

RULEMAKING COMMENT SUMMARY 2
TR-021465
Railroad Remote Control Locomotive (RCL) Operations
Written Comments Received Since March 3, 2003

ISSUE	INTERESTED PERSON	COMMENTS	RESPONSE
General Comments			
	Sheri Kent (3/7/03)	Concerned about safety of RCL technology and operations in major cities in Washington. Supports efforts of BLE to regulate RCL technology. (Form Letter)	Staff appreciates your concerns, and proposes changes to WAC 480-62-320 to address safety issues such as point protection at crossings and where RCL operated trains may enter the mainline track. Staff also proposes a rule to establish periodic diagnostic workshops to address potential safety issues in remote-control areas or zones.
	Dan Potoshnik, Secretary BLE (3/13/03)	Concerned with safety of RCL technology and potential for accidents when used in yards in busy metropolitan areas. Concerned with safety of rail crews. Supports restrictions on use of remote controlled operations.	Staff is aware of the safety concerns presented by RCL operations in yards in busy metropolitan areas. Staff appreciates your concerns and proposes changes to WAC 480-62-320 as described above in response to comments by Sheri Kent.

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	Dan Potoshnik (3/19/03)	Urges Commission to protect citizens of state from increased risks posed by use of remote controlled operations.	See response to comments of Sheri Kent, above.
	J.L. Breeden (3/19/03)	Welcomes WUTC to attend training classes for RCL operations.	Commission Staff appreciates the offer, and will consider doing so when it becomes possible.
	Jeff D. McHenry (3/24/03)	Concerned about safety of RCL technology and operations in major cities in Washington. Supports efforts of BLE to regulate RCL technology. (Form Letter)	See response to comments of Sheri Kent, above.
	Cherie Rogers, Spokane City Council (4/9/03)	Encourages Commission to ban use of remote control operations.	Under federal statutes and case law, the Commission is preempted from banning a practice allowed by the FRA. Staff has proposed changes to existing WAC 480-62-320 to address certain safety issues presented by remote control operations.
	Tom Retterath, UTU (4/28/03)	Encloses copies of BLE/Montana Rail Link Remote Control Agreement, and implementation agreement, as well as article concerning remote control operations, and letter from UTU National Legislative Director to Congressional Representatives.	Staff appreciates the information provided by the UTU, and has placed the information in the rulemaking file in this docket.

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	Peggy Shrum (Railroad Employee Safety and Quality – RRESQ) (6/18/03)	States concerns about deterioration of national rail system and supports discussion draft of RCL rules.	See response to comments of Sheri Kent, above.
	Rick S. Bender, Washington State Labor Council, AFL-CIO (6/20/03)	Supports discussion draft of RCL rules and urges adoption.	Staff appreciates the support of the Washington State Labor Council, AFL-CIO. Staff has modified the June 10 set of draft rules to address comments raised in the August 12, and October 28, 2003, workshops.
	W. Scott Bowen (6/30/03)	Thanks Commission for discussion draft RCL rules and states safety concern for pedestrians walking into Stacy Street yard in Seattle.	Staff appreciates the support for the June 10, 2004 draft rules, and is aware of the safety issues presented by pedestrians in Stacy Street yard.
	Mike Brown, ILWU Local #24 (7/8/03)	Urges adoption of draft rules.	Staff appreciates the support of the ILWU. Staff has modified the June 10, 2003, set of draft rules to address comments raised in the August 12, and October 28, 2003, workshops.
	Mashie Nibs (7/8/03)	Supports draft rules.	Staff appreciates the support of for the June 10, 2003 draft rules. Staff has modified the draft rules to address

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			comments raised in the August 12 and October 28, 2003, workshops.
	Mark Ricci, BLE (7/8/03)	Supports draft rules, even though they do not go as far as the BLE requested. Draft rules will protect the public in Washington state and minimally affect railroad operations.	See response to comments of Mashie Nibs, above.
	Paul S. Bovarnick (7/10/03)	Supports adoption of draft rules. Expresses concern about safety hazards of RCL technology for railroad employees and the public.	See response to comments of Mashie Nibs, above. Staff is aware of the safety concerns for railroad employees and the public presented by RCL operations.
	Dale A. Jeremiah (7/10/03)	Supports adoption of draft rules.	See response to comments of Mashie Nibs, above.
	Terry Reddish (7/14/03)	Supports draft rules. Asserts that it is important for the State to adopt regulations to protect the public and rail workers from accidents involving RCL technology.	See response to comments of Mashie Nibs, above. Staff is aware of the safety concerns for railroad employees and the public presented by RCL operations.
	William J. Adams (8/6/03)	Requests that the Commission adopt safeguards concerning the use of remote control devices on the railroads to avoid injuries and deaths from the use of the devices.	Staff is aware of the safety concerns for railroad employees and the public presented by RCL operations. Staff has proposed changes to existing WAC 480-62-320 to address these safety issues.

