

audited financial statements, its gross revenues may be certified by its chief financial officer or its equivalent.

(g) *Total Assets.* *Total assets* shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of all property owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recent audited financial statements or certified by the applicant's chief financial officer or its equivalent if the applicant does not otherwise use audited financial statements.

* * * * *

(j) * * *
(2) For purposes of assessing compliance with the equity limits in § 24.709 (b)(3)(i) and (b)(4)(i), where such interests are not held directly in the applicant, the total equity held by a person or entity shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

* * * * *

(l) * * *
(11) * * *

(i) For purposes of §§ 24.709(a)(2) and paragraphs (b)(2) and (d) of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of § 24.709 (b)(3) and (b)(5) or § 24.709 (b)(4) and (b)(6), except that gross revenues derived from gaming activities conducted by affiliated entities pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of § 24.709(a) and paragraphs (b) and (d) of this section, unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.

* * * * *

(n) * * *

(1) A qualifying investor is a person who is (or holds an interest in) a member of the applicant's (or licensee's) control group and whose gross revenues and total assets, when aggregated with those of all other attributable investors and affiliates, do not exceed the gross revenues and total assets limits specified in § 24.709(a), or, in the case

of an applicant (or licensee) that is a small business, do not exceed the gross revenues limit specified in paragraph (b) of this section.

* * * * *

(3) For purposes of assessing compliance with the minimum equity requirements of § 24.709(b) (5) and (6), where such equity interests are not held directly in the applicant, interests held by qualifying investors or qualifying minority and/or woman investors shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

(4) For purposes of § 24.709 (b)(5)(i)(C) and (b)(6)(i)(C), a qualifying investor is a person who is (or holds an interest in) a member of the applicant's (or licensee's) control group and whose gross revenues and total assets do not exceed the gross revenues and total assets limits specified in § 24.709(a).

* * * * *

13. Section 24.813 is amended by revising paragraphs (a)(1), (a)(2) and (a)(4) to read as follows:

§ 24.813 General application requirements.

(a) * * *

(1) A list of any business, holding or applying for CMRS or PMRS licenses, five percent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, attributable stockholder or key management personnel of the applicant. This list must include a description of each such business' principal business and a description of each such business' relationship to the applicant.

(2) A list of any party which holds a five percent or more interest (or a ten percent or more interest for institutional investors as defined in § 24.720(h)) in the applicant, or any entity holding or applying for CMRS or PMRS licenses in which a five percent or more interest (or a ten percent or more interest for institutional investors as defined in § 24.720(h)) is held by another party which holds a five percent or more interest (or a ten percent or more interest for institutional investors as defined in § 24.720(h)) in the applicant (e.g. If Company A owns 5% of Company B (the applicant) and 5% of Company C, a company holding or applying for CMRS or PMRS licenses, then Companies A and C must be listed on Company B's applications.)

* * * * *

(4) In the case of partnerships, the name and address of each partner, each partner's citizenship and the share or interest participation in the partnership. This information must be provided for

all partners, regardless of their respective ownership interest in the partnership.

* * * * *

14. Section 24.839 is amended by revising paragraphs (a), (d)(1), and (d)(2) and adding paragraphs (d)(3), (d)(4), and (d)(5) to read as follows:

§ 24.839 Transfer of control or assignment of license.

(a) Approval required. Authorization shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy or legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission. A transfer of control or assignment of station authorization in the broadband Personal Communications Service is also subject to §§ 24.711(e), 24.712(d), 24.713(b), 24.717(c) (unjust enrichment) and 1.2111(a) (reporting requirement).

