

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)

October 28, 2013

STATEMENT OF RICHARD A. JOHNSON, GENERAL PRESIDENT,
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I. Introduction.

My name is Richard A. Johnson. I am the General President, Brotherhood Railway Carmen Division, Transportation Communications Union (BRC) and a National Vice President of the Transportation Communications Union (TCU/IAM). I have been a Carman for 42 years, beginning in 1971 on the former Milwaukee Road at Bensonville, Illinois, and I am personally familiar with the Federal Railroad Administration's (FRA) regulations that set forth safety standards for rail equipment.

BRC appreciates this opportunity to participate in the regulatory process, and brings to that process an enormous wealth of experience and practical knowledge in the area of railroad safety. Our experience has taught us that full compliance with FRA's safety regulations is the surest way to improve railroad safety and, to that end, BRC will address the safety and other issues raised by this petition for waiver.

The Association of American Railroads (AAR), on behalf of itself and its member railroads, has petitioned the FRA for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR Part 232, Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices. Specifically, AAR seeks a waiver of compliance from 49 CFR Part 232.207, Class IA brake tests--1,000-mile inspection. Excluding 49 CFR 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. 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. For the reasons provided below, BRC requests that FRA deny AAR's petition for waiver.

It should also be noted that BRC filed a request for a hearing in this matter by letter dated October 9, 2013, and a request for an extension of time for the comment period by letter dated October 18, 2013. However, FRA has yet to respond to either of these requests.

II. Discussion.

AAR's 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. BRC's position is that while wayside technologies may in fact be a very useful tool for detecting and alerting to certain safety defects, such technology should only be used in conjunction with the inspection regime now required and not in place of them. 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 their use must continue.

This is the second time the Carriers have attempted to substitute the heat sensing scans of wayside detectors for the hands on, visual inspections currently performed under Class IA brake tests on designated Union Pacific (UP) trains in the Powder River Basin. See Docket No. FRA-

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 in Docket No. FRA-2006-25564. FRA denied UP's previous petition and should do the same in regards AAR's current attempt as well.

AAR proposes a limited pilot effort to demonstrate the effectiveness of using wayside wheel temperature detector (WTD) data to ensure safe braking performance. The focus of this pilot will be the normal revenue service coal trains running on the Union Pacific Railroad (UP) between Wyoming's Powder River Basin and an unloading facility at White Bluff, AR, which is a round trip of approximately 2,600 miles. The WTD that monitors the system is located at Sheep Creek, WY. 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, NE. 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 WTD monitors at Sheep Creek for a braking performance recording. They will continue through Van Buren, AR, and then to an unloading facility in White Bluff, AR. The train cars will return to the terminus at North Platte via Van Buren.

In its denial of UP's petition in Docket No. FRA-2006-25564, FRA concluded that wayside detectors are clearly a supplement to - not a replacement for - Class IA brake tests. See Docket No. FRA-2006-25564-0012. Generally, 49 CFR Part 232.207 provides that all trains, other than those designated as "extended haul trains" under to 49 CFR 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 (49 CFR Part 232.207(b)(1));
- 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 (49 CFR Part 232.207(b)(2));
- fully charging the brake system (49 CFR Part 232.207(b)(3));
- 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 retest¹ (49 CFR Part 232.207(b)(4));
- 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 (49 CFR Part 232.207(b)(5)); and

- all parts of the brake equipment must be properly secured (49 CFR Part 232.207(b)(6)).

In place of the requirements prescribed in 49 CFR 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 attempt. See Docket No. FRA-2006-25564-0012. 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 breaking 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 breaking effort available. Again, a visual inspection may also identify incipient conditions in the foundation break rigging that can cause the break to become ineffective. The Class IA inspection thus addresses the safety of the particular train movement.

Id.

Moreover, AAR does not discuss the movement of defective equipment under 49 U.S.C. §20303 which was a major concern for FRA when it denied UP's petition in Docket No. FRA-2006-25564-0012. 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 §20303 would require the defective car to be hauled no further than the nearest location where repairs could be made." Id.

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 § 232.15 [Movement of Defective Equipment] have been satisfied." However, part 232.15 is a weakened and far less restrictive version of the strict requirements of 49 U.S.C. § 20303. Given that only Congress can amend or repeal a law, any movement of defective equipment must meet the provisions of § 20303, not the less restrictive provisions of part 232.15.

In addition, AAR has not filed for an exemption under 49 U.S.C. §20306 which concerns the introduction of new technology. Had AAR filed under §20306, 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 filed by AAR is the regulation and monitoring of the wayside detectors. See Docket No. FRA-2006-25564-0012. 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.

This leads to the related point that should wayside detectors completely replace Class IA 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.

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, the 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; BRC does share this same position.

III. Conclusion.

The Brotherhood of Railway Carmen always welcomes the opportunity to participate in the regulatory process. Safety issues addressed in this process are among the primary concerns to the Carmen. In accordance with our commitment to maintaining safety on the nation's railroads, the BRC suggests that FRA deny the AAR petition for waiver.