



February 26, 2018

(Via online at www.regulations.gov)

Docket Operations Facility
U. S. Department of Transportation
1200 New Jersey Avenue, SE, W12-140
Washington, DC 20590

Re: Docket No. FRA-2017-0130

**Comments of the
American Train Dispatchers Association (ATDA)
Brotherhood of Locomotive Engineers and Trainmen (BLET/IBT)
Brotherhood of Railroad Signalmen (BRS)
Brotherhood Railway Carmen Division TCU/IAM
Sheet Metal, Air, Rail and Transportation (SMART)**

The five railroad Labor Organizations identified above (“Labor Organizations”) are the collective bargaining representatives of the vast majority of railroad industry workers engaged in train operations, train dispatching, signal and mechanical maintenance, inspection, testing, and repair on passenger and freight railroads throughout the United States. The undersigned Organizations and their individual and collective memberships have a direct safety interest in the outcome of this petition for a waiver from compliance of a safety regulation. The classes or crafts represented by the Labor Organizations are those who would be directly affected by the petition by the Association of American Railroads (“AAR”).

AAR, on behalf of itself and its member railroads, petitioned the Federal Railroad Administration (“FRA”) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 C.F.R. part 232, Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices. AAR specifically requests a waiver of compliance from the requirement of 49 C.F.R. Section 232.205(b) – Class I brake test-initial terminal inspection, Section 232.209(a) – Class II brake tests; intermediate inspection, Section 232.211(a) – Class III brake tests-train line continuity inspection, and Section 232.217(c) – Train brake tests conducted using yard air. Relief is sought from an element that is common to these requirements: that the test or inspection must be performed if (among other requirements) the car or cars have been off-air for more than four (4) hours. AAR requests that the 4-hour off-air restrictions in these four regulations be replaced by a

24-hour off-air restriction. For the reasons provided below, the Labor Organizations request that FRA deny AAR's petition for waiver.

The Labor Organizations appreciate this opportunity to participate in the regulatory process, and we bring 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 maintain railroad safety and, to that end, the Labor Organizations will address the safety and other issues raised by this petition for waiver.

I. Discussion.

First, the AAR is not a regulated entity and there is a procedural problem with the AAR seeking a waiver that, if granted, would be impossible to enforce. AAR represents numerous and varying railroads, and the waiver could have industry-wide implications. FRA would have to give a blanket waiver to every entity in the AAR and then — if someone opted in or out of the Association — FRA would have to somehow, keep track of AAR's membership. This seems like a task meant for AAR to keep tabs on and not FRA. Indeed, FRA's waiver process contemplates that an individual railroad is the appropriate petitioner for relief:

§211.9 Content of rulemaking and waiver petitions.

Each petition for rulemaking or waiver must:

(a) Set 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;

(b) Explain the interest of the petitioner, and the need for the action requested; in the case of a petition for waiver, explain the nature and extent of the relief sought, and identify and describe the persons, equipment, installations and locations to be covered by the waiver;

(c) Contain sufficient information to support the action sought including an evaluation of anticipated impacts of the action sought; each evaluation shall include an estimate of resulting costs to the private sector, to consumers, and to Federal, State and local governments as well as an evaluation of resulting benefits, quantified to the extent practicable. Each petition pertaining to safety regulations must also contain relevant safety data.

AAR first mentions that, as a whole, its member railroads have enjoyed better safety statistics in recent times, and the Labor Organizations agree. The Labor Organizations also hasten to point out, however, that these better safety statistics come under the current regulatory environment, where regular air brake inspection, testing and maintenance occur at regular intervals, including the 4-hour off-air requirement.

In its submission AAR also states,

“...increasing the off-air restriction from four to 24 hours will reduce employee exposure to safety hazards including slips, trips, and falls, inclement weather, and passing trains on adjacent tracks. Allowing equipment to be off-air for extended periods will eliminate the need for employees to unnecessarily walk trains to inspect air brake equipment, particularly since off-air time limits do not adversely impact the performance of the brake system.”

The Labor Organizations, first, would respond that inspections performed by qualified personnel are necessary as they are part of an overall inspection, testing and maintenance program adopted by railroads and enforced by regulations. Also, if there was some increased amount of risk associated with walking and inspecting trains, that should be reflected in the accident statistics cited by AAR; however, and as AAR points out, accidents are on the decline under the current regulatory safety structure. Moreover, AAR offers no separate data identifying employees who have been injured while performing inspections necessitated by the 4-hour off-air rule, rendering its commentary regarding such injuries wholly speculative and without any evidentiary foundation. Instead of offering the type of relevant data required by Section 211.9(c), AAR included rules for inspections and a fault mode and effects analysis in Attachment A that cannot assist FRA’s Railroad Safety Board in identifying a safety or public interest case for waiving a safety inspection.

