RULEMAKING COMMENT SUMMARY
TR-021465
Railroad Remote Control Locomotive (RCL) Operations
Written Comments

Revised March 3, 2003

Issue	Interested Person	Comments	Response
General Comments			
FRA's 2001-01 Safety Advisory	See list at end of chart	As of March 3, 2003, the Commission received several similar comments supporting adoption of the FRA's safety advisory 2001-01 as state rule. At the end of this chart is a copy of the letter (or one substantially similar) that was submitted by commenters. Following the letter is a list of the commenters, where they live, and who they represent.	
Ban RCL operations statewide	Deb Allen W.S. Bowen David Clark Rick Kreiwald John P. Lawson Kirt L. Kring	Supports a statewide RCL ban in favor of engineers on board the engine.	
Ban RCL operations in selected areas	James Hedrington	Supports a ban in the Seattle area. "Remotes might work in some areas but Seattle is very	

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	Patty Rose, Pierce County Labor Council, AFL-CIO	unique… . " Opposes RCL use in Pierce County communities	
Federal Preemption			
	Brotherhood of Locomotive Engineers (BLE)	The State preemption provision of the Federal Railroad Safety Act (FRSA), 47 USC § 20106, provides that once the Federal Railroad Administration (FRA) has acted to regulate a particular aspect of railroad safety, the States may no longer adopt or enforce regulations on that topic. Nonetheless, Congress has still allowed States to "fill gaps where the Secretary [of Transportation, through the FRA] has not yet regulated, and [a State] can respond to safety concerns of a local rather than national character." The FRA's Safety Advisory 2001-1 may not constitute a "regulation or . . . order" of the FRA within the meaning of the FRSA's State preemption provision. If a court were to conclude it does not, the States would have latitude to regulate on the subject covered by the Advisory. Even if it is found to be a regulation or order, however, a State could still regulate some aspect of remote control locomotives if can show that its regulation (a) is necessary to eliminate or reduce an essentially local safety hazard, (b) it is not	

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		incompatible with the Advisory, and (c) it does not unreasonably burden interstate commerce. The latter two conditions require analysis of specific regulatory proposals.	
	Burlington Northern Santa Fe/ Union Pacific (BNSF/UP) Railroads	The FRSA, at 47 USC § 20106, provides that once the FRA has either acted to regulate a particular aspect of railroad safety (or at least considered the need for regulation, but decided it is not necessary) the States may no longer adopt or enforce regulations on that topic. The FRA's Safety Advisory 2001-1 (establishing recommended minimal guidelines for the operation of remote control locomotives) represents an instance in which the FRA has considered the need for regulation and concluded that (a) currently available information does not lead to the conclusion that remote control locomotive operations should be prohibited on safety grounds, and (b) some aspects of RCL use are already subject to FRA regulation (e.g., certification of operators if it would be required of conventional operators under the same circumstances). In addition to the FRSA, the federal Locomotive Boiler Inspection Act (LBIA) applies to RCL operations. Under the LBIA, the federal Secretary of Transportation has exclusive authority to adopt rules governing the safety of locomotive equipment and the States are preempted from regulating on the subject. Certain aspects of FRA's Safety Advisory 2001-1 are mandatory rather than advisory. This	

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		includes periodic inspection requirements for RCL equipment. As such, regulation of RCL technology at the state or local level would be inconsistent with the FRA's intent to regulate the technology.	
	Association of American Railroads (AAR)	FRA exercises extensive oversight of the use of portable locomotive control technology (PLCT) by the railroad industry (citing requirements for periodic inspections of RCL systems, certification of operators, reporting of accidents and incidents, authorization of Wheeling and Lake Erie RR to use remote control technology, the convening of technical conference in July 2000, and the issuance of Safety Advisory 2001-1). State regulation of remote control technology is preempted by the LBIA. 49 USC § 20702(a). The LBIA preempts States from regulating locomotive equipment. State regulation of remote control technology is preempted by the FRSA. 49 USC § 20106. The FRA has covered the subject matter of the remote control operations with those regulations that apply to remote control and conventional operations alike, and with its Safety Advisory.	
Safety Advisory 2001-01 Guidelines, (Railroad Implementation Plans)			
Compliance with SA 2001-01	BNSF/UP Railroads	The railroads state that they comply with the provisions of the Safety Advisory, except when an alternative practice is determined to provide an equivalent level of safety. The railroads state that they comply with all of the mandatory	

