



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-2010-0173

**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), “with respect to testing Class 1 tracks in yards,” from applying remedial actions which they erroneously contend “are prescribed for defects found during rail inspections for Class 3 tracks and above.” The Labor Organizations wholly reject CSXT’s contention that the remedial actions required by 49 CFR 213.113(a), apply only to Class 3 tracks and above. § 213.113(a), *Defective rails*, states:

“When an owner of track to which this part applies learns, through inspection or otherwise, that a rail in that track contains any of the defects listed in the following table, a person designated under § 213.7 shall determine whether or not the track may continue in use. If he determines that the track may continue in use, operation over the defective rail is not permitted until –

- (1) The rail is replaced; or

(2) The remedial action prescribed in the table is initiated. (emphasis added)

The remedial actions required under § 213.113(a) are clearly not limited to only rail defects which are discovered in track Class 3 and above. The requirements of § 213.113(a), including the remedial action table, apply to track Classes 1-5 regardless of whether the rail defect is discovered through visual inspection, automated inspection, or other means. The Labor Organizations believe that CSXT's proposal for "alternate remedial actions to be taken for defects found during inspection of Class 1 yard tracks" does not provide an equivalent level of safety and will actually increase the accident and injury risk in rail yards. As such, the waiver should be denied in its entirety.

The Rail Organizations also do not agree with CSXT's assertion that the requested waiver will "increase safety beyond the present requirements." To the contrary, the CSXT waiver will have the effect of further increasing risk by delaying the implementation of appropriate remedial action and allowing CSXT, in many cases, to "inspect" certain known rail defects into perpetuity without any requirement to make timely and necessary repairs.

Additionally, the Labor Organizations point out that the Track Safety Standards Working Group (RSAC Task 07-01) and the Rail Integrity Task Force (RSAC Task 08-03), both to which CSXT was an active participant, spent many months deliberating revisions to the Remedial Action Table to § 213.113(a). The Task Force presented its consensus language for revising the Remedial Action Table to the Track Standards Working Group during the July 28-30, 2010 meeting. The Working Group adopted the consensus revisions presented by the Task Force and thereafter presented the consensus revisions to the full RSAC Committee for approval on September 23, 2010. The full RSAC voted to accept the consensus recommendations, inclusive of the extensive revisions recommended for the Remedial Action Table, and subsequently forwarded those recommendations to the FRA Administrator for development of an NPRM.

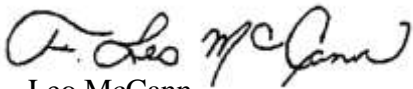
In over two years of deliberations, CSXT had ample opportunity to raise and discuss issues related to Class 1 track rail inspection and associated remedial actions with the industry's subject matter experts participating in RSAC Tasks 07-01 and 08-03. However, CSXT failed to gain the consensus support of the Task Force or the Working Group for such radical revisions as those now subject to this pending waiver request. The issues raised by CSXT in the pending waiver had been openly discussed and appropriately rejected by both the Task Force and Working Group. The Labor Organizations therefore urge FRA to similarly reject CSXT's waiver petition in its entirety.

These Class 1 yard tracks handle large volumes of freight, including TIH and PIH placarded materials which pose an unacceptable risk for catastrophic release anytime such cars derail during yard switching operations. Additionally, train crews, car inspectors, track workers, signalmen, yardmasters, and other railroad employees work in these yards daily making up trains, switching cars, riding "point" on rolling stock, and conducting maintenance, inspection and repair activities. By its very nature, Class 1 track is already very poor quality track with very liberal maintenance tolerances. CSXT's request to establish a "sub-class 1" track class through

the waiver process is wholly inappropriate, does not provide an equivalent level of safety, and should be rejected in its entirety.

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-2010-0173.

Respectfully submitted,



Leo McCann
President, ATDA



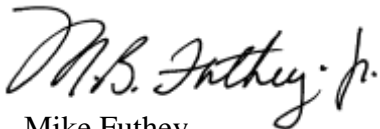
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