



February 10, 2011
(Via online at www.regulations.gov)

Docket Operations Facility
U. S. Department of Transportation
1200 New Jersey Avenue, SE, W12-140
Washington, DC 20590

Re: CSX Transportation Waiver Petition Docket No. FRA-2010-0172

**Comments of the
American Train Dispatchers Association (ATDA)
Brotherhood of Locomotive Engineers and Trainmen (BLET/IBT)
Brotherhood of Maintenance of Way Employees Division (BMWED/IBT)
Brotherhood of Railroad Signalmen (BRS)
United Transportation Union (UTU)**

The five Labor Organizations identified above are the recognized collective bargaining representatives of a significant majority of railroad industry workers engaged in train operations, train dispatching, and track and signal maintenance, inspection and repair. As such, our collective membership has a vested interest in railroad safety including issues related to rail integrity and the timely initiation of appropriate remedial action to safely protect rail defects. The above-named commenters, hereafter referred to as the Labor Organizations, are filing these joint comments in response to the above-referenced waiver petition published in the Federal Register on December 29, 2010.

CSX Transportation (CSXT) seeks a waiver from 49 CFR 213.113(a) from the accepted practice of stop/start rail testing for "Phase III" of their nonstop continuous rail test pilot project beginning April 1, 2011, for a period of up to one (1) year on the main tracks between Richmond, VA and Jacksonville, FL, a distance of approximately 600 (+ -) route miles. The subdivisions to which the waiver would apply include the North End, South End, Charleston, Savannah, Nahunta and Jacksonville Terminal.

This waiver request appears to be closely related to waiver Docket Number FRA-2008-0111, published in the Federal Register on October 30, 2008. Waiver FRA-2008-0111 requested an eight week long waiver on approximately 123 route miles of main track on the North End subdivision between Richmond, Virginia, and Rocky Mount, North Carolina, milepost limits A0.0-123.2, a distance of approximately 123 miles. CSXT stated at that time that "prior to

beginning the pilot project, the North End subdivision main tracks will be rail tested with a conventional stop/start rail test vehicle and any normally scheduled intervals during pilot project will be maintained by convention (sic) stop/start rail test vehicle.”

In its current waiver petition CSXT states, “Based on the results of the previous phases of nonstop continuous rail test, CSXT will not perform parallel/redundant start/stop rail testing on track segments being nonstop continuous rail tested under this waiver.” The Labor Organizations do not view the currently required accepted practice of stop/start testing as “redundant,” particularly while pilot testing is being conducted over a greatly expanded territory. In order to ensure the safety of train operations over approximately 600 (+ -) route miles of main track, the Labor Organizations believe that the accepted practice of start/stop rail testing, in full compliance with the provisions of 49 CFR part 213.237, *Inspection of rail*, is required over the test territory regardless of any pilot testing not in full compliance with 213.237. Any defects identified during such conventional stop/start testing must be verified immediately and remedial action taken in accordance with 213.113(a).

The regulatory docket is devoid of any data or documentation as to the results of the test pilot project related to the previous waiver Docket Number FRA-2008-0111. The public has not been provided access to the results of Phases I or II of the CSXT pilot, thereby denying the public, including the Labor Organizations, an opportunity to review the test results and safety data in consideration of the present waiver request, Docket Number FRA-2010-0172. With waiver FRA-2010-0172, CSXT seeks to expand the pilot test program to an additional 427 (+ -) route miles of mainline track for a period of one year. The lack of public access to the results of the previous test pilot(s) effectively prevents the Labor Organizations from analyzing the previous test pilots in consideration of the pending waiver request and the safety impact of modifying and extending the pilot over approximately 600 (+ -) route miles of CSXT mainline territory. The absence of any supporting data in the docket documenting the safety justification of the pending waiver request is reason enough to deny CSXT’s request. The Labor Organizations point out that the pending waiver will expand the territory to which the modified waiver would apply by approximately 400 percent, covering main line territory encompassing approximately 600 route miles.

In its waiver petition, CSXT states, “The non-stop continuous high speed test vehicle will be a self propelled/railbound ultrasound /induction flaw detection vehicle operating at speeds up to 30 MPH. This vehicle will make runs every 2 weeks over the assigned territory.” The Labor Organizations point out that under the previous waiver (FRA-2008-0111), runs were conducted at a maximum speed of 25 MPH on a weekly basis. CSXT has failed to provide any safety justification or data to support its request for the proposed 20 percent increase in testing speed or the proposed 50 percent decrease in testing frequency over a vastly expanded territory.

CSXT states, “Upon completion of each run, data will be analyzed offline by a group of experts with experience in this process. The analysis will categorize and prioritize suspected defective locations for post-test verification. Two or three teams of verifiers will then be sent out with field instruments to check locations based upon GPS coordinates. All suspect locations will be checked 60 feet either side of suspect GPS locations. Remedial actions will be applied as per CFR 213.113 for confirmed rail defects.” However, the CSXT waiver petition is devoid of any proposed timeline between running the high speed inspection vehicle and the “analyzing, categorizing, and prioritizing of suspected rail defects off-line.” Under the waiver request, the carrier would have complete discretion regarding the time period allowed to pass between the moment the inspection vehicle identifies a suspected rail defect and the time remedial action is finally implemented. Such “open-ended” discretion is inconsistent with rail safety and is itself grounds for denying the petition for waiver.

