

and functioning as temporary members of a specific train or yard crew (subject to the conditions set forth in § 218.22 of this chapter), are excluded only when so assigned and functioning.

Both §§ 218.25 and 218.27, requires blue signal protection when workers are on, under, or between rolling equipment on main track or other than main track. § 218.22(b) states in part:

A utility employee may be assigned to serve as a member of a train or yard crew without the protection otherwise required by subpart D of part 218 of this chapter only under the following conditions. (5) The utility employee is performing one or more of the following functions: Inspect, test, install remove or replace a rear marking device or end of train device. Under all other circumstances a utility employee working on, under, or between railroad rolling equipment must be provided with blue signal protection in accordance with §§ 218.23 through 218.30 of this part.

The FRA has determined that removing or replacing a battery in an EOT, while the device is in place on the rear of a train, requires blue signal protection since this task is a service and repair to the device. Therefore, the only way a utility employee or a train and yard crew member can legally remove or replace the EOT battery, without establishing blue signal protection, is to remove the EOT from the rear of the train and perform the battery work outside the area normally protected by the blue signal.

CP contends that safety would be enhanced if the individual was allowed to perform the battery work without removing the device from the rear of the train. Exposure to injury is greatly reduced because the individual is handling a small NiCad battery, as opposed to lifting the EOT device that weighs 32–34 pounds. It is CP's position, supported by the BNSF waiver docket #10660, that changing EOT batteries *in situ* requires less time, places the employee in less immediate danger, and creates less physical strain than removing and replacing the entire EOT.

CP wants to make it clear that this waiver request is intended to cover only train and yard employees working on their own assigned equipment and properly assigned transportation utility employees. It is not intended to cover mechanical or other employees who clearly require blue flag protection to work in or under equipment.

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–2004–17989) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., 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 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>.

Anyone is able to search the electronic form of all 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). The Statement may also be found at <http://dms.dot.gov>.

Issued in Washington, DC, on July 7, 2004.

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

*Acting Associate Administrator for Safety.*

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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 favor of relief.

### Fort Worth & Western Railroad

(Waiver Petition Docket Number FRA–2004–17992)

The Fort Worth & Western Railroad (FWWR) seeks a waiver of compliance from certain provisions of 49 CFR Part 232, Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment. Specifically, § 232.15(a)(8), which does not permit the movement of a car with defective brakes from a location where a train is required to receive a Class I brake test pursuant to § 232.205.

FWWR originates trains at San Angelo Jct, Texas (interchange with Texas Pacific Transportation) and at Dublin, Texas that require the performance of a Class I brake test. FWWR claims that they do not have a mobile repair truck to make any repairs at those two facilities. Their only mechanical repair facility is located at Hodge Yard in Fort Worth, Texas, which is 170.6 miles from San Angelo Jct. and 93.2 miles from Dublin. Therefore, this is the closest repair facility on the FWWR.

FWWR request that they be allowed to move any cars found defective during the Class I brake test to the repair facility at Hodge Yard. All other provisions of § 232.15 would be strictly followed.

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–2004–17992) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 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 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>.

Anyone is able to search the electronic form of all 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). The Statement may also be found at <http://dms.dot.gov>.

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*Acting Associate Administrator for Safety.*

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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 favor of relief.

#### Massachusetts Bay Transportation Authority

*(Waiver Petition Docket Number FRA-2004-18063)*

Massachusetts Bay Transportation Authority (MBTA) seeks a waiver of compliance with the Passenger Equipment Safety Standards, 49 CFR Part 238, Section 231(b), as it pertains to "The brake system design of passenger equipment ordered after September 8, 2000, or placed in service for the first time on or after September 9, 2002, shall not require an inspector to place himself on, under, or between components of the equipment to observe brake actuation and release". MBTA is in the process of receiving twenty-eight new bi-level passenger coaches equipped with tread brakes and inboard disk brakes. Placement of the inboard disk brake equipment does not allow for an inspector to observe the brake actuation or release without placing himself on, under, or between components of the equipment.

MBTA proposes that it be allowed to perform all brake inspections to the extent possible on a daily basis. The

twenty-eight cars would also be equipped with brake indicators, two per truck, that are fed down stream of the truck air brake cut out valves. MBTA proposes that these brake indicators' functionality would be tested at the required one-hundred-eighty day periodic inspection. In addition the twenty-eight new cars would receive an under car inspection to be performed by a "Qualified Maintenance Person" over a pit not less often than every five days. MBTA indicates that the pit inspection will allow for a full and complete inspection of all brake system components.

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 (FRA-2004-18063) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL-401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. 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://dms.dot.gov>.

Anyone is able to search the electronic form of all 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). The Statement may also be found at <http://dms.dot.gov>.

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*Acting Associate Administrator for Safety.*

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## 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. 20502(a), the following railroad has 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.

#### Docket No. FRA-2004-17994

*Applicant: CSX Transportation, Incorporated*

Mr. N. M Choat, Chief Engineer, Communications and Signal, 4901 Belfort Road, Suite 130, Jacksonville, Florida 32256.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system, on the main and siding tracks, on the Aberdeen Subdivision, Florence Service Lane, in North Carolina, consisting of the following:

1. At N.E. Apex, milepost S-169.94, convert the power-operated switch to hand operation, equipped with an electric lock, and remove the three associated controlled signals;
2. At Apex, milepost S-170.92, convert the north power-operated switch to hand operation, equipped with an electric lock, relocate the southbound controlled signal on the main track, and remove the southbound controlled signal and signal system from the north siding;
3. At A&R Connection, milepost S-228.60, convert the power-operated switch to hand operation, and remove the three associated controlled signals;
4. At Aberdeen, milepost S-228.70, convert the north power-operated switch to hand operation, equipped with an electric lock, relocate the southbound controlled signal on the main track, and remove the southbound controlled signal and signal system from the north siding;
5. At S. Aberdeen, milepost S-230.14, convert the south power-operated switch to hand operation, equipped with an electric lock, relocate the northbound controlled signal on the main track, and remove the northbound controlled signal from the north siding; and
6. At Addor, milepost S-232.7, convert the power-operated switch to