



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

[Docket Number FRA-2016-0121]

In accordance with part 211 of Title 49 of the Code of Federal Regulations (CFR), this provides the public notice that by a document dated December 6, 2016, the Long Island Railroad Company (LIRR) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 214.353(a). FRA assigned the petition Docket Number FRA-2016-0121. LIRR submitted this petition for a partial waiver of a new regulation, which will be set forth in 49 CFR § 214.353(a) and will go into effect on April 1, 2017, requiring that conductors who act as roadway workers in charge (RWICs) receive annual training as set forth in that section. See 81 FR 37840.

LIRR is not requesting a waiver from the portion of the new rule requiring that it provide conductors who act as RWICs the specified training set forth in the rule. LIRR already includes all of those items in its training of assistant conductors prior to their promotion to conductors. In fact, the level of Qualifications/Certifications for LIRR assistant conductors and conductors far exceeds the RWIC requirements, and LIRR conductors are fully qualified on all operating rules and physical characteristics for LIRR's entire system. LIRR also is revising its syllabus to make sure that, as of April 1, 2017, the

refresher training given to conductors includes all of the specified topics, as well as any additional topics recommended in FRA Safety Advisory 2016-02 (See 81 FR 85676). Nor is it requesting a waiver from the portion of the new rule requiring that these individuals be qualified every 3 years and, in fact, will require that they be qualified every 2 years.

Finally, LIRR is not requesting that the annual training requirement be waived for LIRR's roadway workers or any employees (such as non-roadway worker Engineering Department employees) other than conductors who act as RWICs. It is simply requesting that LIRR be permitted to provide the specified training to its conductors who act as RWICs every 2 years.

LIRR is making this request because of the difficulty of training all of its 1,200 conductors each year. LIRR currently conducts bi-annual block training, with half of its conductors (600 out of 1,200) trained in 1 year and the other half trained the following year. LIRR also notes that it provides all of them each spring with a "Roadway Worker Refresher Guide" that includes specific RWIC responsibilities. In running its program in this manner, LIRR is able to maintain its 24 hour a day/7 day a week operation of the largest commuter railroad in the United States and carry over 87 million passengers per year. Requiring that all 1,200 conductors receive training each year would force LIRR to hire additional conductors (an expensive and lengthy process) and/or increase overtime (also expensive) to cover the assignments that conductors cannot cover due to the increased training. LIRR also may need to hire additional training personnel and/or limit the amount of time such training personnel can devote to teaching LIRR employees other non-mandated but useful subjects. As a public benefit corporation that receives much of its funding from tax revenues, these added personnel and training costs then would be passed on to the public.

LIRR has spoken with officials from The International Association of Sheet Metal,

Air, Rail and Transportation Workers (SMART) Division, the union representing LIRR's conductors. SMART provided a letter in support, and it is available for review in the public docket for this waiver petition.

Permitting LIRR to instruct and qualify its conductors who act as RWICs on the items set forth in 49 CFR 214.353, *Training and qualification of roadway workers who provide on-track safety for roadway work groups*, every 2 years, rather than instruct them every year and qualify them every 3 years, would allow LIRR to maintain the safety of its passengers and employees and also allow it to maintain its operations without the need to: (i) hire additional conductors and/or training personnel, (ii) increase overtime, or (iii) reduce training in non-mandated areas. As the waiver would be in the public interest and consistent with public safety, LIRR requests that it be granted.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate

docket number and may be submitted by any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 202-493-2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by [INSERT DATE 45 DAYS FROM PUBLICATION OF THIS NOTICE] will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.transportation.gov/privacy. See also <https://www.regulations.gov/privacyNotice> for the privacy notice of www.regulations.gov.

Robert C. Lauby,
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Chief Safety Officer.

[FR Doc. 2017-00693 Filed: 1/12/2017 8:45 am; Publication Date: 1/13/2017]