



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

JUN 20 2014

Ms. Sarah Grimmer Yurasko
Regulatory Counsel
Association of American Railroads
425 Third Street SW, Suite 1000
Washington, DC 90024

Re: Docket Number FRA-2013-0080

Dear Ms. Yurasko:

This letter is in response to the Association of American Railroads' (AAR) July 19, 2013, petition to the Federal Railroad Administration (FRA), on behalf of itself and its member railroads, for a waiver of compliance from certain provisions of Title 49 Code of Federal Regulations 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 Section 232.207, *Class 1A brake tests—1,000-mile inspection*. This section requires that each train receive a Class 1A brake test performed by a qualified person at a location that is not more than 1,000 miles from the point where any car in the train last received a Class 1 or Class 1A brake test.

FRA's Railroad Safety Board (Board) reviewed AAR's waiver request and held a public hearing on February 19, 2014. The Board is denying AAR's petition for the reasons detailed below.

In its petition, AAR requests a 1-year limited waiver of 49 CFR § 232.207 for the purpose of demonstrating that a subsequent permanent waiver will improve safety and eliminate unnecessary costs to the industry, with the following provisions:

1. Section 232.207 shall not apply to trains in the designated test as detailed in the submitted Safety Assurance Plan (SAP) for at least 1 year from the effective date.
2. For the test location and test trains, the process and procedures in the SAP will govern safety compliance with respect to the use of wayside wheel temperature detector (WTD) in lieu of a 49 CFR § 232.207 Class 1A brake inspection. All other provisions of the rail safety standards will continue to apply.
3. AAR proposes that monthly data from the system be provided to FRA as shown in the enclosed reports. The Union Pacific Railroad (UP) will make additional information—apart from the monthly reports—available to FRA upon request. Upon

completion of the 1-year test period, results and findings will be reported to FRA and will form the basis for any further recommendations by AAR.

FRA's procedures for consideration of a waiver petition are outlined in 49 CFR Part 211, Rules of Practice. As stated in 49 CFR § 211.9(a), each petition must "[s]et forth the text or substance of the rule, regulation, standard or amendment proposed, or specify the rule, regulation or standard that the petitioner seeks to have repealed or waived, as the case may be." AAR is specific when it states that "the process and procedures in the SAP will govern the safety compliance with respect to the use of wayside wheel temperature detector...in lieu of a § 232.207 Class 1A brake inspection."

Further, AAR states "[a]ll other provisions of the rail safety standards will continue to apply." However, AAR did not request a waiver for the consequences of what occurs after equipment fails the Class 1A test, or their proposed equivalent procedure. Specifically, the petition does not discuss why equipment found defective or "abnormal" (in the language of the SAP) should be permitted to move past the nearest location where repairs can be made. A defect of 49 CFR Part 232, when found at a Class 1A test is, at a minimum, a potential violation of 49 CFR § 232.103(f), which states "[e]ach car in a train shall have its air brakes in effective operating condition unless the car is being moved for repairs in accordance with 49 CFR § 232.15." Although the SAP appears to assume waiver or modification of 49 CFR §§ 232.103(f) and 232.15, AAR requested neither in its petition. Therefore, AAR failed to set forth in its request a complete list of the regulations it seeks to have waived, even though it states that all other provisions of the rail safety standards will continue to apply.

Additionally, the Board finds that the use of the WTD does not replace the inspections done at a Class 1A brake test. It is unclear from the petition and supporting documentation how the use of the WTD alone would provide an equivalent level of safety to the current Class 1A brake test. The wayside detectors and Class 1A brake tests serve complementary, but different, functions. Intermediate brake tests, such as Class 1A brake tests, provide the opportunity to view the foundation brake rigging and potentially identify conditions that may lead to failure, as well as obvious brake defects (e.g., brakes not applying).

Title 49 CFR § 232.15's key provision is a codification of the statute at 49 U.S.C. § 20303 that requires that equipment with defective or insecure power brakes only be moved "from the place at which the defect or insecurity was first discovered to the nearest available place at which the repairs can be made." AAR's SAP allows a car with an "abnormal reading" to pass through a Class 1 brake inspection until an abnormal reading is recorded six times before it is considered a defect and removed from the train. FRA considers that until an abnormal brake reading is cleared, it is a defect and subject to the provisions of 49 U.S.C. § 20303. The SAP procedure would thus be a violation of 49 U.S.C. § 20303, which may only be waived by using the process detailed in 49 U.S.C. § 20306, *Exemption for technological improvements*. During the public comment and hearing process, several commenters stated that they considered AAR's request to be deficient regarding 49 CFR §§ 232.103(f) and 232.15. Although AAR provided supplemental information in response to other questions posed during the public hearing (*see* FRA-2013-0080-0019 at www.regulations.gov), AAR did not use that opportunity to address these deficiencies by

modifying its petition or by complying with 49 U.S.C. § 20306(b) by either requesting a hearing specifically requesting the exemption or by presenting an agreement between national railroad labor representatives and the AAR as the developer of the new equipment or technology.

FRA carefully reviewed the petition and the WTD technology presented in the petition, and determined that it has merit and the potential to add safety to the railroad industry. AAR has consistently asserted in its safety case that “wheel temperature detectors find four times as many brake defects as do the traditional Class IA brake tests.” A limited test waiver may be able to prove that case. However, the current SAP then requires that the WTD system has to find six “abnormalities” on a car before the mandatory removal of a car for repair of a defect. The SAP could also allow a train to run several hundred miles with 95-percent effective brakes and bypass Class 1 inspections (if the qualified mechanical inspector does not discover a defective car that has an abnormal reading), while the Federal standard is generally that a train shall have 100-percent effective and operative brakes. *See* 49 CFR § 232.103(d). In its petition and in the SAP, AAR did not address several key elements, including the movement of equipment for repair and the need to request the statutory relief for new technology. Therefore, FRA can only analyze the safety case for what AAR presented.

Nothing in this letter should discourage any railroad from using WTD or other technology to supplement the inspections and tests required by Federal regulations. Further, nothing in this letter should be read to constitute a determination that this approach to diagnosis of potential braking problems is contrary to the law or FRA regulations. FRA believes that this technology has excellent future potential for improving railroad safety, and that there may be a way to better integrate it into the comprehensive regulatory scheme of brake effectiveness. FRA suggests that future proposals regarding the development and use of this technology address other aspects of 49 CFR Part 232 and/or satisfy the procedural requirements of 49 U.S.C. § 20306(b). However, the Board finds that, as presented in this waiver application, the use of a WTD is not an appropriate substitute for a Class 1A brake test to determine whether individual cars have effective air brakes for the purposes of the law and regulations.

In any future correspondence regarding this waiver, please refer to Docket Number FRA-2013-0080. If you have any questions, please contact Mr. Gary Fairbanks, Staff Director—Motive Power and Equipment Division, at (202) 493-6322 or Gary.Fairbanks@dot.gov.

Sincerely,



Robert C. Lauby
Associate Administrator for Railroad Safety
Chief Safety Officer