 236.588

Periodic test. Waiver is requested exempting ETMS from the requirements of this section during the test phase.

Justification: During the ETMS test phase, the requirements for a departure test will be defined.

Section 236.703

Aspect. Clarification is requested exempting the ETMS display from this definition.

Justification: ETMS is not an automatic cab signal system.

Section 236.805

Signal, cab. Clarification is requested exempting the ETMS display from this definition.

Justification: ETMS is not an automatic cab signal system.

Section 240.127

Criteria for examining skill performance. Waiver is requested exempting ETMS from the testing requirements of this section during the test phase.

Justification: Criteria and procedures for ETMS performance evaluation do not yet exist; they will be identified and defined during the ETMS test phase.

Section 240.129

Criteria for monitoring operational performance of certified engineers. Waiver is requested exempting ETMS from the performance monitoring procedures during the ETMS test phase.

Justification: Criteria and procedures for ETMS performance evaluation do not yet exist; they will be identified and defined during the ETMS test phase.

It is acknowledged for clarification that ETMS, when fully operative during the test phase, will comply with the following regulations:

Section 236.8

Operating characteristics of electromagnetic, electronic, or electrical apparatus. ETMS computing equipment will comply with this regulation.

Section 236.501

Forestalling device and speed control. ETMS is designed to enforce maximum authorized speeds, speed restrictions, slow speed and absolute stop. ETMS will comply with § 236.501 except for paragraph (b)(2).

Section 236.502

Automatic brake application, initiation by restrictive block conditions stopping distance in advance. ETMS is designed to initiate an automatic brake application stopping distance in advance of the end of limits of authority; or the beginning of each speed restriction in the route.

Section 236.503

Automatic brake application; initiation when predetermined rate of speed exceeded. ETMS will comply with this regulation.

Section 236.505

Proper operative relation between parts along roadway and parts on locomotive. ETMS will function as intended under all conditions of speed, weather, oscillation and shock. ETMS will comply with this regulation.

Section 236.506

Release of brakes after automatic application. After an ETMS initiated brake application, brakes cannot be released until the train is stopped.

Section 236.507

Brake application; full service. ETMS will comply with this regulation.

Section 236.508

Interference with application of brakes by means of brake valve. ETMS equipment will not interfere with or impair the efficiency of the automatic or independent brake valves.

Section 236.509

Two or more locomotives coupled. ETMS will be made operative only on the controlling locomotive; however, ETMS tests that do not affect train operations may occur on the trailing locomotives.

Section 236.513

Audible indicator. The audible indicator for ETMS will have a distinctive sound and be clearly audible under all operating conditions.

Section 236.516

Power supply. ETMS equipment will have its own isolated power supply.

Section 236.565

Provision made for preventing operation of pneumatic brake-applying apparatus by double-heading cock; requirement. Operation of the double-heading cock (cutoff pilot valve) will not cut out ETMS before the automatic brake is cut out.

Section 236.590

Pneumatic apparatus. Pneumatic apparatus will be inspected and cleaned as required.

Part 236 Subpart G

Definitions. As applicable except § 236.703 and § 236.805.

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 FRA–2002–15432) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. 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 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC, on September 16, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver 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) has received a request for a waiver of compliance with certain requirements of