

BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION

FEDERAL RAILROAD ADMINISTRATION

FRA WAIVER PETITION DOCKET No. FRA-2013-0080

Brake System Safety Standards for Freight and Other
Non-Passenger Trains and Equipment
(49 C.F.R. Part 232)

February 19, 2014

ORAL STATEMENT OF RICHARD A. JOHNSON, GENERAL PRESIDENT,
BROTHERHOOD OF RAILWAY CARMEN DIVISION
TRANSPORTATION COMMUNICATIONS UNION/IAM

3 Research Place
Rockville, Maryland 20850

Good Morning, my name is Richard Johnson, and I have been the General President of the Brotherhood Railway Carmen Division of the Transportation Communications Union, which I will refer to as BRC, since 1996.

BRC represents railroad workers employed as Carmen by each of the Class I Carriers, as well as certain Class II and Class III Carriers, commuter railroads and Amtrak.

Before addressing the substance of the issues raised by the petition for waiver, I want to thank the FRA for extending the time to submit written comments and scheduling this oral hearing today.

Now, I am here today to offer BRC's comments on a waiver application submitted by the Association of American Railroads, which I will refer to as AAR, on behalf of itself and its member railroads published in the Federal Register on September 6, 2013. AAR has petitioned the FRA for a waiver of compliance from certain provisions of part 232 of the Code of Federal Regulations, regarding Brake System Safety Standards for Freight Trains.

More specifically, AAR seeks a waiver of compliance from performing a Class IA brake test every 1,000 miles under part 232.207. Excluding part 232.213, the current rule states that each train shall receive a Class IA brake test performed by a qualified person, as defined in part 232.5, at a location that is not more than

1,000 miles from the point where any car in the train last received a Class I or IA brake test. Regardless, AAR petitioned FRA for a 1-year limited waiver for the purpose of demonstrating that a subsequent permanent waiver will improve safety and eliminate unnecessary costs to the industry.

AAR proposes this limited pilot effort to demonstrate the effectiveness of using data obtained by wayside wheel temperature detectors to ensure safe braking performance. The focus of this pilot will be the normal revenue service coal trains running on the Union Pacific Railroad, which I will refer to as UP, between Wyoming's Powder River Basin and an unloading facility at White Bluff, Arkansas. This is a round trip of approximately 2,600 miles.

The wayside detection equipment that monitors the system is located at Sheep Creek, Wyoming. Each test train will receive a Class I brake test in accordance with part 232.205 and a pre-departure inspection in accordance with part 215.13 at North Platte, Nebraska. The trains will leave North Platte and travel to a coal loading facility in the Powder River Basin. On the return trip, the trains will pass the wayside detectors at Sheep Creek for a braking performance recording. They will continue through Van Buren, Arkansas, and then to an unloading facility in White Bluff, Arkansas. The train cars will return to the terminus at North Platte by way of Van Buren.

What is at stake in this matter is the safe operation of the trains that will be monitored by wayside detectors instead of receiving the currently prescribed Class IA brake test. Safety is a common goal of all the parties involved in these proceedings and we believe that all the necessary steps must be taken to assure safe operation of these trains. For the reasons provided below, BRC requests that FRA deny AAR's petition for waiver.

The petition should be denied because there is no evidence that wayside detection equipment can, by itself, provide a level of safety equivalent to that provided by the train inspections required under the current federal regulations. Accordingly, it is BRC's position that while wayside technologies may in fact be a very useful tool for detecting certain safety defects, such technology should only be used in conjunction with the inspection regime now required and not in place of it. Simply put, comprehensive hands-on brake inspections such as what is now known as the Class I and Class IA brake tests have a long history of contributing to safety in the railroad industry and they use must continue.

This is the second time the Carriers have attempted to substitute wayside detectors for Class IA brake tests on designated UP trains in the Powder River Basin. UP filed the petition for waiver on its own in the first instance. The docket number in that matter was 2006-25564.

Our understanding is that the technology of wayside detectors and the manner in which they are used have changed very little since the first petition for waiver filed by UP. FRA denied UP's previous petition and should do the same in regards AAR's current attempt as well.

First of all, as noted by FRA in its denial of UP's previous petition, wayside detectors are clearly a supplement to, and not a replacement for, Class IA brake tests. Generally, part 232.207 provides that all trains, other than those designated as "extended haul trains" under part 232.213, must receive a Class IA brake test "at a location that is no more than 1,000 miles from the point where any car in the train received a Class I or Class IA brake test." The Class IA brake test consists of the following tasks and requirements:

- a leakage test;
- a physical examination of each car during some portion of the test to examine and observe the functioning of all moving parts of the brake system;
- fully charging the brake system;
- a determination that the brakes on each car applies in response to a 20-psi brake pipe reduction, which application must remain until a release is initiated by the controlling locomotive, provided, however, that a car initially failing this test may remain in the train if it passes a retest;

- the brake rigging on each car must be properly secured and may not bind or foul or otherwise adversely affect the operation of the brake system; and
- that all parts of the brake equipment must be properly secured.

In place of the requirements prescribed in part 232.207, AAR requests that wayside detection equipment alone be used to monitor and identify the defects that the regulatory inspections would have identified. This concept is in direct contrast to FRA's denial in UP's previous petition. There, FRA specifically noted that "wayside detectors and Class IA brake tests serve complimentary, but distinct functions."