* * * * *

(d) * * *

(1) The application for assignment or transfer of control is filed after five years from the date of the initial license grant; or

(2) The proposed assignee or transferee meets the eligibility criteria set forth in § 24.709 at the time the application for assignment or transfer of control is filed, or the proposed assignee or transferee holds other license(s) for frequency blocks C and F and, at the time of receipt of such license(s), met the eligibility criteria set forth in § 24.709;

(3) The application is for partial assignment of a partitioned service area to a rural telephone company pursuant to § 24.714 and the proposed assignee meets the eligibility criteria set forth in § 24.709;

(4) The application is for an involuntary assignment or transfer of control to a bankruptcy trustee appointed under involuntary bankruptcy, an independent receiver appointed by a court of competent jurisdiction in a foreclosure action, or, in the event of death or disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved; provided that, the applicant requests a waiver pursuant to this paragraph; or

(5) The assignment or transfer of control is *pro forma*.

* * * * *

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DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****49 CFR Parts 233, 235 and 236**

[FRA Docket No. RSSI-1 ; Notice No. 1]

RIN 2130—AB06; 2130—AB05

**Signal and Train Control;
Miscellaneous Amendments**

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Interim final rule.

SUMMARY: In accord with President Clinton's Regulatory Reinvention Initiative, FRA is amending FRA's signal system reporting requirements to reduce signal system reporting burdens on the rail industry. FRA is also amending its regulations governing applications for approval of discontinuance or material modification of a signal system and is consolidating certain pneumatic valve cleaning and testing intervals to eliminate overlapping and unnecessary test schedules.

DATES: This interim final rule is effective August 30, 1996. Written comments concerning this rule must be filed no later than July 31, 1996.

FOR FURTHER INFORMATION CONTACT: William Goodman, Staff Director, Signal and Train Control, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202-366-2231), or Mark Tessler, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202-366-0628).

SUPPLEMENTARY INFORMATION:**Background**

On September 30, 1993, President Clinton issued Executive Order No. 12866, "Regulatory Planning and Review". This Executive Order was based on the recognition that government must govern in a focused, tailored, and sensible way. In order to reaffirm and implement the principles of Executive Order No. 12866, President Clinton, in March of 1995, announced a Regulatory Reinvention Initiative in which federal agencies were directed to conduct a review of agency regulations with a view toward eliminating or revising those outdated or otherwise in need of reform. This proceeding is part of that effort.

FRA has not provided prior notice and request for public comment prior to making the amendments contained in this rule. FRA has concluded that such notice and comment are impracticable,

unnecessary and contrary to the public interest under 5 U.S.C 553 since FRA is making only minor changes in reporting requirements, administrative procedures, and is clarifying contradictory regulatory provisions. However, FRA is soliciting comments on this rule and will consider those comments in determining whether there is a need to take further action to improve these regulations. For this reason, FRA has issued this as an interim final rule so that it can take effect while any comments are being considered. If comments persuade FRA that amendments are necessary, it will address them in a subsequent notice. As noted above, comments must be submitted no later than July 31, 1996.

Section-by-Section Analysis**49 CFR Part 233.9 "Signal System Reporting Requirements"**

The Signal Systems Annual Report has historically been used to monitor changes in the types of signal systems installed on the nation's railroads. Based on its regulatory review, FRA has concluded that the signal system information base can be maintained while at the same time the reporting burden imposed on railroads can be reduced. FRA has concluded that the information provided by this report does not need to be updated annually. Using the information base already in existence, FRA can monitor incremental changes in railroad signal systems through reports of agency field personnel. Additionally, because railroads must file an application with FRA to discontinue or materially modify a signal system under 49 CFR Part 235, FRA will be well informed regarding incremental changes in signal systems. FRA is amending this section to provide for filing of signal system reports every five years rather than on an annual basis, as is required presently. This more realistic time frame will reduce the reporting burden to the industry while maintaining an adequate information base. FRA is also revising the information to be reported in order to reflect technological changes in the industry and in accord with information needs of FRA. FRA will submit the report form to the Office of Management and Budget (OMB) for approval. The new reporting requirements contained in this section are not mandatory until approval has been obtained from OMB. Section 233.9 is thus being revised to require that not later than April 1, 1997 and every 5 years thereafter, each carrier shall file with FRA a Signal System Five-year Report on a form to be provided by FRA and in accordance

with instructions provided on the report.

