

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Stookey, Office of Aerospace Medicine, Drug Abatement Division, Program Administration Branch (AAM-810), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8442.

Discussion: Pursuant to 14 CFR part 121, appendix I, section V.C, the FAA Administrator's decision on whether to change the minimum annual random drug testing rate is based on the reported random drug test positive rate for the entire aviation industry. If the reported random drug test positive rate is less than 1.00%, the Administrator may continue the minimum random drug testing rate at 25%. In 2007, the random drug test positive rate was 0.60%. Therefore, the minimum random drug testing rate will remain at 25% for calendar year 2009.

Similarly, 14 CFR part 121, appendix J, section III.C, requires the decision on the minimum annual random alcohol testing rate to be based on the random alcohol test violation rate. If the violation rate remains less than 0.50%, the Administrator may continue the minimum random alcohol testing rate at 10%. In 2007, the random alcohol test violation rate was 0.13%. Therefore, the minimum random alcohol testing rate will remain at 10% for calendar year 2009.

SUPPLEMENTARY INFORMATION: If you have questions about how the annual random testing percentage rates are determined please refer to the Code of Federal Regulations Title 14: part 121, appendix I, section V.C (for drug testing), and appendix J, section III.C (for alcohol testing).

Issued in Washington, DC on December 15, 2008.

James R. Fraser,

Deputy Federal Air Surgeon.

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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) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being

requested, and the petitioner's arguments in favour of relief.

Port Authority Trans-Hudson Corporation

[Docket Number FRA-2008-0135]

The Port Authority Trans-Hudson Corporation (PATH) seek a permanent waiver of compliance with the *Locomotive Safety Standards*, 49 CFR 229.123, which requires that each lead locomotive be equipped with an end plate that extends across both rails, a pilot or a snowplow. The petition is being made for PATH's new fleet of passenger MU locomotives designated as PA-5 cars. Prior to receiving this new fleet of cars, PATH had been granted a waiver, Docket Number LI-81-9, from the pilot end plate requirement. PATH operated under this waiver over the past 26 years. PATH operates a closed system with no public highway-rail crossings over 13.8 miles between New York, and New Jersey. PATH states that the addition of a pilot would interfere with space allocated for Communication Based Train Control Equipment to be mounted under the cars.

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-2008-0135) 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 within 45 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://www.regulations.gov>.

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).

Issued in Washington, DC on December 15, 2008.

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 section 238.21 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Northern Indiana Commuter Transportation District

[Waiver Petition Docket Number FRA-2008-0139]

The Northern Indiana Commuter Transportation District (NICTD), further identified herein as the railroad, seeks approval for a waiver of compliance with the requirements of the *Passenger Equipment Safety Standards* contained in 49 CFR 238.105(d)(1), train electronic hardware and software safety. Section 49 CFR 238.105(d)(1) states that:

"Hardware and software that controls or monitors a train's primary braking system shall either: (i) Fail safely by initiating a full service brake application in the event of a hardware or software failure that could impair the ability of the engineer to apply or release the brakes; or (ii) Access to direct manual control of the primary braking system (both service and emergency braking) shall be provided to the engineer."