For instance, FRA placed great emphasis on the wayside technologies inability to view the equipment. Indeed, FRA specifically provided that "[i]ntermediate brake tests, such as Class IA brake tests, provide the opportunity to view the foundation brake rigging and potentially identify conditions that may lead to failure, as well as obvious no sets." Moreover, FRA further maintained that:

[a]lthough the methodology appears to be very well suited to identifying cars with low braking horsepower . . . [a] car to car inspection, while potentially less sensitive in identifying brakes that are becoming ineffective than a single car airbrake test or use of wheel temperature detectors, can ascertain which brakes are clearly ineffective (are cut out, or cut in but do not apply) and thus potentially better determine the total braking effort available. Again, a visual inspection may also identify incipient conditions

in the foundation brake rigging that can cause the brake to become ineffective. The Class IA inspection thus addresses the safety of the particular train movement.

It should also be noted that, hands-on, visual inspections include critically important tactile components such as pulling or pushing as well as olfactory components to validate whether detected conditions are compliant with FRA safety provisions. These are abilities that the wayside detectors clearly do not possess.

The next issue to address is AAR's failure to discuss the movement of defective equipment under 49 U.S.C. §20303. This was also a major concern for FRA when it denied UP's previous petition. There, FRA noted that the apparent purpose of UP's petition was to eliminate Class IA brake tests because wayside detectors could perform an equivalent brake test. On this point, FRA provided that "[i]f we concluded that wayside detectors determined when a car is defective, then section 20303 would require the defective car to be hauled no further than the nearest location where repairs could be made."

Just like UP in the previous petition for waiver, AAR has failed to adequately address this issue as well. In its petition, AAR maintains that "defective equipment may be moved from or past a location where a Class IA brake test is performed only if all of the requirements contained in [part] 232.15 have been satisfied." However, part 232.15 is a weakened and far less restrictive

version of the requirements of section 20303. Given that only Congress can amend or repeal a law, any movement of defective equipment must meet the provisions of section 20303, not the less restrictive provisions of part 232.15.

It should also be noted there are other federal regulations that have not been addressed by AAR in its petition which may also be applicable in this situation as well. For instance, if a brake becomes ineffective due to the brake rigging dragging, a railroad may also be required to comply with part 215.121. In addition, if there is a low air hose, then the equipment would have to be moved under the prescriptions of part 215.9.

Moreover, AAR has also not filed for an exemption under 49 U.S.C. §20306 which concerns the introduction of new technology. Had AAR filed under this provision, other options would have been available in this matter.

Another issue relevant to both the previous attempt by UP and the instant petition for waiver is the regulation and monitoring of the wayside detectors. Wayside detection equipment is relatively new technology to the railroad industry. In addition, the equipment is not regulated by FRA. Without federal regulation, there are no universal standards for FRA to apply in evaluating this equipment and there is no regulatory oversight over the safe operation and maintenance of the equipment.

Similarly, should wayside detectors completely replace Class IA brake tests, there is no guarantee that the detectors will be properly maintained and monitored. In its denial of UP's previous petition for waiver, FRA provided that "[a]ny reliance on this technology would necessitate tighter controls." While AAR has discussed some of the ways UP will monitor the wayside detectors in its petition, these are industry standards that do not provide the assurance of federal regulations.

On this point, BRC has an additional question in regards to the reliability of the wayside detectors. In section 6.0 of AAR's proposed Safety Assurance Plan, AAR maintains that "[a] car with 6 (in many cases less) abnormal brake readings will be set out and will undergo repairs at the next mechanical facility." If the data provided by wayside detectors is truly accurate, it should not be necessary for a car to get up to six (6) abnormal readings before being set out and moved for repair.

Another related consideration is the training and knowledge necessary to accurately assess the data produced by the wayside detectors. Railroad employees must possess the ability to understand the readings and the complex computer programs needed to accurately interpret it. FRA personnel must also be adequately trained in this technology as well in order to make an independent and accurate assessment of whether a particular car meets the criteria to consider readings to be abnormally high or low while not meeting any exclusion criteria.

In addition, BRC is also greatly concerned with rail labor's exclusion from the monitoring and review of the data collected by the wayside detectors. While AAR proposes to provide the FRA with monthly data, there is no mention of providing the data to the members of rail labor as well. The inclusion of rail labor would benefit the situation given our knowledge of the equipment and the Federal Regulations.

Finally, if granted, this practice will expand and water down the testing provisions currently prescribed by part 232. Such an expansion may cause further safety issues in the railroad industry. AAR is requesting this relief simply as a matter of economic convenience; this is a position that BRC does not share.

In summary, BRC requests that FRA deny the AAR petition for waiver for the following reasons:

First, wayside detectors are clearly a supplement to, and not a replacement for, Class IA brake tests;

Second, AAR has failed to discuss the movement of defective equipment under 49 U.S.C. §20303;

Third, wayside detection equipment is relatively new technology that is not regulated by FRA;

Fourth, there is no guarantee that the detectors will be properly maintained and monitored should they replace Class IA brake tests;

Fifth, is whether railroad employees and FRA personnel will have the training and knowledge necessary to accurately assess the data produced by the wayside detectors;

Sixth, BRC is greatly concerned with rail labor's exclusion from the monitoring and review of the data collected by the wayside detectors; AND

Finally, if granted, this practice will expand and water down the testing provisions currently prescribed by part 232.

Thank you for the consideration of these views.