The waiver petition states, “Two or three teams of verifiers will then be sent out with field instruments to check locations based upon GPS coordinates.” The Labor Organizations point out that the waiver seeks to increase the route miles subject to the waiver by approximately 400 percent over the previous waiver, but field verification under this new waiver will be conducted by “two or three teams of verifiers.” We believe that a 400 percent increase in territory subject to waiver would necessitate a corresponding percentage increase in the number of “verifier teams.” Failure to increase the number of verifier teams will create additional delay in verifying and protecting defects.

Additionally, the waiver petition presents no timeline for the “two or three teams of verifiers” to check suspect locations with field instruments and to apply remedial action per §213.113 for confirmed rail defects. The Labor Organizations believe all suspected rail defects must be verified and protected based upon the timelines mandated in the remedial action table to §213.113. It is widely recognized throughout the industry that rail flaws can and do grow to critical failure at unpredictable rates. It contradicts FRA’s safety mandate to allow the petitioner to leave suspected defects unprotected pending later-time verification. The Labor Organizations believe delayed verification constitutes a violation of 49 CFR 213.5 *Responsibility for compliance*. Part 213.5(a) states,

- (a) Except as provided in paragraph (b) of this section, any owner of track to which this part applies who knows or has notice that the track does not comply with the requirements of this part, shall--
 - (1) Bring the track into compliance;
 - (2) Halt operations over that track; or
 - (3) Operate under authority of a person designated under §213.7(a), who has at least one year of supervisory experience in railroad track maintenance, subject to conditions set forth in this part.

The Labor Organizations believe that each time a test vehicle is operated or a visual inspection is conducted where defect data is collected or suspected defects are otherwise identified, the carrier “knows or has notice” that the track does not comply with the requirements of Part 213. Thus, we are of the opinion that a waiver from the requirements of §213.113(a) does not relieve the carrier from its responsibility for compliance with the provisions of §213.5. Suspected rail defects should not be allowed to remain in track unprotected until “verified” at some unspecified time in the future. All suspected rail defects must be first protected and then “verified” to assure the safety of train crews, passengers, roadway workers, and the public at large.

Additionally, the Labor Organizations find the waiver petition provides insufficient information on which to judge the merits and potential risks of the waiver being sought. Petitioner offers no evidence establishing that the equipment is capable of consistently and accurately identifying rail defects in non-stop/start mode operating at speeds of up to 30 MPH. The docket is devoid of any evidence which would indicate that the continuous high speed rail test vehicle and testing protocols proposed for CSXT’s “Phase III” pilot will provide an equivalent level of rail safety.

All rail defects subject to remedial actions A, A2, or B of the remedial action table to §213.113 are required to be immediately protected upon discovery. Such protection should not be delayed pending off-line analysis, categorization, prioritization, and verification. The Labor Organizations do not believe that waiving immediate remedial action for these most severe defects is appropriate, necessary, or consistent with rail safety. Thus, unless CSXT can assure FRA that the experimental test car will consistently “flag” defects requiring remedial action A, A2, or B in “real time,” and that CSXT confirms to FRA that the remedial actions required under notes A, A2 or B will be immediately instituted pending further analysis, categorization, and verification, the waiver should be denied in its entirety. For defects requiring remedial action contained in notes C through I of the remedial action table, the time limits, speed restrictions, and remedial actions specified therein should also be implemented in real time and in accordance with their terms pending further analysis, categorization, and field verification of suspected defects.

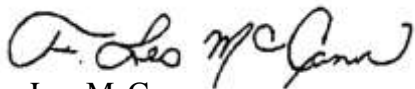
The Labor Organizations also point out that the proposed CSXT procedures fail to detail the actions that would be taken when field verifiers are unable to reproduce the defect signature that was identified in the original test. Field-testing equipment is not as sensitive or comprehensive as the defect detection system on a dedicated rail test car. It is therefore conceivable that field testing over the 120-foot section of GPS located track could leave field verifiers unable to match the defect signature. As such, it is possible that a valid defect could be left in track unfound, unverified, and unprotected.

In closing, the Labor Organizations are concerned that the CSXT waiver seeks to essentially “ignore” suspected rail defects detected by the test vehicle until such defect data is later analyzed, categorized and verified. The Labor Organizations believe this is a wrong-headed

approach to rail flaw detection and the testing of new technology and/or experimental testing protocols. New technology and/or novel testing protocols should not be allowed to degrade the current level of safety. The Labor Organizations believe that every indication of a rail defect found with the test vehicle should be immediately protected in real time. If the test vehicle is incapable of providing such real time notification, or if CSXT is unwilling to conduct the pilot conditioned upon such real time notification and protection of defects, the waiver must be denied. Failure to institute required remedial action in real time presents an unnecessary opportunity for catastrophic rail failure with the potential for derailment, injury, loss of life, environmental damage and property loss.

For the reasons stated above and for the safety of the railroad, its employees and the public, the Labor Organizations oppose granting a waiver from §213.113 in docket FRA-2010-0172.

Respectfully submitted,



Leo McCann
President, ATDA



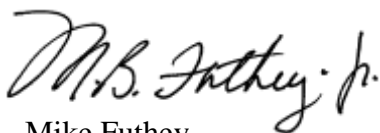
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