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	Cynthia Sullivan Metropolitan King County Council (8/11/03)	Supports draft rules concerning remote control railroad operations	See response to comments of Mashie Nibs, above.
	David Clark, BLE (8/21/03)	Supports rules concerning remote control railroad operations in Washington State .	See response to comments of Mashie Nibs, above.
	Jeanne Harris Council Member, City of Vancouver (9/19/03)	Encourages Commission to continue the rulemaking process and establish rules concerning remote control locomotives in Washington state.	Staff appreciates the support of the City of Vancouver to continue with the rulemaking. The Commission will determine on January 28, 2004, whether to file proposed rules modifying WAC 480-62-125 and WAC 480-62-320 with the Code Reviser for publication in the Washington State Register for comments.
	Craig Pridemore, Commissioner, Clark County (9/25/03)	Supports rulemaking concerning remote controlled locomotives due to public safety concerns.	Staff is aware of the safety concerns for railroad employees and the public presented by RCL operations. Staff has proposed changes to existing WAC 480-62-320 to address these safety issues. See also response to comments of Jeanne Harris, above.

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	Judie Stanton, Commissioner, Clark County (11/7/03)	Urges the Commission to proceed with the remote controlled locomotives rulemaking, stressing the need for rules to protect workers, citizens, and visitors, and to minimize accidents.	See response to comments of Jeanne Harris and Craig Pridemore, above.
Specific Safety Concerns			
	Tom C. Smillie (3/19/03)	Railroad GCOR includes rules governing watching crossings and protecting movements, but is concerned as a remote control operator (RCO) that rules are made in response to accidents. Concerned that BNSF is not following implementation agreement with UTU.	Staff appreciates your comments as an RCL operator. The Commission generally does not involve itself with contractual disputes because there are alternative processes for addressing them. It is unfortunate that sometimes accidents occur before rules are made to address the underlying safety concern. Staff attempts to balance the demonstrated need for rules with practicality and effectiveness of proposals.
	Marc J. Robertson (3/26/03)	Encloses near miss reports for Tacoma Rail. Requests Commission to take into consideration the risk of near misses at public crossings using RCL technology, in particular protection of point of movement, during the rulemaking.	Staff appreciates the information and suggestion. Staff has proposed changes to existing WAC 480-62-320 to address certain safety issues presented by remote control operations, and point protection in particular.

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	<p>WSLB-BLE, (4/3/03)</p>	<p><u>Main Line Passenger Rail Protection:</u> BLE asserts that FRA Safety Advisory is intended for yard-switching operations only, and advisory states that passenger trains should not be operated by remote controlled devices. BLE seeks Commission regulation of RCL operations on mainline tracks.</p> <p><u>Crossing Protection:</u> FRA Safety Advisory states that “FRA’s first priority in assessing RCL operations is to ensure that the operation pose no threat to railroad workers or the general public.” Guideline F recommends use of warnings and notice of use of RCL technology. FRA has by letter discouraged use of remote cameras to protect RCL movements of highway-railroad grade crossings. BLE asserts a need for definition of crossing protection to ensure safe movement over public highway-grade crossings.</p> <p><u>Safety of RCL Operations:</u> Disputes railroads assertions that RCL technology is as safe as conventional railroad operations. Cites incidents/accidents in Seattle and Shelton, Washington, and Syracuse, New York.</p>	<p>The FRA Safety Advisory appears to contemplate only yard operations with only minor use of mainline tracks as in any switching operation. Staff has proposed changes to existing WAC 480-62-320 to address the underlying concern about protecting movements that can go onto mainline tracks.</p> <p>The issue of crossing protection must be addressed by the Federal Highway Administration, which is responsible for approving signage on roadways. Staff will encourage a review of this issue by the team created by the BNSF Northwest Division SACP. The proposed rules do address the issue of appropriate protection of movements through crossings.</p> <p>Staff will not attempt to address the issue of the comparative safety of RCL technology in a general sense. Instead, Staff will focus on specific issues where a safety problem may be alleviated by an enforceable state rule.</p>