49 CFR Part 235.7 "Changes not Requiring Filing of Application"

Section 235.7 currently specifies those modifications to signal systems that can be made by a railroad without the necessity of filing an application for FRA approval. Those listed modifications are of a type that increase either the safety of a signal system or which do not affect the existing level of safety. FRA is adding a provision which permits the installation, removal or relocation of intermediate or automatic signals in conjunction with the elimination of signal system pole lines when replaced with electronic track circuits. Improving a signal system with electronic track circuits provides a railroad with the benefit of a signal system not adversely affected by ice, snow storms, and floods. Installation of electronic track circuits and the elimination of open pole lines often results in the extension and equalization of block limits and relieves the railroads from maintaining and replacing many poles and cross arms and eliminates signal problems created by wire crosses and grounds on the open wire signal circuits. Section 235.7(c)(24) provides that it is not necessary to file an application for approval for the installation, relocation, or removal of signals, interlocked switches, derails, movable-point frogs, or electric locks in an existing system directly associated with the installation of new track; the elimination of existing track other than a second main track; the extension or shortening of a passing siding; elimination of second main track in certain stated circumstances or a line relocation. FRA is adding to this list conversion of pole line circuits to electronic (coded) track circuits provided that the railroad gives notice and a profile plan of the change to the FRA regional office having jurisdiction over that territory at least 60 days in advance of the change. In addition, the railroad must provide at the same time a copy of the notice and profile plan to representatives of employees responsible for maintenance, inspection and testing of the signal system under 49 CFR Part 236. The signal system modification will be deemed acceptable, unless within 60 days, the Regional Administrator stays action by written notice to the railroad and refers the issue to the Railroad Safety Board for decision. The proposed change will enable railroads to better manage the timing and budgeting for signal system upgrades while at the same time

maintaining protection and safety of train movements.

49 CFR 236.590 "Pneumatic Apparatus"

This section presently requires that automatic train stop ("ATS"), automatic train control ("ATC"), or automatic cab signal ("ACS") pneumatic apparatus be inspected and cleaned at least once every 736 days. This section also requires that the pneumatic apparatus be stenciled, tagged or otherwise marked to indicate the last cleaning date. Locomotive safety standard regulations at 49 CFR 229.29 require that valves, valve portions, MU locomotive brake cylinders and electric pneumatic master controllers in the air brake system be cleaned, repaired, and tested at least once every 736 days. The section also requires that the date and place of the cleaning, repairing and testing be recorded on a specified form. A record of the parts of the air brake system that are cleaned, repaired, and tested are required to be kept in the railroad's files or in the cab of the locomotive.

FRA intends that the inspection and cleaning time interval requirements for pneumatic apparatus (ATS, ATC, and ACS) be governed by the air brake testing intervals established in 229.29. In that way, railroads will not be faced with conflicting testing schedules. Maintenance schedules will be simplified and locomotive down-time will be reduced as a result. Although both section 229.29 and 236.590 require a 736-day test interval, due to existing waivers, the testing and cleaning intervals for air brake systems and pneumatic systems on many locomotives do not coincide. In 1985, FRA granted a waiver of compliance with § 229.29 (see 50 FR 3910, January 29, 1985) to allow locomotives equipped with 26L airbrake equipment to operate for periods not to exceed three years before receiving the detailed inspections required by § 229.29. Under the terms of this waiver, which extended an earlier test waiver (see 46 FR 33401, June 29, 1981), "train control pneumatic valves (suppression and timing valves)" were included within the waiver. Thus railroads have been able to perform periodic testing and maintenance of air brake and train control pneumatic valves on locomotive 26L brake equipment at the same time. It has come to our attention that many railroads were not aware of the extent of the waiver issued in 1985 and thus may not have been taking advantage of the scheduling advantages this waiver provided. By conforming the requirements of § 236.590 to those of

§ 229.29, any changes in inspection and testing intervals or recordkeeping requirements made to air brake systems will automatically apply to pneumatic train control valves on similar types of locomotives. Since pneumatic train control valves utilize the same air supply system, a decision as to safe testing intervals for one component would apply to the other component as well. In addition to the above changes, FRA is providing "out of service" credit that is applied to air brake systems under § 229.33 to train control systems under § 236.590. This will further conform the two sets of testing and maintenance requirements.

