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**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA-2013-0068]

#### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated June 18, 2013, the National Railroad Passenger Corporation (Amtrak) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR Part 214, Subpart C, Roadway Worker Protection. FRA assigned the petition Docket Number FRA-2013-0068.

In its petition, Amtrak requests a temporary waiver from 49 CFR Part 214, Subpart C, seeking relief from the requirement to provide Roadway Worker Protection (RWP) for contractors and contractor employees (herein referred to as "workers") using hand tools within the 4-foot fouling envelope

of a track in publicly accessible areas, specifically passenger station platforms. The waiver is sought for the express purposes of performing manual snow removal with hand tools, which extend into the tactile warning area of a passenger platform (if equipped with a tactile warning strip), or other warning area beyond and including a similarly positioned and contrasting painted line (if not equipped), while the worker's person is behind the area and in a position of safety. The tactile warning area is the area beyond and including a 24-inch-wide strip of truncated domes that is installed along the full length of the public-use areas of a passenger platform (pursuant to the Americans with Disabilities Act (ADA) standards) and that is generally positioned approximately 24 inches from the outside of the nearest rail. The request for relief from the regulation is limited to platforms outside of the Northeast Corridor at stations for which Amtrak is not the operating railroad.

Title 49 CFR 214.7 defines fouling a track as "the placement of an individual or an item of equipment in such proximity to a track that the individual or equipment could be struck by a moving train or on-track equipment, or in any case is within four feet of the field side of the near running rail." In the case of a platform, 4 feet from the field side of the rail generally encompasses the space between the outside of the nearest rail and the platform, plus the width of a 24-inch-wide, ADA-required, tactile strip.

Currently, workers performing passenger station snow-removal activities, which breach the tactile (or painted) warning area with hand tools, must be provided with on-track safety in accordance with the RWP rule, while pedestrians and the riding public may move throughout the system in the very same areas without restriction.

Contractor workers performing snow removal on passenger service infrastructure not owned by Amtrak are not qualified to provide on-track safety. Thus, workers may remove snow from platform areas behind the tactile (or paint-delineated) warning area, but must not remove snow in the area of the tactile (or paint-delineated) warning area without first establishing on-track safety in accordance with the RWP rule. As a result of this requirement, hazardous conditions on platforms remain unaddressed. Amtrak believes that the proposed alternate snow removal protection program (alternate program), used for specific snow-removal activities, will permit workers to address unsafe platform conditions from a safe location in a safe and timely

manner, without workers being struck by a train, while occupying the area of the platform behind the tactile warning strip or contrasting painted line.

Slippery or snow-covered platform surfaces pose a significant risk to passengers, especially if such conditions exist close to the platform's edge. This potential risk continues if the surfaces remain slippery or snow-covered. In contrast, the potential risk to workers is intermittent depending on the presence of a train. Considering the differing levels of potential risk from both time-based and quantity-based perspectives, risk to passengers is significantly greater than the potential risk to workers.

Throughout the 2012-2013 winter season, with the permission of FRA, Amtrak conducted a pilot test program of the alternate program used for specific snow-removal activities (see FRA-2011-0077). Amtrak believes that there was an improvement to the safety of the riding public during the pilot program and believes this improvement will continue in the form of faster response times, reduced hazardous walking conditions, and reduced passenger incidents, should the waiver be granted. Amtrak submits that it is logical to assume that removing snow and ice from the tactile or paint-delineated warning areas of passenger station platforms would result in a reduction in slips, trips, and falls due to inclement weather at station platforms. Further, there were no incidents meeting this criteria in the stations that were part of the pilot program.

Amtrak also believes that no negative impact to the safety of workers removing snow will occur under the plan, based upon examination of publicly available data regarding passenger and employee injuries and fatalities on railroad passenger station platforms in addition to the data obtained throughout the pilot test program.

Under Federal Transit Administration oversight, no consistent RWP requirements exist nationwide. Transit agencies are permitted to perform snow-removal activities at station platforms in accordance with protection requirements that the transit agency itself adopts. Many rail transit agencies have adopted policies similar to the practices that Amtrak proposes in this waiver, with no appreciable difference in worker injuries and fatalities on station platforms when compared with FRA data.

