

BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION

FEDERAL RAILROAD ADMINISTRATION

FRA WAIVER PETITION DOCKET Nos. FRA-2014-0070 & FRA-2014-0075

Brake System Safety Standards for Freight and Other Non-passenger
Trains and Equipment, End-Of-Train Devices
(49 C.F.R. Part 232)

September 10, 2014

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 43 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 these petitions for a temporary waiver.

The BNSF Railway Company (BNSF) has filed two (2) petitions with FRA for a six (6) month temporary 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. Both of these petitions for waiver are discussed in this comment.

In Docket No. FRA-2014-0070, BNSF seeks a six (6) month temporary waiver of compliance from 49 CFR § 232.213(a). The current rule provides that a railroad may be permitted to move a train up to, but not exceeding, 1,500 miles between brake tests and inspections if the railroad designates a train as an extended haul train. BNSF requests relief to allow it to operate up to 1,800 miles between inspections.

In Docket No. FRA-2014-0075, BNSF seeks a six (6) month temporary waiver of compliance from 49 CFR § 232.15, Movement of Defective Equipment. The current rule provides that a railroad car or locomotive with one (1) or more conditions not in compliance with this part may be used or hauled without civil penalty liability under this part only if prescribed conditions are met. Those conditions being that the location to which the car or locomotive is being taken for repair is the nearest available location where necessary repairs can be performed on the line of the railroad where the car or locomotive was first found to be defective. BNSF requests relief to allow it to operate single cars with air brakes cut out and a crew inspection through to the destination or the next inspection point as opposed to the current nearest available location where necessary repairs can be performed. For the reasons provided below, BRC requests that FRA deny BNSF's petitions for temporary waiver.

II. Discussion.

BRC requests that both of BNSF's petitions for a six (6) month temporary waiver be denied. The purpose of BNSF's petitions is to ensure that the carrier continues to meet the expectations, both of its regulators and shippers, for the delivery of commodities across its

system. This is not a matter of improving safety; rather, it's a matter of convenience and not a justifiable reason to permit the requested relief.

The fact that BNSF makes these requests due to the economic impact on its operation does not belie the fact that rail safety is the obligation of FRA. Enforcement guidelines are in place to protect railroad workers and the general public. The carriers have faced the same or similar issues previously in their history and dealt with them under much more stringent regulations. The carrier's profits and operating complications should not usurp safety.

All trains must have the same quality inspection as prescribed by the current federal regulations to ensure the safe movement of all rail equipment. If the carriers, FRA and the labor organizations are genuinely concerned about the safety of the public and the safe operation of trains, then all inspections and air tests would be performed by a Qualified Mechanical Inspector who walks the train, physically and visually inspecting every component of a railcar prior to its movement to any other location in accordance with the current federal regulations.

BNSF argues that safety will not be compromised by granting both of these temporary waivers and offers several reasons to support its notion. For instance, in both petitions, BNSF provides that it is taking steps to improve capacity. BNSF claims it will acquire 500 new locomotives, hire 5,000 new employees and is working on engineering projects targeted to relieve congestion and improve the capacity of its physical plant.

However, these actions may not be effective at all. First, buying more locomotives does not improve the carrier's inspection process. Moreover, hiring 5,000 new employees is similarly suspect given that many of the hirings will be to replace outgoing, retiring employees from all crafts and management. Indeed, BNSF does not even provide how many of these new hires will be involved in the capital efforts described in its petitions for waiver.

BNSF also maintains that both petitions should be granted because the carrier has continued to develop its wayside detector network. However, BRC has several issues with the carrier's allegations concerning this issue.

First, according to our people in the field, BNSF has yet to fully implement its wayside detection system. Without such implementation, BNSF's plans to use its wayside detection equipment as provided in both petitions are suspect.

In addition, wayside detectors are not a substitute for hands on visual inspections. In fact, the FRA Safety Board (Board) recently had a chance to discuss the use of wayside detectors in FRA Docket No. FRA-2013-0080. In that docket, the Association of American Railroads (AAR) petitioned FRA to implement a test plan where data collected by wayside detectors would be used in lieu of a 49 CFR § 232.207 Class IA brake inspection. FRA denied AAR's request for several reasons, chief among them was that:

the use of the WTD does not replace the inspections done by a Class IA 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 IA brake test. The

wayside detectors and Class IA brake tests serve complimentary, but different functions. Intermediate 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)

The Board's conclusion is relevant in this situation given that the relief requested by BNSF would apply to approximately 615 grain and coal unit trains. As stated by the Board, wayside detectors on their own are not sufficient to replace the Class IA inspections. This is a large number of trains that will travel the carrier's system without regular inspections.

Another concern for BRC relates to arguments BNSF specifically made in Docket No. FRA-2014-0070. There, BNSF requests a mileage extension for the approximately 615 grain and coal unit trains. BNSF offers several arguments to support the requested relief with the most important being that FRA granted BNSF similar relief from section 232.213 just last year in Docket No. FRA-2006-24812.

Under Docket No. FRA-2006-24812, BNSF is currently permitted to move approximately 65 unit coal train sets operating from the Powder River Basin across BNSF's entire system up to 1,603 miles. But there is more to this docket than what BNSF discusses in Docket No. FRA-2014-0070. In Docket No. FRA-2006-24812, BNSF actually petitioned FRA to have the 65 coal unit trains move up to 1,815 miles which was an attempt to extend the mileage further under an existing FRA waiver which allowed the carrier to move trains up to 1,603 miles between inspections. In its decision, the Board provided that it had reviewed all of the available data and found that:

BNSF's request for modification of the conditions of the existing waiver to include trains traveling up to 1,815 miles between required inspections is neither in the public interest nor consistent with railroad safety. Accordingly, the Board hereby denies the requested increase in the interval between extended haul inspections.

