



A bold voice for transportation workers

October 21, 2019

John Karl Alexy
Associate Administrator for Railroad Safety
Chief Safety Officer
Federal Railroad Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

**RE: NS Petition for Waiver of Compliance, Employee Injury/Illness Forms
Docket Number FRA-2019-0046**

Dear Mr. Alexy:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to FRA's request for comment on Norfolk Southern's (NS) petition for a waiver of compliance concerning employee injury/illness forms. TTD consists of 33 affiliate unions representing workers in all modes of transportation, including freight rail employees whose workplace injuries and illness are reported and documented via the regulation NS seeks relief from.¹

Under current regulation at 49 CFR § 225.25(h), railroads must post a listing of all injuries and illness reported to FRA in a "conspicuous location at that establishment", which must include information on any incident which has occurred in the preceding 12 months. This posting includes information on the location, severity of the incident, and the occupation of the employee. Through this petition, NS asks for regulatory relief in order to replace the physical posting of the form with an electronic version. NS states that this version would be available through employee's personal electronic devices and company computers. Employees would also be permitted to ask for the physical copy to be provided to them at any time.

¹ Attached is a complete list of TTD affiliates.
Transportation Trades Department, AFL-CIO
815 16th Street NW / 4th Floor / Washington DC 20006
Tel: 202.628.9262 / Fax: 202.628.0391 / www.ttd.org
Larry I. Willis, President / Greg Regan, Secretary-Treasurer



The availability of this posting is of substantial importance to the freight rail workforce as it provides necessary transparency to workers on the safety culture of their employers. Whereas employees may spend their workdays at different places within a yard or facility, the presence of the physically posted form allows employees to be well-informed of safety issues across craft, location, or shift. Broadly, we are supportive of efforts to make material such as injury/illness forms more readily accessible to workers in multiple mediums. However, as FRA considers this request, we urge the agency to consider several concerns.

As NS notes, FRA rejected a similar request from NS in May of 2017 (Docket Number FRA 2016-0119). As part of its rejection, FRA expressed its concern that moving to solely electronic postings would deny employees who did not regularly use the internet access to these documents. While we are not aware of how many railroaders this may describe, we share FRA's interest in ensuring that regulatory relief will not result in any workers losing access. Furthermore, even if there are no employees who are unable to access the information due to their internet usage, workers could have their access reduced if roll-outs of an electronic version fail to adequately inform employees of the change, or if the electronic access process does not work properly. It is critical that employees at no time lose access to this data.

Therefore, we propose that if FRA decides to grant NS' waiver, that it does so on a provisional basis as a pilot program. Following the granting of the waiver, FRA should conduct recurring reviews that include interviews with employees at NS properties to determine if access to illness/injury logs has been degraded. If FRA determines there is no impact on access during the switch to electronic recordkeeping, then it may grant a longer-term waiver.

To mitigate access concerns, NS has proposed that it will also make physical copies of injury/illness forms available to employees upon request. While we appreciate NS continuing to make physical versions available, the action of having to request the information from one's supervisor opens up employees to retaliation from management. If employees are too concerned with possible retribution to request a physical copy, then the benefit is moot. We express similar concerns in regard to employees accessing the forms on employer provided electronic devices, or computers on company property where browsing information can be readily tracked. If FRA decides to permit NS to operate a pilot program as described above, it should ask employees if they feel comfortable when requesting these forms from their supervisors and if any pattern of retaliation has occurred.

Regardless of if FRA grants the waiver as proposed, or installs a pilot program, it should also take preemptive steps to mitigate potential retaliatory actions. We urge FRA to require clearly printed language on both the electronic and physical documents that states that as a condition of the granting of this petition, NS acknowledges that it cannot retaliate against, or discipline, workers who access or request the forms.

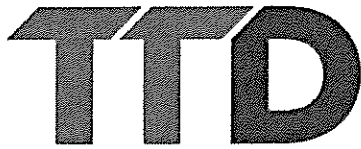
Finally, we note that the Rail Safety Advisory Committee's (RSAC) Accident Reporting Working Group is currently considering issues relating to injury/illness forms to include electronic posting. We encourage FRA to make no determination on this waiver until the Working Group has produced its recommendations and they have been reviewed by RSAC.

We appreciate the FRA's consideration of these comments, and we look forward to continuing to work with the agency in the future.

Sincerely,

A handwritten signature in cursive script that reads "Larry I. Willis".

Larry I. Willis
President



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TTD MEMBER UNIONS

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of Government Employees (AFGE)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Iron Ship Builders,
Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Longshoremen's Association (ILA)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)
National Federation of Public and Private Employees (NFOPE)
Office and Professional Employees International Union (OPEIU)
Professional Aviation Safety Specialists (PASS)
Sailors' Union of the Pacific (SUP)
Sheet Metal, Air, Rail and Transportation Workers (SMART)
SMART-Transportation Division
Transportation Communications Union/ IAM (TCU)
Transport Workers Union of America (TWU)
UNITE HERE!
United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)
United Mine Workers of America (UMWA)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service
Workers International Union (USW)

These 33 labor organizations are members of and represented by the TTD

