



Brotherhood of Locomotive Engineers

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FEDERAL RAILROAD
ADMINISTRATION

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OFFICE OF CHIEF COUNSEL

EDWARD DUBROSKI
International President

118232

November 16, 2000

FRA-00-8422-1

The Honorable Jolene M. Molitoris
Federal Railroad Administrator
U. S. Department of Transportation
400 Seventh Street, N.W.
Washington, D.C. 20590

Dear Madame Administrator:

The Brotherhood of Locomotive Engineers (BLE) is the duly designated and authorized collective bargaining representative under the Railway Labor Act, 45 U.S.C. §§151 et seq., of the craft or class of locomotive engineers on all the major railroads in the United States and Canada. As such, BLE has a duty to protect the life and safety of locomotive engineers that BLE represents. In that context, BLE petitions the Federal Railroad Administration (FRA) to provide rulemaking on the use of remote control locomotives (RCL), where the operation of such locomotive(s) is from a location other than the operating cab of a locomotive occupied by the crew.

Locomotive engineers have operated locomotives and trains from the operating cab for nearly 150 years. A "cab" is an appurtenance to a locomotive and is defined in 49 CFR §229.5 (b) as "... that portion of the superstructure designed to be occupied by the crew operating the locomotive." It is noteworthy, with respect to safety, that the historical and actual methods of operation — operating rules, signal systems, physical properties of the trains being operated, associated requirements for safe train handling, public awareness of railroad operations, and the safety of our fellow railroad employees — all have evolved from and are dependent upon the crew operating the locomotive from its attached cab.

FRA has a significant role in ensuring safe railroad operations. In fact, the Federal Railroad Safety Act of 1970, as amended, 49 U.S.C. Subtitle V Part A (Public Law 91-458, 84 Stat. 971),¹ requires the agency to investigate and promulgate regulations to enhance railroad safety, including the use of devices such as remote control.

Because of the profound changes that will likely result from the introduction of RCL, including the potential for the lessening of the safety of operations, FRA held a Technical Conference on July 19, 2000, to determine, among other things, the extent to which RCLs are in use in the United States.

¹ Formerly codified at 45 U.S.C. §§431, et seq.

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Although no precise information was provided on that question, it became apparent that considerable interest in RCL use is being generated by manufacturers of the equipment and by railroads. It is expected that, as a result of the interest expressed, the use of RCL will increase.

Accordingly, BLE believes that the prudent and safe course makes it incumbent upon FRA to conduct a regulatory proceeding on RCL use. Such regulation(s) should address, at a minimum, the following subjects:

- design standards for RCL equipment, both on-board and off-board;
- methods for assessing risk to personal injury from the use of RCL equipment;
- proof of safety of RCL equipment, prior to its use, with respect to the life and limb of railroad employees, and the lives and property of the public living, working and traveling adjacent to railroad rights of way;
- regular inspection of the equipment to ensure its proper and safe maintenance;
- requirements for reporting the inspection, repair, and failure of equipment in use;
- prohibition of the use of defective equipment;
- operating rules, standards, procedures and practices;
- security;
- training; and
- other relevant matters that may arise during the rulemaking process.

Verifiable data proving the safety of RCL use has not been produced; consequently, we have seen nothing that would support an argument suggesting operational safety will not be degraded as a result of RCL operations. Moreover, data submitted to FRA pertaining to RCL use in the steel industry, where it has developed a considerable history, leads BLE to believe that a substantial risk associated with the use of RCL has been identified.

It has been argued by proponents of RCL that the railroad industry cannot be compared to the steel industry, with regard to its rail operations. However, no data has surfaced to repudiate the documented hazards of RCL use in the steel industry. FRA is in possession of the steel industry data and other data presented at the Technical Conference. BLE believes that the record FRA has developed on this issue is more than sufficient evidence that a regulatory proceeding is required.

