

Issued in Washington, DC on May 6, 2010.

**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 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.

#### New Jersey Transit Corporation

[Waiver Petition Docket Number FRA-2010-0082]

The New Jersey Transit Corporation (NJTC) has petitioned FRA for an alternate method from compliance as cited in 49 CFR 238.105, which applies to electronic hardware and software used to control or monitor safety functions in passenger equipment. Title 49 CFR 238.105(d)(1) states that hardware and software that controls or monitors a train's primary braking system shall either:

(i) Fail safely by initiating a full service brake application in the event of a hardware or software failure that could impair the ability of the engineer to apply or release the brakes or;

(ii) Access to direct manual control of the primary braking system (both service and emergency braking) shall be provided to the engineer.

NJTC recently placed an order for 27 ALP-46A electric passenger locomotives, and the braking software being provided by the manufacturer only partly meets the above requirements.

The railroad explains in their petition that the full service brake application is transmitted electronically to each MU's Friction Brake Control Unit (FBCU). FBCU then provides the requested brake application without drawing down brake pipe pressure. An Emergency Magnetic Valve (EMV) is provided on each MU for an electric emergency brake application. During normal operations, EMVs are energized in the closed position and any loss of power or software malfunction causes EMVs to

open and vent to atmosphere causing the brakes over the entire consist to apply at an emergency rate.

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-2010-0082) 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>.

Issued in Washington, DC on May 6, 2010.

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

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#### Steam Railroading Institute

[Docket Number FRA-2009-0060]

The Michigan State Trust for Railway Preservation, Inc. (MSTRP), d/b/a Steam Railroading Institute (SRI) petitioned FRA for relief from the requirements of 49 CFR 223.15 *Existing passenger cars* and § 223.13 *Existing cabooses* for 5 passenger cars and 2 cabooses. Specifically, passenger cars MSTX 5576, 5581, 5646, and 762 were built by the Canadian Car and Foundry Company in 1954. Car number 2624 was built by the Pullman Car Company in 1950. Cabooses AA 2838 and AA 2839 were built in 1952. Since FRA's long-standing definition of "antiquated" is being built prior to the end of World War II, even though this equipment is used in tourist/excursion/educational service, relief from the Federal safety glazing requirements is required.

A caboose listed in the petition, number PM A909, was built in 1937, thus considered by FRA to be antiquated, but over 50 years of age from original construction. A Special Approval for continued use of this over-age caboose will be considered under a separate proceeding.

MSTRP primarily operates this equipment in steam and diesel locomotive powered excursion service on the entire trackage of the Great Lakes Central (GLC) and shared trackage utilized by GLC, the Ann Arbor Railroad and Canadian National Railroad. MSTRP has previously and in the future intends to operate (or lease to operators) this equipment in excursion service on the trackage of the Rail America subsidiaries Huron and Eastern Railway, Mid-Michigan Railroad, and Saginaw Valley Railway. In addition, occasional operations have previously taken place on the Lake State Railway and Saginaw Bay Southern.

The above referenced passenger cars and cabooses have occasionally been leased for excursion service purposes to

similar organizations in the Midwest region of the United States, and are proposed for lease in the future. In all instances, the excursions operate through rural and wooded areas. The coaches are used at speeds up to and including 45 mph, and the cabooses 30 mph. There have been no reported incidents of stoning or acts of vandalism against the excursion trains since the start of operations, and the cars are stored inside a protected facility when not in use.

MSTRP is a non-profit educational organization incorporated under Section 501(c)(3) of the Internal Revenue Code. The main source of income for the organization is the operation of steam and diesel locomotive powered excursion trains. The above referenced equipment is heavily relied upon to fund the continued operations. MSTRP believes that bringing the passenger and caboose cars' glazing into compliance would impose a severe financial hardship considering the intermittent usage of the equipment in excursion service. Further, MSTRP believes that they could not generate enough revenue to justify this expense.

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-2009-0060) 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.
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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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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

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#### Metro-North Railroad

[Docket Number FRA-2007-0006]

The Metro-North Railroad (Metro-North) seeks a permanent waiver of compliance from certain specific requirements in the testing protocol of the *Locomotive Safety Standards*, 49 CFR 229.129(c), as it pertains to railroad locomotive horn testing. Metro-North seeks to utilize an acoustic enclosure specifically designed for the purpose of testing horns removed from the locomotives in lieu of the requirements required in 229.129(c)(4), (5) & (7). The data from the acoustic enclosure testing would be used to calculate the level to be expected at the location 100 feet in front of the locomotive as required under 229.129(c)(7). Metro-North has requested the Acoustical Society of America to work towards a new American National Standards Institute

(ANSI) standard that supports the approach proposed by Metro-North.

In addition to the requested waiver of the technical requirements described above, Metro-North is also requesting an extension of 5 years to June 24, 2015, in which to complete the required testing of its approximately 1,098 train horns.

FRA's Safety Board (Board) did not grant the requested waiver of the June 24, 2010, deadline as a result of the original waiver petition. The Board did however invite Metro-North to resubmit that portion of the waiver request when the outcome of the alternative testing procedure was known and shown to be acceptable.

Metro-North has proceeded to fund the design, fabrication and pilot testing of the testing facility proposed subject to the previously granted conditional waiver. Metro-North has presented test data from the testing facility developed under the previous application that supports the technical validity of the procedure and wishes FRA to reconsider its application for an extension of 5 years to complete its efforts to have an ANSI standard adopted and submitted to FRA in support of its petition, and to complete the testing of its train horns in accordance with that standard.

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-2007-0006) 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.
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