

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2003-16306) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL-401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. 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://dms.dot.gov>.

Anyone is able to search the electronic form of all 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). The statement may also be found at <http://dms.dot.gov>.

Issued in Washington, DC on December 5, 2003.

**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) received a request for a waiver of compliance from certain requirements of its 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.

#### Union Pacific Railroad Company

[Waiver Petition Docket Number FRA-2003-14408]

On September 22, 2003, FRA denied a waiver request submitted by the Union Pacific Railroad Company (UP) seeking

a waiver of compliance from certain provisions of the Railroad Operating Practices regulations, 49 CFR 218, regarding blue signal protection of workers. Specifically, UP wanted authority to have train and yard crew members, and utility employees to remove and replace batteries in the two-way end-of-train telemetry device (EOT) on the train the individual has been assigned to, without establishing any blue signal protection. UP requested the same relief that was earlier granted to the Burlington Northern and Santa Fe Railway (BNSF) in waiver request FRA-2001-10660. FRA denied the original request because it included utility employees from any working craft. UP is amending the original request, with regard to relief for utility employees. The new request is only for train and yard crew members and operating craft utility employees.

Both 218.25 and 218.27 requires blue signal protection when workers are on, under, or between rolling equipment on main track or other than main track. 218.5 defines worker as any railroad employee assigned to inspect, test, repair, or service railroad rolling equipment or their components, including brake systems. Members of train and yard crews are excluded, except when assigned such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate (or assigned to as "utility employees"). Utility employees assigned to and functioning as temporary members of a specific train or yard crew (subject to the conditions set forth in 218.22 of this chapter), are excluded only when so assigned and functioning. 218.22(b) states in part: A utility employee may be assigned to serve as a member of a train or yard crew without the protection otherwise required by subpart D of part 218 of this chapter only under the following conditions \* \* \* (5) The utility employee is performing one or more of the following functions: \* \* \* inspect, test, install remove or replace a rear marking device or end of train device. Under all other circumstances a utility employee working on, under, or between railroad rolling equipment must be provided with blue signal protection in accordance with 218.23 through 218.30 of this part.

The FRA has maintained that removing or replacing a battery in an EOT, while the device is in place on the rear of a train, requires blue signal protection since this task is a service and repair to the device. Therefore, the only way a utility employee or a train and yard crew member can legally remove or replace the EOT battery

without establishing blue signal protection, is to remove the EOT from the rear of the train and perform the battery work outside the area normally protected by the blue signal.

UP contends that safety would be improved by eliminating the need for employees to remove an EOT and place it on the ground to change the battery, then have to pick it up and re-mount it to the freight car coupler. Once again, UP requests that they be granted a waiver under conditions similar to those listed in BNSF waiver FRA-2001-10660.

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.

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