



August 31, 2020

(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: Docket No. FRA-2020-0028-0004

**Comments of the
American Train Dispatchers Association (ATDA)
Brotherhood of Locomotive Engineers and Trainmen (BLET)
Brotherhood of Maintenance of Way Employees Division (BMWED)
Brotherhood of Railway Carmen Division (TCU)
Int'l Association of Sheet Metal, Air, Rail and Transportation Workers (SMART TD)**

The railroad Labor Organizations identified above (“Labor Organizations”) are the collective bargaining representatives for the vast majority of railroad industry workers engaged in train operations, train dispatching, signal, maintenance of way and mechanical maintenance, inspection, testing, and repair on passenger and freight railroads throughout the United States.

These comments are in response to CSX petitioning the Federal Railroad Administration (FRA) for a waiver of compliance from certain provision of the federal railroad safety regulations contained within 49 CFR Part 225, Railroad Accidents/Incidents: Reports Classification, and Investigations. FRA assigned the petition Docket Number FRA-2020-0028-0004.

Specifically, CSX requests a waiver from 49 CFR §225.25(h), which requires, in part, that monthly listings of employee reportable injuries, occupational illnesses, and fatalities be “posted in a conspicuous location” at each on-duty point where a railroad reasonably expects its employees to report during a 12-month period, and that employees “have the opportunity to observe the posted list.” CSX requests that in lieu of a paper copy of the listing, to make the required information available via a web portal that allows employees access to information from computer terminals and employees’ personal electronic devices. CSX states that any employee who prefers a paper listing would have the option to request a hard copy of the listing from his or her supervisor.

We are writing in opposition to this petition. As noted above, FRA requires that monthly listings of employee reportable injuries, occupational illnesses, and fatalities be posted *in a conspicuous location*. The Attachment to the Carrier’s June 30, 2020 “update letter” shows that the link is located at the very bottom of the webpage, and is

labeled “FRA Postings”. *See* FRA-2020-0028-0003 at 3. The location of the link is not conspicuous; it is buried. Moreover, the label gives no indication whatsoever that it leads to information concerning employee reportable injuries, occupational illnesses, and fatalities. For the reasons set forth below, the Carrier’s requested relief will effectively result in the concealment of this information from the very employees for whose benefit it is required to be conspicuously published.

By regulation and statute, train and engine (T&E) employees must gather, review, and comprehend all documentation affecting their tour-of-duty prior to boarding or moving equipment. This must occur between a crew’s federal on-duty time and the carrier’s mandated time that a crew is permitted to spend in a crew room (or on-duty location). Unfortunately, CSX’s pursuit to achieve the lowest operating ratio has resulted, in most cases, in a twenty-minute restriction for crews to review all applicable documentation and hold their necessary safety job briefing. Should a crew fail to meet the carrier’s set time limit in the crew room, whether they were able to meet the mandated requirements or not, they would most certainly face discipline for delaying the train. The atmosphere in today’s crew rooms, as a result of the carrier’s actions, is not one with a focus on safety but rather moving freight at any cost. If a T&E employee was to spend the few minutes it would require to access the injury log to review potential unsafe conditions and locations that may directly affect their tour-of-duty, he/she would do so at the risk of termination.

For traveling maintenance employees in the signal department and/or working on construction gangs, most don’t have access to a company terminal, nor do they have company provided electronic devices to access the listings on the web portal. It should not be incumbent on rail employees to use their own personal devices to access the reports, as there are many variables that may prevent them from being able to secure an electronic copy. By eliminating physical, fixed locations for reporting, CSX is significantly increasing the burden for these employees to have access to information regarding their overall well-being.

The carrier contends that it will make this information accessible on the web portal and that supervisors will have to discuss the listed incidents via job safety briefings and contacts when encountering or testing employees in the field. Our concern is that the facts of each incident will not be presented in the necessary detail, as to protect the carrier’s liability, thus placing the blame on behavior rather than underlying unsafe conditions, or that affected employees will lack the necessary information to determine if all of the listed injuries or illness were even addressed.

As for the actual electronic technology provided by CSX, it is no different than any other workplace. It has complications and experiences unexpected interruptions and scheduled maintenance. Should an employee hear news of an injury or illness that may impact their tour-of-duty, they should know, without question, that the report is available and published in the required conspicuous location. Given that technology is not infallible, it is entirely possible that the information needed to ensure employee safety may not be available as a result. Compounding this issue even further is the fact that crews are prohibited from using personal electronic devices to access data once they have gone on-duty¹. So, not only is the information subject to the proper functioning of the technology, it is also temporally restricted to availability for nearly the entirety of an employee’s duty tour.

Additionally, the information these reports provide enables checks and balances across the industry as whole. No other stakeholder involved in this process knows more about what happens at the ballast level than the men and women who make up the ranks. Should an incident go unreported or be mischaracterized, rail employees are there

¹ 49 CFR Part 220.305.

to let the FRA know. However, by transitioning these lists to electronic access only, the transparency of the process becomes obscured. Employees should be encouraged to review and discuss the issues regarding these reports collectively. In doing so, employees will be empowered to take ownership of their safety, a characteristic not possible through the extremely restrictive online process.

Should this petition be granted, it would certainly have an adverse effect on safety. By being required to list injuries and illnesses conspicuously, and in public view, all departments, including contractors, are able to see life-threatening instances that may very well affect their day's intended work. Likewise, conspicuous public postings serve as a reminder for employees to review injuries and illnesses, whereas hiding the list from view would only encourage the adage: *out of sight, out of mind*. For this reason and for those listed above, this petition, if granted, would not be consistent with railroad safety, nor would it do anything to maintain or improve the overall welfare of the general public. The petition should be denied.

Respectfully submitted,



F. Leo McCann
President ATDA



Dennis R. Pierce
National President, BLET/IBT



Freddie N. Simpson
President, BMWED/IBT



Jerry C. Boles
President, BRS



Richard A. Johnson
General President, BRC/TCU/IAM



Jeremy R. Ferguson
President, SMART Transportation Division