BLE requests that the rule apply to all railroads under FRA's jurisdiction. To those who contend that there may be significant costs to the industry associated with development of RCL regulation, BLE responds that RCL rulemaking differs materially from typical regulatory action, because a RCL proceeding will not result in the mandated deployment of a costly piece of equipment; rather, it will ensure that any equipment ultimately deployed provides the safest possible operation. Contrary to the caution necessarily dictated by the potential risks inherent in RCL operations, the railroad industry

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and RCL suppliers have indicated a desire to deploy RCL without any studies and possibly without regulations governing specifications and use. This regulation, properly written, will ensure that RCL will be used safely, provide a degree of consistency in RCL equipment, and permit FRA to meet its statutory obligation to railroad employees and the public through proper approval, testing, inspection, repair and reporting.

Requesting your immediate attention to this petition, I am

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Edward J. Ibrach".

President



Brotherhood of Locomotive Engineers

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EDWARD DUBROSKI
International President

FRA-2000-8922

FEDERAL RAILROAD
ADMINISTRATION

00 NOV 17 PM 5:41

OFFICE OF CHIEF COUNSEL

Via Hand Delivery

November 17, 2000

Docket Clerk
Office of Chief Counsel
Federal Railroad Administration
U. S. Department of Transportation
400 Seventh Street, N.W.
Washington, D.C. 20590

Dear Sir or Madam:

Enclosed herewith, in triplicate, please find three (3) copies of the petition for rulemaking of the Brotherhood of Locomotive Engineers with respect to the use of remote control locomotives.

Very truly yours,

President

enclosures

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OFFICE OF CHIEF COUNSEL

[Service Date January 31, 2003]

January 31, 2003

**NOTICE OF OPPORTUNITY TO FILE WRITTEN COMMENTS
(February 27, 2003)**

**NOTICE OF STAKEHOLDER WORKSHOP
(Wednesday, March 19, 2003)**

RE: Consider Establishing Rules Related to Public and Employee Safety, and
Protection of Property from Damage Associated with Remote Control
Locomotive (RCL) Operations. Chapter 480-62 WAC.
Docket No. TR-021465

TO INTERESTED PERSONS:

The Washington Utilities and Transportation Commission has authorized the filing of a Preproposal Statement of Inquiry (CR-101) with the Code Reviser in Docket No. TR-021465. The Federal Railroad Administration (FRA) has promulgated voluntary Remote Control Locomotive (RCL) safety guidelines in Safety Advisory 2001-01. The focus of this rulemaking will be to consider whether the Commission is preempted to any degree by federal law from adopting rules on the subject of remote control locomotives and whether any state rules, whether or not based on the voluntary federal guidelines, should be considered for adoption. The CR-101, as filed with the Code Reviser, and FRA Safety Advisory 2001-01 are available for inspection on the Commission's web site at <<http://www.wutc.wa.gov/021465>>. If you are unable to access the web site and would like a copy of the CR-101 mailed to you, please contact the Commission's Records Center at (360) 664-1234.

Pursuant to WAC 480-62-320, railroad companies must report their intention to use remote control devices to operate trains in Washington State before operations begin. Several railroad companies have provided notice of commencing RCL operations, and at least one accident involving a remote controlled locomotive has occurred in Washington. On November 1, 2002, the Washington State Legislative Board of the Brotherhood of Locomotive Engineers (BLE) filed a petition requesting that the

Commission adopt rules making mandatory the safety guidelines in FRA Safety Advisory 2001-01. FRA Safety Advisory 2001-01 contains voluntary guidelines in the following subject areas: safety design and operational requirements; training; operating practices; security; inspections and tests; notification of remote control locomotives; and accident-incident reporting procedures. The Commission rejected the BLE petition, but also noted that the issues raised by the BLE petition are of potential concern. The Commission directed that this rulemaking be commenced in order to thoroughly review and analyze the issues underlying Safety Advisory 2001-01, including input from interested persons, before proposing any rules for adoption.

