



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

APR 14 2015

Mr. John E. Kesich
Senior Vice President- Operations
MTA Metro-North Railroad
347 Madison Avenue
New York, NY 10017

Re: Docket Number FRA-2014-0106

Dear Mr. Kesich:

This letter is in response to the Metro-North Railroad's (MNCW) October 16, 2014, petition to the Federal Railroad Administration (FRA), identified as Docket Number FRA-2014-0106, requesting relief from certain provisions of Title 49 Code of Federal Regulations (CFR) Part 240, Qualification and Certification of Locomotive Engineers, and Part 242, Qualification and Certification of Conductors. Specifically, MNCW requested participation in the Confidential Close Call Reporting System (C³RS), a project sponsored by FRA. C³RS is a proven risk reduction program within the rail industry that has been successfully implemented on several railroads, resulting in positive outcomes with respect to measurable safety improvements.

MNCW sought a waiver from mandatory sanctions, as defined in 49 CFR Parts 240 and 242, that would potentially arise when revocation of the engineer and conductor certificate is not initiated and/or implemented for properly reported incidents, as defined in the C³RS Implementing Memorandum of Understanding (IMOU), that are not observed or discovered in real-time or near real-time that would otherwise be mandatory for incidents involving the following violations of operating rules and practices:

- § 240.117(e)(1-4)
- § 240.305 (a)(1-4); and (a)(6)
- § 240.307
- § 242.403(b); (c); (e)(1-4); (e)(6-11); and (f)(1-2)

On March 19, 2015, the FRA Railroad Safety Board (Board) granted the requested relief, in part, subject to the following conditions:

1. This waiver is only in effect after the IMOU has been signed by MNCW management, the representative labor organizations, and FRA.

2. The waiver should be limited to relief necessary to implement the terms of the IMOU. The proposed relief incorporated by reference to the C³RS IMOU specified conditions provided in Article 7.2, under which a reporting employee is not protected from MNCW discipline and/or decertification from FRA enforcement under the following conditions:
 - a) The employee's action or lack of action was intended to damage MNCW or another entity's operations or equipment or to injure other individuals, or intentionally places others in danger (e.g., sabotage);
 - b) The employee's action or lack of action involved a criminal offense;
 - c) The employee's behavior involved substance abuse or inappropriate use of controlled substances;
 - d) If the report is rejected by NASA/PRT [National Aeronautics and Space Administration/Peer Review Team];
 - e) The event resulted in a railroad accident/incident that qualifies as reportable under 49 CFR § 225.11;
 - f) The event resulted in an identifiable release of a hazardous material; or
 - g) The event was observed in real-time and reported to MNCW management (such as a Dispatcher or Tower Operator observing a signal violation) or was observed as part of Proficiency Testing. Proficiency testing generally consists of real-time observations and does not qualify for exemption.

3. An employee is not exempt from discipline and/or decertification for a violation that MNCW or FRA identifies in real-time (e.g., the dispatcher notices unauthorized track occupancy). In such situations, MNCW or FRA may use event recorder information to support discipline and/or decertification and for enforcement. For example, an MNCW manager or supervisor who observes a train operating past a signal that requires a stop may use any relevant data recorded by the locomotive's event recorder in pursuing disciplinary action against the train crew, regardless of whether a member of the crew timely files a close call report.

Grand Central Terminal is a very large and complex interlocking, controlled remotely by a rail traffic controller (RTC) located in the operations control center. Track circuiting provides occupancy information to the RTC in real-time, and a stop signal violation within these interlocking limits is immediately announced the instant that a train occupies the circuit immediately beyond a passed signal. At that moment, the event cannot be considered a "close call."

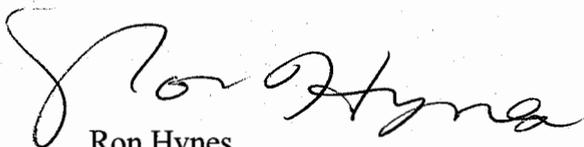
It is for this reason the Board denies the relief requested in Appendix A attached to the petition, amending IMOU Article 6.4, "Special Criteria for Known Event Reporting, to except Stop Signal violations that occur within Grand Central Terminal."

FRA reserves the right to modify or rescind this waiver at any time if new information is presented that indicates this waiver is not in the public interest or is inconsistent with railroad safety.

This waiver is effective until March 19, 2020, or until any one IMOU party cancels its participation in the C³RS project, whichever occurs first. FRA reserves the right to extend the waiver if conditions warrant and if MNCW has made a written request for an extension to FRA's Office of Technical Oversight at least 6 months prior to the expiration date. Any request for an extension must be filed in accordance with the requirements of 49 CFR §§ 211.7, *Filing requirements*, and 211.9, *Content of rulemaking and waiver petitions*.

In any future correspondence regarding this waiver, please refer to Docket Number FRA-2014-0106. If you have any questions or concerns regarding this waiver, please contact Mr. Joseph D. Riley, Railroad Safety Specialist, Operating Practices Division at (202) 493-6318 or Joseph.Riley@dot.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Hynes", written in a cursive style.

Ron Hynes
Director, Office of Technical Oversight