



Washington Legislative Office

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National Legislative Director

December 2, 2014

Bob Lauby
Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Mr. Lauby:

We are concerned with the CSX and other railroads' outright ban on cameras being used while operating employees are on duty. We believe it is an attempt to stop the documentation of safety defects and violations, thereby limiting the ability of operating employees to share that information with the FRA. CFR 49 220.309 clearly allows for the use of cameras: "Notwithstanding any other limitations in this subpart, a railroad operating employee may use the following, if that use does not interfere with any employee's performance of safety related duties—".

We believe the plain meaning of that language is that a railroad cannot place prohibitions on the use of a camera to document a safety hazard or violation of a law or regulation, yet this is precisely what CSX has done.

CSX 2014 Operating Rule 1001.2 (see attached) prohibits the use of personal cameras for any reason while on duty.

The use of a "stand alone camera" is legal per 49 C.F.R. §220.309(c) which states: "An *electronic device to take a photograph of a safety hazard or a violation of a rail safety law, regulation, order, or standard, provided that—*

- (1) A camera that is part of a cell phone or other similar multi-functional electronic device is not included in this exception unless it is a railroad-supplied device and is used for an authorized business purpose;*
- (2) The camera, unless otherwise permitted, is turned off immediately after the documentation has been made; and*
- (3) If the camera is used in the cab of a moving train, the use is only by a crewmember other than the locomotive engineer.*

Furthermore, the Federal Railroad Administration made it clear on September 27th, 2010 in the Federal Register, Part 5, Volume 75, pages: 59586 and 59587 on this issue: *FRA is not prohibiting employees from carrying stand-alone cameras. Whether an employee chooses to carry a personal camera to document potential safety hazards is at his or own discretion subject to railroad rules.*

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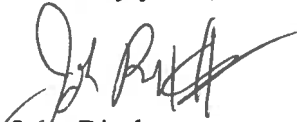
The American Association of Railroads (AAR) requested that FRA delete this proposed camera exemption as unnecessary and compromising to security. AAR first reasoned, that even without the use of potentially distracting cameras, operating employees have other means of reporting safety issues to both the railroad itself and to FRA. Second, AAR asserted that for security reasons FRA should not allow the use of cameras at all, as employees could then post pictures of security-sensitive locations. In response to AAR's comment, FRA declined to delete § 220.309(c) from the final rule. As discussed in the NPRM, FRA realizes the importance of operating employees being able to document violations of railroad safety laws and potential hazardous conditions, and not wanting to infringe upon that usefulness. The provision in the final rule, while limiting the use of electronic devices, still allows for hazardous conditions to be documented safely using a camera.

CSX's rule totally prohibits employees from using cameras to document safety hazards and is a blatant attempt to cover-up unsafe conditions. This CSX Rule undermines the FRA's intent of allowing operating employees the right under certain conditions to photograph unsafe conditions and provide that information to the FRA.

I ask that you review this prohibition by CSX and then, order CSX and any other railroad with such a policy to rescind it.

Thank you in advance for your consideration of this issue.

Sincerely yours,



John Risch
National Legislative Director

Cc: Greg Hynes, Alternate National Legislative Director
Larry Mann, General Counsel
Andres Trujillo, Chairman NASLD

Operating Rules



Chapter 10 - Electronic Devices and Radio Communication

1000 - Use of Electronic and Electrical Devices by Railroad Operating Employees

- 1000.1** No individual shall use an electronic or electrical device if that use would interfere with the employee's or a railroad operating employee's performance of safety-related duties.
- 1000.2** Personal or railroad provided electronic devices may be used in the event of emergency or for redundancy in case of radio or other communication failure.
- 1000.3** Railroad operating employees must not use railroad supplied electronic and electrical devices for personal use.

1001 - Use of Personal Electronic and Electrical Devices

- 1001.1** Power off and store all personal electronic and electrical devices, including earpieces, when:
 - a. Train or locomotive is moving, or
 - b. Any member of the crew is on the ground during a switching operation, or
 - c. Any railroad employee is assisting in the preparation of a train for movement, or
 - d. Located within dispatcher, yardmaster, or operator offices.

→ **1001.2** Railroad operating employees must not use personal cameras while on duty and may only use other personal devices for minimal personal voice or text communication when all of the following conditions are met:

- 1. Train or locomotive is stopped,
- 2. No member of the crew is on the ground during a switching operation,
- 3. Any crewmember not located on the lead locomotive is in a place of safety not closer than 25 feet from the nearest rail,
- 4. No other employee is on the ground assisting in the preparation of the train, and
- 5. All crewmembers hold a job briefing and all agree the use of the electronic or electrical device is safe.

- 1001.3** The use of the following personal electronic devices is not restricted provided they do not interfere with the performance of safety related duties:
 - a. A medical device prescribed by a medical professional and approved for use by the CSX medical department, or
 - b. A digital watch whose only purpose is as a timepiece, or
 - c. A stand-alone calculator.