

**SMS Rail Lines of New York (Waiver Petition Docket Number FRA-2009-0067)**

The SMS Rail Lines of New York (SNY) seeks a waiver from compliance of certain provisions of the Federal hours of service law (49 U.S.C. Chapter 211; HSL). Specifically, SNY requests relief from 49 U.S.C. 21103(a)(4) which states 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.

SNY currently has three train employees and is not unionized and not subject to any collective bargaining agreements. These SNY train employees usually work 5 days per week.

However, the SNY petition states that when customer needs develop that would necessitate working a shift on the 6th day, these employees would be unable to return to duty without 48 hours off duty. SNY's request may be viewed at <http://www.regulations.gov> under the docket number listed above.

The HSL, at 49 U.S.C. 21108(a), contemplates that any request for a waiver from its requirements will be a joint waiver involving the relevant railroad carrier(s) and nonprofit employee labor organization(s) representing the class or craft of directly affected covered service employees. Because SNY's covered service employees are not represented by any employee labor organization, SNY's waiver request is made solely by the carrier. FRA recognizes that the intent of 49 U.S.C. 21108(a) is to ensure that covered service employees are provided meaningful input into any potential waiver of the HSL that would affect their work schedules. According, before considering the requested relief, FRA is requiring that within 30 days of the publication date of this notice, SNY submit evidence to the docket demonstrating that it has sought employee input into the waiver request, what that employee input was, and that it has provided each covered employee affected by the request with a copy of the waiver petition, along with information on how to submit comments to FRA on the request. FRA will consider this additional information, along with all other relevant factors, in determining whether granting the requested relief would be 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-2009-0067) 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 August 18, 2009.

**John Leeds,**

*Director, Office of Safety Analysis.*

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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.

**Red River Valley and Western Railroad Company**

**(Waiver Petition Docket Number FRA-2009-0056)**

The Red River Valley and Western Railroad Company (RRV&W) seeks a waiver from compliance of certain provisions of the Federal hours of service law (49 U.S.C. Chapter 211; HSL). Specifically, RRV&W requests relief from 49 U.S.C. 21103(a)(4), which states that a train employee may not be required, 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.

RRV&W currently requires three Yard Foremen in its Breckenridge, Minnesota, facility to initiate an on-duty period in 6 consecutive days and return to duty without 48 hours off duty. The current RRV&W Yard schedule includes a Monday through Friday morning shift beginning at 6 a.m.; a Monday through Friday shift beginning at 1:30 p.m.; and a single weekend shift on each Saturday and Sunday at 7 a.m. The three Yard Foreman rotate through these assignments via 6 consecutive day starts in a manner that permits each Foreman working 6 days with one rest day. RRV&W maintains that the current schedule addresses the issue of fatigue through regular and highly predictable assignments, which provide a substantially safer environment and better quality of life for the group. RRV&W's entire petition may be viewed at <http://www.regulations.gov> under the docket number listed above.

The HSL, at 49 U.S.C. 21108(a), contemplates that any request for a waiver from its requirements will be a joint waiver involving the relevant railroad carrier(s) and nonprofit employee labor organization(s) representing the class or craft of directly affected covered service employees.

FRA understands that the covered service employees affected by RRV&W's waiver request are not represented by any employee labor organization, and accordingly, RRV&W's waiver request is made solely by the carrier. FRA recognizes that the intent of 49 U.S.C. 21108(a) is to ensure that covered service employees are provided meaningful input into any potential waiver of the HSL that would affect their work schedules. Accordingly, before considering the requested relief, FRA is requiring that within 30 days of the publication date of this notice, RRV&W submit evidence to the docket demonstrating that it has sought employee input into the waiver request, what that employee input was, and that it has provided each covered employee affected by the request with a copy of the waiver petition, along with information on how to submit comments to FRA on the request. FRA will consider this additional information, along with all other relevant factors, in determining whether granting the requested relief would be 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-2009-0056) 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 August 18, 2009.

**John Leeds,**

*Director, Office of Safety Analysis.*

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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.

#### **Ellis & Eastern Company (Waiver Petition Docket Number FRA-2009-0071)**

The Ellis & Eastern Company (EEC) seeks a waiver from compliance of certain provisions of the Federal hours of service law (49 U.S.C. Chapter 211; HSL). Although EEC requests waiver relief from the requirements of Title 49 CFR 228.19, FRA believes EEC's intent was to request relief from U.S.C. § 21103(a)(4), and is therefore processing the EEC's request as such. Section 21103(a)(4) states 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.

EEC currently has 6 train employees who typically work two assignments (0600 and 0700) Monday through

Saturday, with an occasional Sunday assignment during peak periods. EEC's request may be viewed at <http://www.regulations.gov> under the docket number listed above.

The HSL, at 49 U.S.C. 21108(a), contemplates that any request for a waiver from its requirements will be a joint waiver involving the relevant railroad carrier(s) and nonprofit employee labor organization(s) representing the class or craft of directly affected covered service employees. FRA understands that the covered service employees affected by EEC's waiver request are not represented by any employee labor organization, and accordingly, EEC's waiver request is made solely by the carrier. FRA recognizes that the intent of 49 U.S.C. 21108(a) is to ensure that covered service employees are provided meaningful input into any potential waiver of the HSL that would affect their work schedules. Accordingly, before considering the requested relief, FRA is requiring that within 30 days of the publication date of this notice, EEC submit evidence to the docket demonstrating that it has sought employee input into the waiver request, what that employee input was, and that it has provided each covered employee affected by the request with a copy of the waiver petition, along with information on how to submit comments to FRA on the request. FRA will consider this additional information, along with all other relevant factors, in determining whether granting the requested relief would be 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-2009-0071) 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.