

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) has received a request for a waiver of compliance from certain requirements of its safety standards. 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.

CSX Transportation, Inc.

(Waiver Petition Docket Number FRA-2009-0126)

The CSX Transportation, Inc. (CSXT) requests a waiver of compliance from the requirements of 49 CFR part 240, Qualification and Certification of Locomotive Engineers, specifically Section 129. CSXT's specific request is for a waiver from the requirement that certain remote control operators (RCOs) have annual operational performance evaluations as provided under the procedures pursuant to Sections 240.129(b), (c), and (e).

Section 240.129(b) requires a railroad to have procedures for monitoring the operational performance of those it has determined to be qualified as a "locomotive engineer." Section 240.129(c) provides the requirements of the procedures referenced under (b), including that the engineer, "shall be annually monitored (check ride) by a Designated Supervisor of Locomotive Engineers" and is either accompanied by the designated supervisor or "has his or her train handling activities electronically recorded." CSXT has a program to comply with these requirements. Section 240.129(e) requires the railroad to have an operational testing and monitoring program in place, and to perform at least one unannounced test each calendar year. This program must be designed to monitor compliance with railroad operating rules and other directives, and to examine and test such compliance.

CSXT is using a process whereby the engineer and RCO qualification endorsement is placed into the employee's crew management profile when qualified, and the same engineer or RCO endorsement is removed when certain FRA requirements are not met. Presently, the Manager of FRA Certification or the System Road Foreman of Engines notifies the Crew Management Center and has the

employee's engineer or RCO status changed from active to inactive, thereby prohibiting such employee from working a locomotive engineer's or RCO's assignment.

CSXT has a number of employees certified under 49 CFR part 240 for RCO service who are not currently performing the duties that require this certification. Some of these individuals have bid on and taken positions in other service while others have been furloughed. As a result, these individuals are not in a position to operate remote control equipment. CSXT requests relief from Section 240.129 to avoid having to perform operational performance evaluations on individuals who are currently out of RCO service. Waiving performance of these evaluations on individuals not currently active as RCOs is consistent with the general application of Part 240, which applies to "any person who operates locomotives."

These individuals are not working as RCOs, nor will they be allowed to work as RCOs under CSXT's control system. Performance of the operational evaluation on individuals not currently working as RCOs causes safety concerns because it requires calling a person in for the sole purpose of an evaluation and also because it would lead to those individuals achieving technical compliance with the rule only to go back to prolonged service in areas other than a RCO.

If CSXT's waiver request is granted, CSXT will provide any RCO wishing to return to active service a monitoring observation and an unannounced operating rule operational test within 30 days of the employee's return to RCO service.

CSXT requests this waiver as a method of ensuring that active RCOs receive timely and appropriate training and monitoring as required for compliance with the rule. Through granting this waiver, CSXT believes there will be no negative impact on safety. As described, CSXT will not permit any RCO to operate a remote control locomotive without being in full compliance with part 240, including Section 129, of which relief is requested. CSXT believes this process will promote enhanced safety by providing for the operational performance evaluations to be done as these RCOs return to active service when safe operation of the equipment is their focus.

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-2009-0126) 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 document (or signing the document, 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 (65 FR 19477) or at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on February 2, 2010.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

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