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All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA-2003-16429) 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>.

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Issued in Washington, DC on December 5, 2003.

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

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 03-30649 Filed 12-10-03; 8:45 am]

BILLING CODE 4910-06-P

## 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.

#### Union Pacific Railroad Company

[Waiver Petition Docket Number FRA-2003-16306]

The Union Pacific Railroad Company (UP) seeks a waiver of compliance from certain provisions of the Railroad Locomotive Safety Standards, 49 CFR part 229. Specifically, UP requests relief from the requirements of 49 CFR 229.27(a)(2) Annual Tests and 49 CFR 229.29(a) Biennial Tests, applicable to all existing and future installations of electronic air brake equipment furnished by Wabtec Corporation of Wilmerding, Pennsylvania on UP locomotives.

Part 229.27(a)(2) requires that, "Brake cylinder relay valve portions, main reservoir safety valves, brake pipe vent valve portions, feed and reducing valve portions in the air brake system (including related dirt collectors and filters) shall be cleaned, repaired, and tested" at intervals that do not exceed 368 calendar days. Part 229.29(a) requires in part that "\* \* \* all valves, valve portions, MU locomotive brake cylinders and electric-pneumatic master controllers in the air brake system (including related dirt collectors and filters) shall be cleaned, repaired, and tested at intervals that do not exceed 736 calendar days." UP requests these provisions be temporarily waived to allow them to conduct a long term test program designed to show that Wabtec's electronic air brake technology has sufficiently improved overall system reliability and safety to a point where it is now possible to move toward a "component repair as required, performance based COT&S criterion" similar in scope to that outlined a previous waiver granted September 1, 2000, to CSX Transportation in Docket FRA-1999-6252. This referenced waiver covers CSXT locomotives utilizing New York Air Brake Corporation's Computer Controlled Brake (CCB) equipment, with the intent of moving to a component repair as required, performance-based COT&S criterion.

In 1985, the time interval for the requirements of § 229.29(a) was extended to 1,104 calendar days for 26L Brake equipment based on proven service reliability with the evolution of improved components. The time interval for Wabtec's EPIC equipment was extended to five years in 1992, per FRA Test Waiver, H-92-3 (since renamed FRA-2002-13397.) Currently,

UP has more than 1700 locomotives equipped with the Wabtec EPIC brake equipment and maintained under the conditions of waiver FRA-2002-13397.

UP believes the "vigilance" capability of Wabtec's electronic equipment is key to this waiver request. This feature employs the controlling computer to constantly monitor the proper functioning of the system as a whole and in real time. If any key operational parameters are found to fall outside of the allowable tolerance established for each, an appropriate action is automatically and immediately initiated to insure safe operation of the equipment. Less critical faults are logged for follow-up maintenance. UP concludes that the combination of real time vigilant monitoring and fault logging enables "EPIC" COT&S intervals to be similarly increased beyond the current five years with no impact on safety.

Therefore, UP proposes to initiate a test program to extend the Wabtec electronic air brake COT&S based on the following assertions: (1) A reduction of pneumatic devices by substitution of computer-based logic; (2) real time fault detection and control of critical faults to a known fail-safe condition made possible by constant "vigilance" of the controlling computer; (3) development of emergency brake cylinder pressure accomplished conventionally by a back-up pneumatic control valve, as well as electronically under all conditions; (4) demonstrated performance to date of Wabtec "EPIC" brake system under the current waiver FRA 2002-13397 (formally H-92-3); and (5) supporting test and inspection results documented over the past decade for the "EPIC" equipment as required by the current waiver.

As part of this waiver request, UP recommends that a detailed test plan, necessary for properly tracking and documenting the results, be jointly developed between UP, Wabtec Corporation, and FRA. At the completion of the test program, UP further requests that FRA conduct a formal review of the results relative to the objective of moving toward a "performance-based COT&S" criterion.

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Issued in Washington, DC on December 5, 2003.

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

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 03-30650 Filed 12-10-03; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

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#### Union Pacific Railroad Company

[Waiver Petition Docket Number FRA-2003-14408]

On September 22, 2003, FRA denied a waiver request submitted by the Union Pacific Railroad Company (UP) seeking

a waiver of compliance from certain provisions of the Railroad Operating Practices regulations, 49 CFR 218, regarding blue signal protection of workers. Specifically, UP wanted authority to have train and yard crew members, and utility employees to remove and replace batteries in the two-way end-of-train telemetry device (EOT) on the train the individual has been assigned to, without establishing any blue signal protection. UP requested the same relief that was earlier granted to the Burlington Northern and Santa Fe Railway (BNSF) in waiver request FRA-2001-10660. FRA denied the original request because it included utility employees from any working craft. UP is amending the original request, with regard to relief for utility employees. The new request is only for train and yard crew members and operating craft utility employees.

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. 218.5 defines worker as any railroad employee assigned to inspect, test, repair, or service railroad rolling equipment or their components, including brake systems. Members of train and yard crews are excluded, except when assigned such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate (or assigned to as "utility employees"). Utility employees assigned to 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. 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 maintained 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.

UP contends that safety would be improved by eliminating the need for employees to remove an EOT and place it on the ground to change the battery, then have to pick it up and re-mount it to the freight car coupler. Once again, UP requests that they be granted a waiver under conditions similar to those listed in BNSF waiver FRA-2001-10660.

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