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		provisions in the Safety Advisory.	
Unique RCL Operations Dangers (Dangers that are not present with locomotive engineers)			
Safety of RCL operations	BNSF/UP Railroads	RCL operations are safer than trains controlled from the cab. Remote control (RC) operations eliminate misunderstood signals or voice communications. RC operators have a better vantage point to observe speed and distance to a joint. Operating rules that apply to movements made by an engineer in the locomotive apply to RCL ops.	
Safety of RC operators; training	BNSF/UP Railroads	BNSF and UP RCL training programs have been approved by the FRA.	
Safety of RC operators; training	United Transport Union (UTU)	UTU members certified as RC operators complete an FRA-approved training program. The UTU protects the safety of its members by continually evaluating the capabilities and limitations of RC technology.	
Safety of RC operators; training	V.J. Vance	RC operator classroom and field training is incomplete, spotty, and sufficient for only limited operating environments. RC transmitters can cause physical pain, fatigue, and stress.	
Safety of RC operators and other workers; training	International Longshore & Warehouse Union (ILWU)	RC training does not adequately teach the full dynamics of operating a locomotive; RC operators do not have a sufficient sense of start and stop movements. RC operators should perform the same training as licensed engineers.	
Safety of RC operators; training	WSLB – BLE	RC technology is being implemented with minimal training, and railroads are relying on technology to replace skilled employees.	
Danger caused by RC operator work conditions, elimination of locomotive engineer, and technical malfunctions	Terry Reddish	RC operators must multitask under widely varying, sometimes stressful and distracting conditions, including visual impairment during periods of rain. A locomotive engineer oversees the safety of ground employees as they perform tasks. RC operations increase risk by eliminating	

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		the presence of personnel at each end of the train during all reverse movements. RC technology increases risk due to technological malfunction or sabotage.	
Danger caused by RC operator work conditions, elimination of locomotive engineer, and technical malfunctions	V.J. Vance	Engineers can sense or feel changes to movement and speed that signal a warning that can't be sensed by RC operators. RC controls can be inadvertently activated while the RC operator is performing other tasks. RC technology is susceptible to radio frequency interference and loss of signal. RC operations should be banned in areas where motorists and pedestrians are present.	
Danger caused by RC operator work conditions, elimination of locomotive engineer, and technical malfunctions	WSLB - BLE	The core difference between conventional and RC operations is the amount of trust and reliance society is willing to place on technology. Technology is not perfect, and technology in the field functions less effectively than in controlled tests. Conventional operations rely on extensively trained and experienced engineers. Technology can not replace the need for human judgment to recognize and respond to control systems that are hazardous and subject to failure.	
RC operations safeguards	ILWU	RC operation areas should be fenced off, and derails should be installed to prevent runaways.	
Danger caused by increased RCL operations	WA State Labor Council AFL-CIO	As RCL operations increase, the risk to citizens, railroad workers, and the environment increases	
Danger caused by increased RCL operations – local safety issues	WSLB – BLE	Local safety issues exist in different communities, depending on traffic congestion, pedestrian traffic, passenger rail operations, hazardous materials, proximity to urban centers and residential neighborhoods, and highways. The FRA is too distant and undermanned to address local safety issues.	

