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Chief, Management Programs and Analysis Division.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for a 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) 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.

Canadian Pacific Railway

[Waiver Petition Docket Number FRA-2007-0008]

The Canadian Pacific Railway (CP) seeks a waiver from the requirements of 49 CFR 240.117(e)(1) through (4), 240.305, and 240.307, in connection with implementation of a Close Call Reporting System (C3RS) Demonstration Pilot Project (Pilot Project) sponsored by FRA's Office of Research and Development. These sections of the regulation relate to punitive actions that are required to be taken against locomotive engineers for the violation of certain railroad operating rules. Refer to Part 240 for a detailed listing of these sections.

CP and the employees of CP's Chicago Service Area, represented by the Brotherhood of Locomotive Engineers and Trainmen (BLET) and the United Transportation Union (UTU), desire to participate in the Pilot Project, which is one of the action items included in FRA's Action Plan for Addressing Critical Railroad Safety Issues (Action Plan) announced on January 25, 2006.

As noted in the Action Plan, in other industries such as aviation and mining, as well as in the European railway industry, implementation of "close call" reporting systems that shield the reporting employee from discipline (and the employer from punitive sanctions levied by the regulation) have contributed to major reductions in accidents. In March of 2005, FRA completed an overarching memorandum of understanding with railroad labor organizations and management to develop pilot programs to document

close calls, i.e., unsafe events that do not result in a reportable accident but very well could have. Participating railroads will be expected to develop corrective actions to address the problems that may be revealed. The aggregate data may prove useful in FRA's decision-making concerning regulatory and other options to address human factor-caused accidents.

CP, BLET, and UTU have developed and signed an implementing memorandum of understanding (IMOU), based on the FRA's overarching memorandum of understanding, as a first step in commencing the demonstration pilot project. The project would involve approximately 350 yard and road service employees operating between Newport, Minnesota, (Mile Post (MP) 402.5C, River Subdivision) and Tower A-20 (MP 20.5, C&M Subdivision), and all track between those mileposts, including track on the following subdivisions: River, Tomah, Watertown, M&P, the CN Valley, and C&M. This IMOU was sent to FRA for consideration and acceptance on October 8, 2007. As referenced in the IMOU, certain "close calls" may be properly reported by the employee(s) involved and later discovered by CP, for example, through subsequent retrospective analysis of locomotive event recorder data, etc. In order to encourage employee reporting of close calls, the IMOU contains provisions to shield the reporting employee from CP discipline. CP, BLET, and UTU also desire to shield the reporting employee(s) and CP from punitive sanctions that would otherwise arise as provided in selected sections of Part 240 for properly reported close call events as defined in the C3RS IMOU.

The waiver petition is requested for the duration of the C3RS Pilot Project (5 years from implementation or until the Pilot Project is completed or parties to the IMOU withdraw as described in the IMOU, whichever comes first).

Note: According to Article 7.2 of the IMOU, "Conditions under which a reporting employee is not protected from CP discipline and/or decertification and from FRA enforcement," CP employees included in this C3RS/IMOU receive no protection from discipline and/or decertification or from FRA enforcement action when one or more of the following conditions occur:

- The employee's action or lack of action was intended to damage CP or another entity's operations or equipment, or to injure other individuals or purposely place others in danger (e.g., sabotage);
- The employee's action or lack of action involved a criminal offense;
- The employee's behavior involved substance abuse or inappropriate use of controlled substances;

- The report is rejected by the Bureau of Transportation Statistics Peer Review Team;
- The event resulted in a railroad accident/incident that qualifies as reportable under § 225.11;
- The event resulted in an identifiable release of a hazardous material; or
- The event was observed in real-time and reported to CP management (such as a train dispatcher or operator observing a signal violation) or was observed as part of proficiency testing.

Proficiency testing (e.g., operating rule efficiency testing, signal compliance testing) generally consists of real-time observations and do not qualify for exemption. Similarly, an employee is not exempt from discipline and/or decertification for a violation that CP or FRA identifies contemporaneously (e.g., a block circuit is occupied by a train without authority, and the train dispatcher notices it before the train backs off the circuit) before the employee files a close call report. In such situations, CP or FRA may use event recorder information to support discipline and/or decertification and/or enforcement. For example, a CP official who observes a train operate past a signal that requires a stop may use any relevant data recorded by the locomotive's event recorder in pursuing disciplinary action against the train crew, regardless of whether a member of the crew timely files a close call report.

In its petition, CP indicated that the parties signatory to the IMOU, dated August 21, 2007, believe the data from these properly reported close call incidents, as defined in the IMOU, will be invaluable in the analysis and development of effective corrective actions. CP expressed the view that without the requested waiver the employee(s) involved in incidents such as those described above will not file reports of the incidents and that the incident(s) will likely go undetected, resulting in no opportunity for analysis, data trending, or appropriate corrective actions. Noting the success of close call reporting systems in other industries (e.g., aviation and maritime), CP further indicated that all parties signatory to the IMOU and participating in the Pilot Project believe that the Pilot Project and requested regulatory relief is in the public interest and consistent with railroad safety.

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-2007-0008) 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 19, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7-25141 Filed 12-27-07; 8:45 am]

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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.

Durbin & Greenbrier Valley Railroad

[Waiver Petition Docket Number FRA-2007-27868]

The Durbin & Greenbrier Valley Railroad, Inc. (DGVR), a Class III railroad, seeks a waiver of compliance from the requirements of CFR § 223.11 *Requirements for existing locomotives* for Locomotive Number 82. Specifically, DGVR petitioned FRA for a waiver for a 1,500 horsepower diesel electric locomotive, model BL-2, built by the Electro Motive Division of General Motors in 1948. This locomotive is on loan from the State of West Virginia (WV) Rail Authority. The locomotive is stored in Belington, WV, and operated by a subsidiary division of DGVR, the West Virginia Central.

Locomotive Number 82 is used on a limited basis for freight and excursion passenger service from a station in Hi Falls, WV (Milepost (MP) 51) to Tygart Junction, WV (MP 0.02), approximately 50 miles. There are 21 highway/rail crossings at grade, and two overpasses. One is located in Elkins, WV, and the other approximately 10 miles east of Elkins. The railroad operates through rural and relatively unpopulated areas, and there have been no reports of glazing vandalism along this right-of-way.

The petitioner believes that this locomotive can be safely operated throughout the rural area with the current non-compliant safety-type glazing. The cost to DGVR for installation of all new window frames and compliant FRA Types I & II glazing is significant, with only a marginal increase in safety due to the low speed.

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-2007-27868) 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 19, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Informational Filing

In accordance with § 236.913 of Title 49 of the Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received an informational filing from the Ohio Central Railroad System (O CRS) to permit field testing of the railroad's processor-based train control system. The informational filing is described below, including the requisite docket number where the informational filing and any related information may be found. The document is also available for public inspection;