



December 12, 2008

(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-2008-0111

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

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 inspection and repair. As such, our collective membership has a vested interest in railroad safety including those issues related to rail integrity and timely initiation of appropriate remedial action to safely protect identified 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 which was published in the Federal Register (page 64661) on October 30, 2008.

CSX Transportation (CSXT) seeks a waiver from 49 CFR 213.113(a) to permit variance from the accepted practice of stop/start rail test hand verification for a continuous rail test pilot project for a period of eight weeks on the main tracks of the North End subdivision between Richmond, Virginia, and Rocky Mount, North Carolina, milepost limits A0.0–123.2. CSXT states 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 waiver petition, CSXT states, “The continuous high speed test vehicle will be a self propelled/rail bound ultrasound Sperry car operating at speeds up to 25 MPH in nonstop mode making weekly runs. 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 suspects. Two teams of verifiers will then be sent out with field instruments to check locations based upon GPS

coordinates. Locations will be checked 60 feet either side of suspect GPS point. Remedial actions will be applied as per CFR 213.113 for confirmed rail defects.”

While the Labor Organizations support improvements in internal rail flaw detection that allow for more frequent inspections and minimize the risk of rail service failures, there are several significant safety concerns related to this waiver request.

First, we believe that any test pilot program should be conducted within the scope 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 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.

In reviewing the CSXT waiver request, 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 25 MPH. The Labor Organizations believe this type of experimental testing should be conducted off the general system of railroad on a test track such as that of the Transportation Technology Center, Inc. (TTCI) [a wholly owned subsidiary of the Association of American Railroads] located in Pueblo, Colorado. TTCI is a world-class, federally subsidized transportation research and testing organization providing emerging technology solutions for the railway industry throughout North America and the world. 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 pilot project have been fully vetted and are ready for such a pilot project on the general system of railroad. We strongly believe that such emerging technologies and testing protocols should be fully vetted and their capabilities and limitations fully understood before placing same in service under waiver provisions intended to delay real-time implementation of appropriate remedial action.

The CSXT petition provides no information regarding the proposed timeline between running the high speed inspection vehicle and the analyzing, categorizing, and prioritizing of suspected rail defects “off-line.” If FRA grants the waiver, the carrier would have complete discretion regarding the time period allowed to pass between the moment of inspection 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 likewise presents no timeline for the “two 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 defects should 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 an unpredictable rate. It contradicts FRA’s safety mandate to allow the petitioner to leave suspected defects unprotected pending later-time verification that they are indeed rail defects. Accordingly, the waiver must be denied.

As an example, 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 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 quite possible that a valid defect could be left in track unfound, unverified, and unprotected.

The Labor Organizations are concerned that the CSXT waiver seeks to essentially “ignore” 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. 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 would present 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 in the interest of safety for the railroad, its employees and the public, the Labor Organizations oppose granting a waiver from §213.113 in docket FRA-2008-0111.

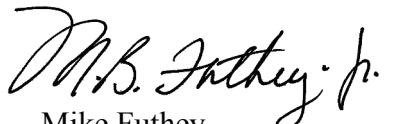
Respectfully submitted,



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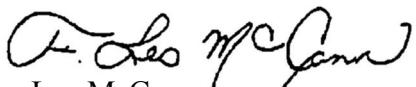
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