Amtrak believes and has observed throughout the pilot test program that the alternate program, as proposed, will provide an equivalent level of safety to the current requirements under RWP,

while improving the safety of the riding public. As such, Amtrak believes that relief from the application of fouling protection required when manually removing snow from a publicly accessible station platform is “in the public interest and consistent with railroad safety.”

To ensure that workers using the alternate program to remove snow from platforms are not exposed to undue risk, the following conditions are proposed by Amtrak in its alternate program:

1. Workers are not permitted to use powered equipment, such as snow blowers, to clear the tactile edge area of snow without appropriate on-track safety in accordance with the RWP rule.

2. Any need to breach the strip or to come bodily within the 4-foot clearance envelope to push snow from the platform will require on-track safety in accordance with the RWP rule.

3. Amtrak will train workers to be constantly alert for the movement of trains and to remain in areas of the platform that are inaccessible to trains.

4. The Amtrak training program for the alternate program details the conditions under which on-track safety is needed, in accordance with the RWP rule, as well as the explicit conditions under which workers may occupy the station areas behind the tactile edge to remove snow.

5. The training program explains the purpose of a good-faith challenge as well as how to execute a challenge if work needs to be performed that requires on-track safety in accordance with the RWP rule or is otherwise thought to be unsafe by the worker.

6. Workers must demonstrate an understanding of the types of conditions that would require protection above and beyond that which would be permitted under this proposal, as well as the methods to execute a good-faith challenge.

7. Workers must hold a job briefing before any work starts.

8. Workers removing snow from station platforms under the alternate program will not be permitted to work in single-man crews.

In addition, Amtrak's alternate program will incorporate all of the criteria that FRA required Amtrak to adopt in the pilot test program conducted in 2012 and 2013.

Under the alternate program procedures, workgroups would be required to appoint a safety monitor. The safety monitor would be required to conduct the job briefing and to maintain a means to contact Amtrak personnel as necessary. Safety monitors would observe all work for compliance with

the requirements of the protection procedures and would ensure that all work would stop in the presence of a train.

Amtrak does not seek a waiver from RWP requirements when a worker is fouling the track in order to remove snow from areas other than the platform, such as clearing an inner-track walkway or when a worker is required to bodily breach the tactile edge. Many of the prior incidents within the industry occurred under precisely the same conditions under which Amtrak's proposed procedures would still mandate full RWP protection.

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 and may be submitted by any of the following methods:

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**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 35523]

#### **CSX Transportation, Inc.—Joint Use— Louisville & Indiana Railroad Company, Inc.**

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Decision No. 3 in FD 35523; Notice of Acceptance of Application and Related Filings; Issuance of Procedural Schedule.

**SUMMARY:** The Surface Transportation Board (Board) is accepting for consideration the application submitted on June 14, 2013, and supplemented on July 2, 2013, by CSX Transportation, Inc. (CSXT), and Louisville & Indiana Railroad Company, Inc. (L&I). The application seeks Board approval under 49 U.S.C. 11323 *et seq.*, for joint use by CSXT and L&I of L&I's 106.5-mile railroad line between its connection with CSXT in Indianapolis, Ind., milepost 4.0±, and its connection with CSXT in Louisville, Ky., milepost 110.5± (the Line). In order to jointly use the Line with L&I, CSXT seeks to acquire and use a perpetual, non-exclusive freight railroad operating easement over the Line. This proposal is referred to as the Transaction, and CSXT and L&I are referred to collectively as Applicants.

The Board finds that the Transaction is a “minor transaction” under 49 CFR 1180.2(c), and that the application, as supplemented on July 2, 2013, is complete.<sup>1</sup> The Board adopts a procedural schedule for consideration of the application, under which the Board's final decision would be issued by December 6, 2013 (assuming the environmental review process has been completed), and would become effective by December 26, 2013.

<sup>1</sup> On July 2, 2013, Applicants filed public and confidential versions of Section 4 of Attachment C to the Joint Use Operating Agreement. For more information, see Decision No. 2 in this docket.