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	Nick R. Flores, BLE (10/14/03)	Supports RCL rulemaking. Disagrees with UPRR and BNSF claims that the GCOR is a safety net for RCL operations. Raises concern that incidents are not being reported to FRA. States that UPRR has had 28 known derailments on the Portland Service Unit as a result of remote control technology. Cites human error as the reason for failures, identifying numerous design problems with RCL.	Staff appreciates your expression of support. The issues you raise are important but some of them must be addressed under existing FRA rules. The rulemaking addresses the issue of the sufficiency of the GCOR in certain circumstances.
FRA Safety Advisory			
	FRA Administrator Allan Rutter (3/11/03)	Statement of Allan Rutter re: Use of Remote Control Technology: FRA continues to monitor the use of RCL technology. FRA states that nothing indicates need to ban use of RCL technology. FRA intends to proceed cautiously, will address further through enforcement or regulation as needed. Attached statement of FRA policy indicates that Safety Advisory addresses only RCL technology used in yard switching operations.	Partnership with the FRA will help identify safety issues, and provide appropriate responses to those issues.
Federal Preemption			
	WSLB-BLE (4/3/03)	Response to March 11, 2003, news release from FRA concerning remote control operations, and railroads comments during March 19, 2003, stakeholder meeting. Asserts that FRA news release does not contain an affirmative statement concluding that no remote control regulation is necessary. BLE asserts that FRA has failed to grant or deny its petition for	Staff generally agrees with BLE's analysis.

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		<p>regulation, as required by federal rules. BLE asserts that the Commission is not preempted from regulating remote control operations under U.S.C. §20106. Requests that the Commission address railroad safety as authorized by RCW 81.104.120.</p>	
	<p>Burlington Northern Santa Fe/ Union Pacific Railroads (BNSF/UP) (7/15/03)</p>	<p>The railroads reiterate previous comments concerning preemption. Specifically that FRA actions and federal law preempt the field of RCL operations, including the areas under consideration by Staff. The railroads assert that the Commission may only regulate within the preempted field if the Commission can satisfy the three prong test of 47 USC § 20106: 1) the rule is necessary to eliminate or reduce an essentially local safety hazard; 2) is not incompatible with a law, regulation, or order of the United States Government; and 3) does not unreasonably burden interstate commerce. The railroads assert that the draft rules do not meet this test, and if adopted, may challenge the draft rules in court.</p> <p>The railroads provide background information concerning the history of RCL rules and operations in Washington state, as well as the current rulemaking. I</p> <p>The railroads' comments include nine attachments.</p>	<p>Please see the response to BNSF and UP's comments in the summary of comments received prior to March 3, 2003.</p> <p>Staff has included the information provided by the railroads in the rulemaking file.</p>

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	David M. Reeve, for BNSF (7/25/03)	Requests Commission to consider Section IV of <u>King v. Illinois Central Railroad</u> , 2003 WL 21688266 (5 th Cir. July 21, 2000), attaching decision.	Please see the response to BNSF and UP's comments in the summary of comments received until 3/3/03.
	David M. Reeve, for BNSF, and Carolyn Larson for UPRR (10/24/03)	While the October 3, 2003, draft rules have been scaled back, the railroads assert that the new rules continue to encroach upon an area preempted by federal law. The railroads continue to assert that FRA has occupied the filed and has preemption any state regulation. The railroads request the Commission postpone work on the rulemaking pending completion of an FRA audit of Class I railroads.	Please see the response to BNSF and UP's comments in the summary of comments received until 3/3/03. There is no need to postpone the rulemaking as there is no set date for completion of the audit.
Comments on Draft Rules			
	BNSF/UP (7/15/03)	<u>Reporting Requirements (Sections 1, 6,):</u> The railroads assert that prohibiting operations for lack of notice to the Commission is beyond the Commission's authority. The additional reporting requirements are too burdensome, and existing reporting rules allow the Commission to obtain the same information. The draft rules are vague by failing to define certain terms: pedestrian crossings, private crossings, yard limits, and remote control zones.	The draft rules do not prohibit operations for failure to notify the Commission, but impose a requirement on the railroads to notify the Commission. The notice requirements are the same as those in the current rule, except that the railroads must provide greater specificity about road crossings in a remote control area. The most recent set of draft rules identifies only road crossings at grade, to be consistent with the GCOR usage, does not refer to yard limits, and includes

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		<p><u>Remote Control Zones (Section 2)</u>: The term remote control zone is not defined in the rule. The draft rule seems to prohibit remote controlled operations if barriers to prevent pedestrian access are not constructed. A ban on RCL operations is preempted by FRA action. Remote Control Zones are either solely on railroad property or include crossings protected by active warning devices. Regulating access to a remote control zone would be virtually impossible, given railroad experience with trespassers.</p> <p><u>Warnings Signs (Section 3)</u>: The railroads are voluntarily complying with the FRA guidelines to post warning signs. Making a federal guideline mandatory denies the railroads the flexibility given to them by the FRA guidelines. The railroads assert that FRA has covered the field on the issue and that warning signs could not meet the three-prong preemption test.</p>	<p>definitions of remote-control area, remote-control operations, and remote-control zone.</p> <p>The October 3, 2003, discussion draft rules included definitions of remote-control area and remote-control zone. Based upon discussion in the October 28, 2003 workshop, Staff has modified those draft definitions and included a definition of remote-controlled operations to be consistent with the FRA's Safety Advisory. Staff removed the requirement for barriers in the July 30, 2003, discussion draft rules.</p> <p>The October 3, 2003, discussion draft (and the most recent set of draft rules) remove the requirement to install warning signs, and addresses the issue instead in new section 6 which provides for workshops involving the railroads, unions, Staff, governmental representatives and other interested persons to address specific safety problems.</p>