Section 211.9 requires a petitioner to demonstrate the need for the waiver. AAR has not shown a need, merely a desire that lacks specificity. AAR makes too broad of a request to fall within the requirements of Section 211.9. AAR claims, without substantiation, that environmental impacts will be lessened due to fewer idling locomotives that are used to maintain brake pipe pressure. While locomotives do, indeed, perform that function, they also have automatic shut down and restart to lessen fuel consumption, and idling locomotives do not sit in idle simply to keep trainline air. They idle because of many reasons that have nothing to do with air brake inspections and most idling takes place long after air brake inspections are complete.

AAR’s petition should be denied. Despite the carriers’ safety assurances, the Labor Organizations have concerns with this far sweeping request for waiver given the fact that it will cover AAR’s entire membership. As noted by FRA in the 2001 rulemaking, “FRA does believe that in certain circumstances the length of time that equipment is removed from a source of compressed air can impact the integrity and operation of the brake system on a vehicle or train.” 66 Fed. Reg. 4104, 4122 (Jan, 17, 2001).

Indeed, FRA specifically noted that this applied “[p]articularly in cold weather situations where freeze-ups in train brake systems can occur.” While AAR touts advancements in managing problems associated with cold weather, AAR itself concedes in its petition that many, but not all, locomotives have operable air driers or other systems to remove moisture and contaminants from the air supply system.

Given the fact that AAR’s membership includes all of the Class I railroads operating in the U.S., it is undeniable that a large number of trainlines could still be impaired by the cold weather. Moreover, the equipment is interchanged and does not remain on the Class I railroad lines. It

just takes one piece of equipment with part of the braking operations frozen or blocked by ice to compromise the entire trainline.

FRA also commented during the 2001 rulemaking that extended off-air time was an issue “in areas where the potential for vandalism is high due to the location where equipment is left standing.” The Labor Organizations believe this is an issue as well, and one that AAR has simply ignored.

AAR disputes FRA’s positions, stating the following in its petition for waiver:

“However, industry testing does not support these concerns. In 2015, the Transportation Technology Center, Inc. (“TTCI”) conducted Class I brake tests ten times over the course of five days on a block of cars, to understand the stability of a railcar’s brake system at a variety of air temperatures and time off air. The tests concluded that there was no change in the brake system performance of any of the cars throughout the course of the testing regardless of the air temperature, amount of time off air prior to the test, or cumulative time elapsed after the initial test.”

We are not in a position to refute AAR’s test results. That being said, laboratory conditions are designed to produce optimal outcomes in most tests. Extrapolating the laboratory conditions at TTCI and grafting them onto the vast trackage of America’s rail system is not a feasible way of scaling up the test results for a whole range of environmental reasons. Testing a block of cars ten times for five days cannot be indicative of rail operations over an entire network.

This waiver petition also does not address the problems that occur in yards due to shift changes and constant classification of rail cars. Blocks of cars are added to and taken away from as a normal part of switching cars. This can happen dozens of times or more in a given shift at the railroads. Stasis is often hard to identify when examining a solid block of cars without a lead locomotive and either a rear end device or end of train marker/device. Due to this constant classification it becomes very difficult to determine exactly when a block of cars may have been tested. Increasing this time where a determination is made from 4 hours to 24 hours will require yard personnel, qualified inspectors and train crews to speculate as to whether the cars they have on their train were tested or not; surely, AAR cannot argue that this is safer than the current operation.

The advances in safety AAR now cites as the basis for relief actually came before the current rule was re-examined. Even advances in technology have not been availed to every member railroad that the AAR represents. To allow such a sweeping waiver request to go forward, each railroad would have to demonstrate that the cars on their railroad had state of the art brake valves, dryers and automatic moisture drainage. It is hard to imagine FRA granting such a “one size fits all” waiver to each of AAR’s member railroads. The safest course is to make the air test. This takes time; however, if the cars are indeed not experiencing leaks, the test will take very little time as repairs and/or setting out cars that have excessive brake pipe leakage will not be necessary. If it is necessary, then the air test performed as the regulations intend by ferreting out non-complying car(s).

The average rate of leakage does not help the outlying train that has 8 psi of leakage. Each train needs to comply with the requirement, not just the average train. FRA is clear that a train leaving an initial terminal must have 100 percent of its brakes functioning as intended. En route failures happen in an imperfect world; however, known defects discovered during air tests must be repaired, or the problem car switched out and the train retested. This is for good reason – it is the safest course of action.

II. Conclusion.

The Labor Organizations welcome the opportunity to participate in the regulatory process. We represent the skilled workers on America's Railroads and are proud of our safety record and our knowledge of what it takes to ensure safe train operations. Safety issues addressed in this process are our primary concern.

In accordance with our commitment to maintaining safety on the nation's railroads, the Labor Organizations request that the FRA preserve the advances made in rail safety and deny the AAR petition for waiver from compliance of the aforementioned safety regulations.

Respectfully submitted,




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