FRA is thus amending § 236.590 to provide that automatic train stop, train control, or cab signal pneumatic apparatus shall be inspected, cleaned, and the results of such inspection recorded as provided by § 229.29(a). When a locomotive with automatic train stop, train control, or cab signal pneumatic apparatus receives out-of-use credit pursuant to § 229.33, the automatic train stop, train control, or cab signal apparatus shall be tested in accordance with § 236.588 prior to the locomotive being placed in service.

E.O. 12866 and DOT Regulatory Policies and Procedures

These amendments have been evaluated in accordance with existing policies and procedures and because they are primarily technically oriented and generally reduce the regulatory burden on railroads, FRA has concluded that the revisions do not constitute significant rule under either Executive Order 12866 or DOT's regulatory policies and procedures.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this rule will not have a significant impact on a substantial number of small entities. There are no substantial economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

These amendments reduce information collection requirements and therefore reduce reporting burdens imposed on railroads.

Environmental Impact

FRA has evaluated these regulations in accordance with its procedure for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related

directives. FRA has determined that the revision of Parts 233, 235 and 236 of Title 49 of the CFR does not constitute a major FRA action requiring an environmental assessment.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, "Federalism," and it has been determined that these amendments do not have federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

49 CFR Part 233

Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 235

Railroad safety, Administrative practice and procedure.

49 CFR Part 236

Railroad safety.

The Rule

In consideration of the foregoing, FRA amends Parts 233, 235, and 236 of Title 49 of the Code of Federal Regulations as set forth below:

PART 233—[AMENDED]

1. The authority citation for Part 233 continues to read as follows:

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49 (f), (g), and (m).

2. Section 233.9 is revised to read as follows:

§ 233.9 Reports.

Not later than April 1, 1997 and every 5 years thereafter, each carrier shall file with FRA a signal system status report "Signal System Five-year Report" on a form to be provided by FRA in accordance with instructions and definitions provided on the report.

PART 235—[AMENDED]

3. The authority citation for Part 235 continues to read as follows:

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49 (f), (g), and (m).

4. Paragraph (c)(24) of § 235.7 is amended by adding at the end thereof a new paragraph (c)(24) (vi) to read as follows:

§ 235.7 Changes not requiring filing of application.

* * * * *

(c) * * *

(24) * * *

(vi) The conversion of pole line circuits to electronic (coded) track circuits provided that the railroad gives notice and a profile plan of the change to the FRA regional office having jurisdiction over that territory at least 60 days in advance of the change. The railroad must also at the same time provide a copy of the notice and profile plan to representatives of employees responsible for maintenance, inspection and testing of the signal system under 49 CFR Part 236. The signal system modification will be deemed acceptable, unless within 60 days, the Regional Administrator stays action by written

notice to the railroad and refers the issue to the Railroad Safety Board for decision.

PART 236—[AMENDED]

5. The authority citation for Part 236 continues to read as follows:

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49 (f), (g), and (m).

6. Section 236.590 is revised to read as follows:

§ 236.590 Pneumatic apparatus

Automatic train stop, train control, or cab signal pneumatic apparatus shall be

inspected, cleaned, and the results of such inspection recorded as provided by § 229.29(a). When a locomotive with automatic train stop, train control, or cab signal pneumatic apparatus receives out-of-use credit pursuant to § 229.33, the automatic train stop, train control, or cab signal apparatus shall be tested in accordance with § 236.588 prior to the locomotive being placed in service.

Issued in Washington, D.C. on May 30, 1996.

Donald M. Itzkoff,

Deputy Administrator.

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