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State Rule Proposals			
Adoption of FRA Safety Advisory 2001-01	WSLB - BLE	Supports adoption. Rules adopting the FRA's recommendations serves to coordinate rail safety efforts between state and federal govts and establishes necessary local oversight.	
Adoption of FRA Safety Advisory 2001-01	WA St. Labor Council, AFL-CIO; ILWU	Supports adoption. Self-regulation by railroads does not adequately protect citizens, rail workers, and the environment.	
Adoption of FRA Safety Advisory 2001-01	V.J. Vance	If the railroads support the guidelines of FRA Safety Advisory 2001-01, then they should not object to establishing the guidelines as rules.	
Adoption of FRA Safety Advisory 2001-01	BNSF/UP Railroads	RCL technology is rapidly improving, and the FRA Safety Advisory is a dynamic document. Thus, it would be inappropriate to set the guidelines in a rule. Existing mandatory rules are adequate.	
WAC 480-62-320 should be expanded	V.J. Vance	Railroads should be required to report regarding how, what, when, where, and why RC operations are being implemented. Railroad record keeping and the quality of data being produced is suspect.	
Definition of "RC operations" and "RCL"	WSLB - BLE	"RC operations" includes all train and engine movements controlled from any distance. "RCL" refers to train and engine movements designed for an operator located outside the cab of the controlling locomotive from a distance up to 1.5 miles.	
Main line passenger rail protection	WSLB – BLE	"No railroad will at anytime allow RCL operations on any main line track that serves regularly scheduled passenger trains. Railroads will maintain derails in derailing position between active RC operations and any main line track that serves regularly scheduled passenger trains." FRA guidelines recommend these protections because passenger and freight rail operations	

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		are not absolutely segregated. The BLE notes that Montana Rail Link uses derails to separate operations, and uses ground strobes, warning lights, and warning signs.	
Crossing protection	WSLB – BLE	"Before occupying any public or private road crossing at grade, an employee of the railroad will position him/herself in a safe location that maintains a 180 degree view of the crossing until the movement over the crossing fully occupies the crossing with the train or engine." Local railroad RC operations do not fully comply with the FRA recommendation to provide point protection	
Signs posted for railroad workers and the public	WSLB - BLE	"Signs must be posted and maintained warning railroad workers and the public at locations where RCL is being operated. The signs must be clearly readable from a 150' distance. The signs must be of reflective material for nighttime warning. At a minimum, signs must be posted at or near all private and public railroad crossings, all locations that are known to be used by pedestrian traffic, and at the entrance to any location providing railroad access to the RC operation." FRA recommended. Many local areas don't have signs or signs are not readable from a safe distance.	
Grade operation	WSLB - BLE	"No railroad will use RCL technology in any location where the ascending/descending grade exceeds 0.5%, or in any other location where railroad track structures may be expected to exceed the operational abilities of the RC equipment or operator." FRA recommended. RC operations on these grades pose a safety hazard.	
Hazardous materials	WSLB - BLE	"RCLs cannot be used to transport hazardous materials, switch cars containing hazardous	

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		materials, or switch other cars on or near tracks occupied by hazardous materials." The reduced number of employees overseeing switching operations increases the potential for disaster associated with accidents involving hazardous materials.	
Protection at the point of movement in publicly accessible locations	WSLB - BLE	"A railroad must provide effective and reliable protection at the point of movement in any location accessible to the general public for any RC operations." FRA recommended. Because citizens trespass onto railroad property does not relieve the railroad from a duty to warn. Engineers routinely warn citizens away from forward movement in switching operations.	
RCL operator restrictions	WSLB - BLE	"When operating an RCL, the RC operator shall not ride on a freight car under any circumstances; mount or dismount moving equipment; operate any other type of equipment (such as a car, truck, mule, etc.); or stand or walk within the gauge of the track or foul the track on which the movement is occurring while physically located in front of the movement." FRA recommended. Distractions increase the risk of injury or hazard. The RC operator must use both hands to control the RC transmitter.	
RCL operator restrictions	BNSF/UP Railroads	The FRA's position is that riding a car using the newer RCL technology provides at least an equivalent level of safety as conventional methods of operation.	
Alternatives to RCL rules			
National standards	BNSF/UP Railroads	The railroads, railroad unions, and other interested persons were actively involved in the development of FRA guidelines. Rulemakings and the enforcement of rules should occur at the national level.	

