

otherwise incorporated as part of the supplementary material to proposed FINRA Rule 2150, as noted below.

#### d. Proposed Supplementary Material

In addition, FINRA is proposing to add a "Supplementary Material" section to proposed FINRA Rule 2150 that would:

- Codify existing staff guidance clarifying that a "guarantee" extended to all holders of a particular security by an issuer as part of that security generally would not be subject to the prohibition against guarantees<sup>8</sup> and that a permissible sharing arrangement remains subject to other applicable FINRA rules;<sup>9</sup>

- Clarify that the rule does not preclude a member from determining on an after-the-fact basis, to reimburse a customer for transaction losses, provided however that the member shall comply with all reporting requirements that may be applicable to such payment;<sup>10</sup>

- Consistent with NYSE Rule 352(c), clarify that the rule does not preclude a member from correcting a *bona fide* error; and,

- Clarify that the required written authorization(s) shall be preserved for a period of at least six years after the date the account is closed, which is consistent with the retention period under the SEA for similar records.

FINRA intends to announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

#### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>11</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will further the

purposes of the Act by protecting investors against potential misconduct.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2009-014 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-014. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2009-014 and should be submitted on or before July 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-14802 Filed 6-23-09; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Privacy Act of 1974: System of Records

**AGENCY:** Federal Highway Administration, Department of Transportation (DOT).

**ACTION:** Notice to establish a system of records.

**SUMMARY:** DOT intends to establish a system of records under the Privacy Act of 1974 entitled the "National Highway Institute Web site (NHIW) and Course Management and Tracking System (CMTS)". The system will contain information on customers and instructors who use or contribute services to the National Highway Institute. The NHIW does not contain any information about individuals, just course and session data that is stored in CMTS. Additional information on this system is described in the

<sup>8</sup> See SR-NASD-2002-180; *Notice to Members* 03-21 (April 2003). FINRA is proposing to make this clarification even though such arrangements do not implicate the express language of the rule, in light of member inquiries regarding such securities and existing staff guidance. See Securities Exchange Act Release No. 47354 (February 12, 2003), 68 FR 8053 (February 19, 2003) (Order Approving File No. SR-NASD-2002-180).

<sup>9</sup> See *id.*

<sup>10</sup> Associated persons would not similarly be permitted to reimburse their customers for losses under the rule given the concern that such payments may conceal individual misconduct.

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

Supplementary Information section of this notice.

**DATES:** *Effective Date:* August 3, 2009. If no comments are received, the proposal will become effective on the above date. If comments are received, the comments will be considered and, where adopted, the documents will be republished with changes.

**FOR FURTHER INFORMATION CONTACT:**

Habib Azarsina, Departmental Privacy Officer, Department of Transportation, Office of the Secretary, 1200 New Jersey Avenue, SE., Washington, DC 20003, 202-366-1965 (telephone), 202-366-7870 (fax), [habib.azarsina@dot.gov](mailto:habib.azarsina@dot.gov) (Internet address).

**SUPPLEMENTARY INFORMATION:** The Department of Transportation system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and is available from the above mentioned address.

**SYSTEM NUMBER:**

DOT/FHWA 221.

**SYSTEM NAME:**

National Highway Institute Web site (NHIW) and Course Management and Tracking System (CMTS).

**SECURITY CLASSIFICATION:**

Sensitive, Unclassified.

**SYSTEM LOCATION:**

This system is located in the National Highway Institute (NHI), Federal Highway Administration, 4600 N. Fairfax Drive, Suite 800, Arlington, VA 22203.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:**

CMTS contains information on customers and instructors who use or contribute services to the National Highway Institute. The NHIW does not contain any information about individuals, just course and session data that is stored in CMTS. When customers create accounts on NHIW to enroll in training, they are really creating an account in the User Profile and Access Control System (UPACS), and the information is stored in CMTS under the Customer module.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

CMTS contains records related to the administration of the training. Personally identifiable information in CMTS consists of customer names, work address, e-mail address, and work telephone number and instructor names and e-mail addresses. The NHIW contains training course and session information stored in CMTS that does

not pertain to individuals and is available for public viewing.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59.

**PURPOSES:**

FHWA has been given the responsibility of enhancing the highway movement of people and goods, while also ensuring the safety of the traveling public, promoting the efficiency of the transportation system, and protecting the environment. One vital component involved in reaching those goals is providing training pertaining to highway activities, particularly in making sure that professionals and members of the public have access to the best, most accurate information. Towards this goal, NHI develops and implements applicable training programs. To manage this increasingly complex task and to make the training process more accessible and useful NHI uses NHIW and a back-end database (CMTS) to support this public site. The NHIW, <http://www.nhi.fhwa.dot.gov>, is available to the general public and displays NHI's training information. Through this site, members of the public can sign up for and take NHI-developed training, link to a separate government web site to pay for that training, schedule and participate in a Web conference, and download resources for developing courses. In addition, the NHIW offers the ability to purchase course materials. CMTS supports the NHIW by maintaining course development information, customer records, invoices, instructor records and contract data. There is a direct link between NHIW and CMTS.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The records are used to administer training and for program evaluation purposes. Only federal program staff and contractors directly involved in administering the program have access to the information stored in CMTS.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored in an electronic database and in paper files.

