

19477) or at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on October 21, 2009.

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

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

[FR Doc. E9-25819 Filed 10-26-09; 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) has received a request for a waiver of compliance from 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.

#### Central California Traction Company & the United Transportation Union

[Waiver Petition Docket Number FRA-2009-0077]

The Central California Traction Company (CCT) and the United Transportation Union (UTU) jointly seek a waiver from compliance of the provisions of 49 U.S.C. 21103(a)(4), which provides that a train employee may not be required or allowed to remain or go on duty after that employee has initiated an on-duty period each day for 6 consecutive days, unless that employee has had at least 48 hours off duty at the employee's home terminal.

The parties state that provisions of their current collective bargaining agreements provide for an enhanced level of rest and safety for employees working regular or extra board assignments that is superior to the conditions imposed by 49 U.S.C. 21103(a)(4). Specifically, the agreements provide for four regular assignments working Monday through Friday, with regular starting times. Extra assignments are operated on weekends, usually one on Saturday and one on Sunday. Employees are called on Friday afternoon for the weekend assignments with Extra board employees, who fill vacancies in regular and extra weekend assignments, are subject to call during certain calling windows, and have one scheduled day off. CCT crews always complete their assignments and spend their off-duty periods at their home

terminal. These provisions would be combined with compliance with other provisions of the hours of service laws, including a minimum of 10 hours of undisturbed rest between assignments, and employees not exceeding 276 hours of service a month. At the time of this petition, CCT had 16 employees in train and engine service; 12 on regular assignments and the remainder on the extra board. The petition submitted by CCT and UTU may be viewed at <http://www.regulations.gov> under the docket number listed above.

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-2009-0077) 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 document (or signing the document, 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 (65 FR 19477) or at <http://www.dot.gov/privacy.html>.

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**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 Title 49 Code of Federal Regulations (CFR) § 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the Federal railroad safety regulations. 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.

#### New Jersey Transit Rail Corporation

[Docket Number FRA-2009-0096]

The New Jersey Transit Rail Corporation (NJTR) seeks a waiver from the requirements of 49 CFR 240.117(e)(1) through (4), 49 CFR 240.305, and 49 CFR 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 49 CFR Part 240 for the specific regulatory requirements.

NJTR and selected employees of NJTR's rail system represented by the American Train Dispatchers Association (ATDA), 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). The Action Plan is available at <http://www.fra.dot.gov>. In addition, 49 U.S.C. 20156, enacted as part of the Rail Safety Improvement Act of 2008 (Pub. L. 110-432) authorizes the conduct of "pilot programs" designed to evaluate and manage railroad safety risks. The Pilot Project is one such program.

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 reporting employees from discipline (and the employers from punitive sanctions levied by 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 are 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.

NJTR, ATDA, BLET, UTU, the Bureau of Transportation Statistics (BTS) and FRA 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 Pilot Project. The Pilot Project would involve approximately 1,400 yard, road service, yardmaster, and train dispatcher employees working within the boundaries of NJTR’s operating territory (including the Southern Tier and Pascack Valley Line, but not Conrail and Amtrak operating territories). As referenced in the IMOU, certain “close calls” may be properly reported by the employee(s) involved and later discovered by NJTR, 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 NJTR discipline. NJTR, ATDA, BLET, and UTU also desire to shield the reporting employee(s) and NJTR from punitive sanctions that would otherwise arise as provided in certain sections of 49 CFR Part 240 for properly reported close call events as defined in the IMOU. The waiver petition is requested for the duration of the Pilot Project (5 years from implementation or until the demonstration project is completed or parties to the IMOU withdraw as described in the IMOU, whichever is first).

**Note:** Article 7.2 (of the IMOU) CONDITIONS UNDER WHICH A REPORTING EMPLOYEE IS NOT PROTECTED FROM NJTR DISCIPLINE AND/OR DECERTIFICATION AND OTHER FRA ENFORCEMENT—NJTR 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:

1. The employee’s action or lack of action was intended to damage NJTR or another entity’s operations or equipment or to injure other individuals, or intentionally places others in danger (e.g., sabotage);
2. The employee’s action or lack of action involved a criminal offense;
3. The employee’s behavior involved substance abuse or inappropriate use of controlled substances;
4. If the report is rejected by BTS or the Peer Review Team (PRT);
5. The event resulted in any type of accident and/or has caused or alleged to have caused any injury, illness, or medical treatment of any kind to any person involved in the event;
6. The event resulted in an identifiable release of a hazardous material; or
7. The event was observed in real-time by FRA and/or a railroad employee and reported to NJTR management; or
8. The event was observed in real time as part of Efficiency Testing.

Similarly, an employee is not exempt from discipline and/or decertification for a violation that NJTR 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, NJTR or FRA may use event recorder information to support discipline and/or decertification and/or enforcement. For example, a NJTR 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, NJTR indicated that the parties signatory to the IMOU believe the data from these properly reported close call incidents as defined in the IMOU will be invaluable in analysis and development of effective corrective actions. NJTR 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 incidents 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), NJTR further indicated that all parties signatory to the IMOU and participating

in the Pilot Project believe that the 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–2009–0096) 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 20 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).

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

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

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