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FRA involvement	BNSF/UP Railroads	The Commission can participate in the FRA standing Rail Safety and Advisory Committee (RSAC).	
Alternatives are ineffective	WSLB – BLE	Two safety issues, fatigue and RCL operations, demonstrate that alternatives to mandatory requirements are ineffective. For instance, the railroad operations are not developing domestic fatigue management plans, even though they are developing plans to comply with requirements in Canada. Railroads are willing to increase risk for the sake of cutting costs.	

The following letter or one substantially similar was submitted by most BLE supporters:

> I am very concerned about the use of "Remote Controlled Locomotives" in railroad operations. I have learned that the Federal Railroad Administration has failed to effectively regulate the use of remote control technology to safeguard the community and environment of 'Washington State. I am concerned that without regulation, railroads are nor considering my family's safety in their rush to experiment with questionable technology.
>
> I have learned that railroad remote control operations will occur in major cities like Seattle, Tacoma, Everett, Spokane, Pasco, Vancouver as well as smaller communities like Shelton and Aberdeen. I also know that fewer people will be safeguarding railroad operations on our public crossings, in business centers, and through our private neighborhoods.
>
> Numerous accidents are being documented because of this train operation in Washington State and across the United States. These accidents have caused worker injuries, release of hazardous materials, risks to public safety and to the environment. I believe that action is necessary immediately to stem the risk railroads are bringing to Washington State communities.
>
> Please support the efforts of the Brotherhood of Locomotive Engineers to bring safe, sane regulation of railroad remote control technology to Washington State. The safety of my family, my neighbors, and the environment depends on your efforts.

The following is a list of those interested persons who submitted comments supporting the letter above:

	First Name	Last Name	City	State	Representing
1	V.J.	Vance	Mill Creek	WA	BLE*- Division 238
2	Kurt	Solheim	Kennewick	WA	BLE - Division 402
3	Rick D.	Kriewald			BLE - Division 518
4	N.R.	Flores			BLE - Division 892
5	Herald	Ugles			ILWU**, Local #19
6	Mike	Brown	Hoquiam	WA	ILWU, Local #24
7	Calvin	Goings	Pierce County	WA	Pierce County Council
8	Cherie	Rodgers	Spokane	WA	Spokane City Council
9	Rick S.	Bender	Seattle	WA	Washington State Labor Council, AFL-CIO
10	Michael	Elliott	Spokane	WA	WSLE-BLE
11	John R.	Cox	Seattle	WA	Self
12	James B.	Delacour	Seattle	WA	Self
13	Nancy	Delacour	Seattle	WA	Self
14	Mark	Dressor	Klamath Falls	OR	Self
15	M. Stella	Elliott	Spokane	WA	Self
16	Cecile A.	Elliott	Laramie	WY	Self
17	Kirk	Fisher			Self
18	Denise	Fisher			Self
19	Mike	Gelhaus	Spokane	WA	Self
20	R.T.	Golubic			Self
21	Monica	Gration	Portland	OR	Self
22	Robert	Holton	Coeur d Alene	ID	Self
23	Cecil G.	Jasso	Portland	OR	Self
24	Dale	Jeremiah	Mountlake Terrace	WA	Self
25	Cheryl	Kaufman	Dupo	IL	Self
26	Sheri	Kent	Spokane	WA	Self
27	Doris	McDonnell	Spokane	WA	Self
28	Geoff	Mirelowitz	Seattle	WA	Self
29	Lonnie	Mowan			Self
30	Heather	Rau	Vancouver	WA	Self
31	Lance	Rau	Vancouver	WA	Self
32	Phil	Ray	Tacoma	WA	Self
33	Terry	Reddish	Battle Ground	WA	Self
34	Suzan K.	Robertson			Self
35	Chad N.	Sabin	Kennewick	WA	Self
36	Scott	Shagool	Spokane	WA	Self
37	Kimberly	Solheim	Kennewick	WA	Self
38	Valori J.	Vance	Mill Creek	WA	Self

39	Teresa	Watters	Hillsboro	IL	Self
40	Randy	Wallenby			Self
41	Jon	Warrington	Seattle	WA	Self
42	James O.	Wood	Post Falls	ID	Self

*Brotherhood of Locomotive Engineers
** International Longshore & Warehouse Union