**RETRIEVABILITY:**

Records are retrieved by participant name, course number, instructor name, contract number, and invoice number.

**SAFEGUARDS:**

Access to records in the electronic database is limited to program staff and protected via password controls. Physical access to the server and paper files is limited to appropriate personnel through building key cards and room-access keypads. Other security measures include firewalls, routine scans and monitoring, back-up activities, and security background checks.

**RETENTION AND DISPOSAL:**

The records retention schedules for these systems are pending National Archives and Records Administration (NARA) approval. The proposed retention period for this system is for the information to be maintained indefinitely.

**SYSTEM MANAGER AND ADDRESS:**

Director of Training, Federal Highway Administration, 4600 N. Fairfax Drive, Suite 800, Arlington, VA 22203.

**NOTIFICATION PROCEDURE:**

Individuals wishing to know if their records appear in this system may make a request in writing to the System Manager. The request must include the requester's name, mailing address, telephone number and/or e-mail address, a description and the location of the records requested, and verification of identity.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about them in this system should apply to the System Manager, following the same procedure as indicated under "Notification procedure."

**CONTESTING RECORD PROCEDURES:**

Individuals seeking to contest the content of information about them in this system should apply to the System Manager, following the same procedure as indicated under "Notification procedure."

**RECORD SOURCE CATEGORIES:**

The customer records are obtained from forms that customers complete at training sessions, that are then entered directly in the system by program personnel or transactions (weekly patches) that occur via NHIW. Instructor records are obtained directly from the instructors. Data is entered directly in the system by program staff or by transactions (weekly patches) that occur via NHIW.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**DATE OF UPDATE:**

June 3, 2009.

Dated: June 18, 2009.

**Habib Azarsina,**

*Departmental Privacy Officer, 202-366-1965.*

[FR Doc. E9-14837 Filed 6-23-09; 8:45 am]

**BILLING CODE 4910-9X-P**

**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236**

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236, as detailed below.

Docket Number FRA-2009-0052.

*Applicant:* Norfolk Southern Corporation, Mr. Donald D. Graab, Assistant Vice-President Mechanical, Mechanical Department, 1200 Peachtree Street, NE., Atlanta, Georgia 30309-3579.

The Norfolk Southern Corporation (NS) seeks relief from the requirements of the Rules, Standards, and Instructions, 49 CFR Part 236, §§ 236.586 and 236.110. NS seeks a waiver from compliance with § 236.586 Daily or after trip test, in its entirety for locomotives equipped with UltraCab equipment. NS seeks a waiver from that portion of § 236.110 that requires record-keeping and record retention for tests performed under § 236.586.

The reason given for the proposed changes is that UltraCab locomotive cab signal equipment is microprocessor-based, and it is universally recognized that this technology has provided vast breakthroughs in advanced train stop and train control equipment. These systems offer improvements far superior to their predecessors in performance, reliability, and safety. Equipment is now capable of checking itself several times a second and verifying that the system is functioning properly and that all external inputs are valid.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the

interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

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-2009-0052) 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 June 17, 2009.

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

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

[FR Doc. E9-14830 Filed 6-23-09; 8:45 am]

**BILLING CODE 4910-06-P**

**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****Notice of Informational Filing**

For informational purposes only, the Federal Railroad Administration (FRA) is providing notice that it has received an informational filing from the BNSF Railway Company (BNSF) to conduct testing of Configuration IV of BNSF's Electronic Train Management System (ETMS) submitted pursuant to Title 49 Code of Federal Regulations (CFR) 236.913. The informational filing is described below, including the submitting party and the requisite docket number where the informational filing and any related information may be found. The document is available for public inspection; however, FRA is not accepting public comment on the document.

**BNSF Railway Company**

[Docket Number FRA-2006-23687]

BNSF has submitted an informational filing to FRA to begin operational testing of ETMS Version IV on BNSF's Stampede Subdivision. This testing will allow BNSF to obtain the necessary assessments required to amend BNSF's currently approved Product Safety Plan (PSP) for ETMS Version I for a future submittal to FRA. In addition, this testing will allow BNSF to substantiate the ETMS technology on mountain grade territory with freight operations. The informational filing has been placed under Docket Number FRA-2006-23687 and is available for public inspection.

Interested parties are invited to review the informational filing and associated documents at the DOT Docket Management facility during regular business hours (9 a.m.-5 p.m.) at 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590. All documents in the public docket are also available for inspection and copying on the Internet at <http://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications received into any of our dockets by name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.).