The Commission requests written comments from interested persons regarding in general the issues of federal preemption and whether any Washington State rules are necessary to protect railroad employees and the public. Additionally, the Commission is interested in knowing to what extent the Safety Advisory 2001-01 guidelines have been implemented by railroad companies engaged in RCL operations in Washington. Specifically, the Commission requests written comments to the following:

1. Is the Commission preempted to any degree by federal law from adopting rules establishing safety requirements relating to RCL operations? If you contend that federal law preempts the Commission to any degree, please state the degree of preemption and refer to specific legal authority that supports your contention.
2. If you represent a railroad company engaged in RCL operations in Washington, please identify with specificity which, if any, of the Safety Advisory 2001-01 guidelines your railroad has implemented. Further, please explain with specificity why other guidelines have not been implemented.
3. What are the specific dangers, if any, that exist with RCL operations but do not exist when locomotives are occupied by an engineer?
4. What specific state safety rules may be necessary, and why? Are they included in, or in addition to, the provisions of Safety Advisory 2001-01?
5. What alternatives to mandatory requirements for RCL operations are available to assure the safety of railroad employees and the general public?

WRITTEN COMMENTS

Written comments must be filed with the Commission no later than **Thursday, February 27, 2003** for consideration at the March 19, 2003, workshop. The Commission requests that comments be provided in electronic format to reduce the need for paper

copies, to enhance public access, and to facilitate reference to the comments. Comments may be submitted by electronic mail to the Commission's Records Center at [<records@wutc.wa.gov>](mailto:records@wutc.wa.gov). Please include:

- The docket number of this proceeding (TR-021465)
- The commenting party's name
- The subject and date of the comments

An alternative method for submitting comments may be by mailing/delivering an electronic copy on a 3 ½ inch, IBM-formatted, high-density disk, in Adobe Acrobat format (.pdf) or in Word 97 or later (.doc). Include all of the information requested above. All comments that are provided in electronic format will be posted and made publicly available on the Commission's web site at [<http://www.wutc.wa.gov/021465>](http://www.wutc.wa.gov/021465). If you are unable to file your comments electronically or to submit them on a disk, the Commission will always accept paper documents.

Questions may be directed to Mike Rowswell at [<mrowswel@wutc.wa.gov>](mailto:mrowswel@wutc.wa.gov) or (360) 664-1265.

STAKEHOLDER WORKSHOP

We encourage your attendance and participation in a stakeholder workshop to be held on Wednesday, March 19, 2003, in Room 206 at the Commission's headquarters, beginning at 9:30 a.m. and continuing through 4:30 p.m. Workshops are informal meetings that provide the Commission and interested persons an opportunity to identify any issues related to the subject of the rulemaking, to discuss options for addressing those issues, and to gather information before beginning to draft rules. Free parking is available. The Commission's street address is:

Washington Utilities & Transportation Commission
1300 South Evergreen Park Drive SW
Olympia, Washington 98504-7250

If you cannot attend the workshop, you can arrange to participate in the workshop via teleconference. Eleven call-in ports are available on a first-come, first-served basis. You may reserve a port by calling Kippi Walker at (360) 664-1139.

GENERAL INFORMATION

Your participation is welcomed via written comments and stakeholder workshops. Opportunity for further comment is anticipated. Information about the schedule and other aspects of the rulemaking, including comments, will be posted on the Commission's web site as it becomes available. If you wish to receive further information on this rulemaking you may: (1) contact Mike Rowswell at <mrowswel@wutc.wa.gov> or (360) 664-1265; (2) contact the Commission's Records Center at <records@wutc.wa.gov> or (360) 664-1234; or (3) notify the Commission in writing at the address below. When contacting the Commission, please refer to "Docket No. TR-021465" to assure that you are placed on the appropriate service list. The Commission's mailing address is:

Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

NOTICE

If you do not want to comment now, but do want to receive future information about this rulemaking, please notify the Secretary in one of the ways described above and ask to be included on the mailing list for Docket No. TR-021465. If you do not do this, you might not receive further information about this rulemaking.

Sincerely,

CAROLE J. WASHBURN
Secretary