The Board notes, however, that certain trains included in this modification request would receive the required inspections at intervals less than the 1,603 miles previously approved under this waiver. The Board has determined that BNSF's requested relief from certain trains travelling less than 1,603 miles between required inspections is in the public interest and consistent with public safety.

Simply put, under Docket No. FRA-2006-24812, the Board expressly disallows distances greater than 1,603 and merely allows BNSF to have approximately 65 coal unit trains travel up 1,603 miles between inspections.

In contrast, the situation presented in Docket No. FRA-2014-0070 is quite different. First, unlike the current relief provided by Docket No. FRA-2006-24812, the instant petition would apply to approximately 615 grain and coal unit trains instead of the 65 coal unit trains. Moreover, the distance would also be extended to 1,800 miles between inspections; 200 more miles than what the 65 coal unit trains travel between inspections under Docket No. FRA-2006-24812.

In addition, the carrier further provides that on its coal franchise alone, the relief would eliminate an average of six (6) inspection events per day. This fact is worrisome given that only 130 of the train sets transport grain while 485 unit train sets transport coal. The bottom line is that BNSF wants to move hundreds of trains farther than the Board has previously allowed while eliminating at least six (6) inspections per day for the vast majority of the carrier's trains at the same time.

The fact that BNSF wants to eliminate inspections is troubling given the data provided in Docket No. FRA-2014-0070. For instance, BNSF maintains that in 2013 alone, there were at least 1000 times that a car had to have its air cut out. This fact shows that the carrier's regiment on airbrake inspections is a failing practice that needs to be improved. If BNSF performed more inspections, the cars that need to be cut out on line could have been fixed before the car left the inspection point. BNSF does not provide how many of these cars being found are actually in trains that were in extended haul service; nor does the carrier provide when the last time the cars were inspected at all. Although these circumstances may ease congestion, it will also negatively impact the safety of both railroad workers and the general public.

BRC's next issue relates specifically to Docket No. FRA-2014-0075. There, BNSF requests relief from the provisions in section 232.15 which determine the manner in which defective equipment is moved while continuing to follow the rest of section 232.15's provisions. In place of the movement provisions, BNSF proposes to have a 24/7 help desk monitor potential "air cut out" events and convey these issues to the train crew who will then determine whether a train should be set out at the next repair location or to have it continue on to its destination or the next repair facility.

The Board faced this same issue in FRA Docket No. FRA-2013-0080. There, the Board provided that:

Title 49 CFR § 232.15's key provision is a codification of the statute at 49 USC § 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."

(Emphasis supplied) In that matter, AAR provided an alternative way to track the defects just as BNSF has done in the instant petition. On this issue, the Board noted that:

AAR's SAP allows a car with an "abnormal reading" to pass through a Class I 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 USC § 20303. The SAP procedure would thus be in violation of 49 USC § 20303, which may only be waived by using the process detailed in 49 USC § 20306, *Exemption for technological improvements*.

As referenced in its four (4) point procedure for tracking defects, BNSF will allow some trains that have no other issues, to continue with air cut out to its destination or an inspection

point. BNSF's alternative is similar to the one (1) proposed by AAR in FRA Docket No. FRA-2013-0080 because both alternatives allow abnormal brake readings to go uncorrected, thus violating the provisions of 49 USC § 20303. Moreover, BNSF has not raised 49 USC § 20306, Exemption for Technological Improvements, in either petition. There are no one-way tracks on any railroad; therefore, cars move back and forth on the system and they continually are jointed too, or pass each other in transit. As such, FRA should deny the requested relief on this basis as well.

BNSF also claims in Docket No. FRA-2014-0075 that the requested relief would further enhance safety in some instances by moving remote road truck repair locations to inspection locations. The carrier maintains that these locations are not designed for many repairs and subject both the train and mechanical crews to elevated exposures to risk.

However, these facts are contrary to the information we have received from our people in the field. According to our representatives, BNSF has added, and is in the process of adding, more Road Trucks and Rapid Responders in all areas of the carrier's system. The purpose of this action is the following: to easily and timely do inspections of the defects; to immediately identify the extent of the defect; to determine if heavy repair equipment is necessary (Road Truck) or, if the carrier can immediately make the repairs in the train so that there are minimal delays. All of this could still be done in compliance with the current regulations and improves velocity of the trains on the main lines.

There is another issue which is not discussed in the BNSF petitions for temporary waiver. The information we have from our people in the field suggests that the carrier is harassing and intimidating employees from identifying and bad ordering defective equipment on outbound trains. In addition, in many locations, the inbound trains are not worked with "air on" the equipment so many air brake defects are going unidentified. BRC has previously contacted FRA concerning these issues.

In addition, the carrier has failed to design and implement a specific training program for the utilization of a "time-o-test" to perform air brake test. Despite this fact, BNSF requires its employees to utilize them in the outbound train yard so as to reduce the number of employees it takes to do a proper Class I air brake inspection and test.

Finally, if the requested relief is granted, BNSF could then request that it be extended or even be made permanent. Should this occur, other carriers would undoubtedly seek similar relief which would further erode railroad safety across the United States.

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 BNSF petitions for temporary waiver.