



October 3, 2016

Docket Clerk
Docket Operations Facility
U.S. Department of Transportation
1200 New Jersey Avenue, SE, W12-140
Washington, DC 20590-0001

Re: Petition for Reconsideration; Docket Number FRA-2011-0060, Notice No. 3; SSP

PETITION FOR RECONSIDERATION

by

**American Train Dispatchers Association (ATDA)
Brotherhood of Locomotive Engineers and Trainmen (BLET/IBT)
Brotherhood of Maintenance of Way Employees Division (BMWED/IBT)
Brotherhood of Railroad Signalmen (BRS)
Brotherhood Railway Carmen Division (TCU/IAM)
Transport Workers Union of America (TWU)**

The Labor Organizations identified above are the recognized collective bargaining representatives of a significant majority of railroad industry workers engaged in train operations; train dispatching; and track, signal and mechanical maintenance, inspection, and repair. The Labor Organizations and their collective membership have a vested interest in the development and implementation of System Safety Plans (SSPs) as a means to reduce the consequences and rates of railroad accidents, incidents, injuries and fatalities on commuter and intercity passenger railroads throughout the United States. Our respective organizations, as well as our collective memberships, are directly affected by the System Safety Program final rule.

On November 6, 2012, the Labor Organizations filed substantive comments to the SSP NPRM. For the most part, FRA dismissed Labor's legitimate comments and concerns and left them largely unaddressed in the final rule. As such, the Labor Organizations consider reiteration of our previously submitted substantive comments an exercise in futility. Therefore, we will limit this Petition for Reconsideration to the administrative deficiencies of the final rule.

§270.107 Consultation requirements

- The consultation procedures mandated under §270.107 are administratively deficient, unclear, and unnecessarily convoluted. Paragraph (a)(1) establishes the general duty of railroads to “in good faith consult with, and use its best efforts to reach agreement with all of its directly affected employees, including any non-profit labor organizations representing a class or craft of directly affected employees, on the content of the SSP plan.”
- Paragraph (a)(2) provides, in part, “A railroad that consults with such non-profit employee labor organization... is considered to have consulted with the directly affected employees represented by that organization.”
- Paragraph (a)(3) provides, in part, “A railroad shall have a preliminary meeting with its directly affected employees... and must hold such preliminary meeting no later than April 10, 2017.”

However, nowhere in paragraph (a) does FRA identify the duly accredited employee representatives on the property, i.e., the general chairpersons, as the appropriate points of contact to be notified for scheduling of the preliminary meeting, subsequent meetings, and service of the consultation statement. Rather, FRA appears to have taken it upon itself to inappropriately delegate the presidents of each national and international labor organization to be the de facto “clearing house” for all administrative matters regarding scheduling and consultation.

The Rail Labor Organizations submitted the following comment to the NPRM regarding administration of the consultation process; however, FRA failed to discuss or reconcile this comment in the section-by-section analysis of the final rule:

The Labor Organizations further believe that § 270.102(b)(4) should be revised to include specific sections as follows:

(i) A service list containing the names and contact information for the international/national president and general chairperson of any non-profit employee labor organization representing a class or craft of the railroad’s directly affected employees; any labor organization representative who participated in the consultation process; and any directly affected employee who significantly participated in the consultation process independently of a non-profit employee labor organization. [Emphasis added]

(ii) When a railroad submits its SSP plan and consultation statement to FRA, it must also simultaneously send a copy of these documents to all individuals identified in the service list.

During RSAC discussions of the administrative processes relative to the Risk Reduction Program rule, the Labor Organizations stated unequivocally that railroads must directly contact the general chairpersons of each labor organization to schedule meetings, schedule subsequent

meetings, engage in negotiation/consultation, and serve a copy of the consultation statement. As noted in the final rule, “RSAC did not provide recommended language for this section” (FR, August 12, 2016, page 53882). This was because the railroads were intransigent on this issue, falsely claiming that requiring them to interact directly with the general chairpersons would be an administrative burden, even though they interact with the general chairpersons on essentially a daily basis.

The general chairpersons are the duly accredited representatives of the crafts and classes of employees on each railroad property. The railroads are required by provisions of the Railway Labor Act (RLA) to bargain directly with the general chairpersons on property-specific issues, and they do so on a daily basis with regard to collective bargaining agreements, local rules, discipline, investigation hearings, safety, and virtually every other matter between labor and management on the property. The SSP process should be no different.

In the preamble to the final rule, FRA states, “FRA worked with the System Safety Task Group to receive input regarding how the consultation process should be addressed, with the understanding that language would be provided in the NPRM for review and comment” (FR, August 12, 2016, page 53882). The Labor Organizations point out that the vast majority of the rail unions were not part of the System Safety Task Group and therefore had no input regarding how the consultation process would be addressed.

In the end, neither FRA nor the System Safety Task Group has the authority to dictate that national and international union presidents serve as the administrative “go between” for railroads required to consult with directly affected employees represented by non-profit labor organizations.

The undersigned national and international labor organizations hereby notify the FRA and the railroads that we designate our general chairpersons as the duly accredited representatives of the crafts and classes of directly affected employees under the SSP. As such, each railroad required to establish a system safety program under §270.107(a) must “in good faith consult with, and use its best efforts to reach agreement with,” the general chairpersons of each affected labor organization. The railroad’s consultation statement under §270.107(b)(1) must likewise provide a detailed description of the process the railroad utilized to consult with the duly accredited general chairpersons.

Rail Labor and railroad management already have well-known and well-established procedures and points of contact for negotiations/consultations over property-specific matters. SSP consultation is clearly a property-specific matter that must be addressed directly with the general chairpersons. We therefore, with this Petition for Reconsideration, respectfully request FRA to amend the unclear, burdensome, and convoluted administrative processes under §270.107, and provide additional time for Labor’s review of submitted SSP plans, as follows:

(a)(3) A railroad shall have a preliminary meeting with its directly affected employees to discuss how the consultation process will proceed. **For directly affected employees represented by a non-profit labor organization, the railroad’s primary point of contact shall be the general chairpersons.** A railroad is not required....

(b)(3) A service list containing the name and contact information for each international/national president of any non-profit organization representing a class or craft of the railroad's directly affected employees. The service list must also contain the name and contact information **for the general chairpersons and** any directly affected employee who significantly participated in the consultation process independently of a non-profit employee labor organization." When a railroad submits....

(c)(2) A railroad's directly affected employees have ~~30~~ **60** days following the date of the railroad's submission of a proposed SSP plan to submit the statement described in paragraph (c)(1) of this section.

In closing, the railroads and the labor organizations already have well-known and well-established procedures for engaging in property-specific negotiation/consultation. The Labor Organizations provide concurrent updates to railroads on any changes in general chairpersons under procedures of the RLA. Therefore, granting this Petition for Reconsideration will provide administrative efficiencies and place absolutely no additional administrative burden on the railroads, as we are simply proposing maintenance of the status quo as it relates to property-specific negotiation/consultation.

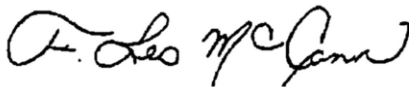
Respectfully submitted,



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