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		<p><u>Protecting the Point (Sections. 4 & 5):</u> The railroads assert that sections 4 and 5 both seek to control the degree and nature of a railroad's protection of RCL movements. These issues are covered by GCORs for making a shoving move across a grade crossing. The railroads assert that FRA has addressed the matter by requiring compliance with the railroad's operating rules or establishing remote control zones. Finally, the railroads assert that the matter is not an essentially local issue.</p>	<p>The most recent set of draft rules modify the July 30, 2003, discussion draft rules by modifying Section 4 to exclude the application of the rule to crossings used only by railroad employees. Staff has also modified Section 5 to be more clear. As Staff clarified in the workshop, these rules mirror the railroads rules under the GCOR for blind shoving moves. See also Staff responses to BNSF and UP comments concerning preemption.</p>
	<p>David M. Reeve, for BNSF, and Carolyn Larson for UPRR (10/24/03)</p>	<p><u>Definitions Section:</u> The draft definitions help to clarify the draft rules.</p> <p><u>Notice Sections (Sections 1 & 2):</u> Prohibiting RCL operations by requiring notice would delay implementation and is beyond the Commission's power. The 10/3/03 draft increases the reporting period from 30 to 60 days. The railroads suggested keeping the 30-day period.</p>	<p>Staff appreciates the railroads' comments and notes that Staff has further clarified the definitions of remote-control area and remote control zone, and added a definition of remote-control operations.</p> <p>As discussed above, the draft rules do not prohibit operations for failure to notify the Commission, but impose a requirement on the railroads to notify the Commission. Staff increased the reporting period to 60 days understanding that the railroads preferred a longer</p>

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		<p><u>Notice Sections (Sections 1 & 2 cont.):</u> The draft rule was changed to include only public and private vehicular traffic. The railroads suggest modifying the draft to exclude internal yard crossings from the application of the rule.</p> <p><u>Point Protection (Sections 3 & 4):</u> The procedures in the draft rules are addressed in the railroads' General Code of Operating Rules (GCOR), "which requires protection when making a shoving move across a grade crossing and treat all remote control movements, regardless of the position of the locomotive, as shoving moves." It is inappropriate to adopt rules on point protection at crossings or in connection with main lines, when the FRA is reviewing the issue in an audit. The public interest is not advanced by additional rules concerning RCL operations.</p>	<p>reporting period. Staff has changed the reporting period back to 30 days to accommodate the railroads' request.</p> <p>Staff has modified sections 1 and 2 to exclude "crossings for which use is restricted to railroad employees." Staff has also modified the rule to apply to road crossings at grade to be consistent with GCOR usage.</p> <p>Staff agrees that the GCOR prohibits unprotected shoving moves across grade crossings (indeed, not just at grade crossings, but generally under GCOR 6.5). Staff also agrees that all remote control movements should be treated as shoving movements under the GCORs. However, to Staff's knowledge, this latter point is not express under the GCOR because it simply does not mention remote control operations or how to apply rules developed for conventional operations to remote control operations.</p>

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		<p><u>Meetings (Section 5)</u>: The railroads question whether the draft rule requiring meetings or workshops is necessary, as the Commission does not need a rule to do so. The railroads do not object to attending such workshops.</p>	<p>Moreover, the purpose of a "remote control zone" is to suspend, for purposes of operating efficiency, GCOR rules that have long required point protection for train movements. It is not clear whether the rules with which railroads intend to dispense include GCOR 6.5, 6.16, 6.28, or 6.32. The state's interest, and the objective of these draft rules is to assure that railroads do not pursue operational efficiency at the price of diminished public safety at grade crossings or at points of conflict with other trains. The purpose is not to adopt additional rules concerning RCL operations, but to make existing rules enforceable.</p> <p>Staff developed the rule, in part, due to the comments of the railroads at the August 12, 2003 workshop. While the Commission does have authority to convene workshops such as those referred to in rule section 6, the draft rule will provide notice to the public that such a workshop is an option.</p>

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			The draft rule also describes the process the Commission will use in addressing any safety problems discussed in a workshop convened under section 6 of the rule.