

Comments of the  
Transport Workers Union of America, AFL-CIO

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Before

The

U.S. Department of Transportation

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Federal Railroad Administration

**Docket No. FRA-2018-0100**

**February 27, 2019**

**Federal Register Notice**

*Volume 84, No. 25/ Wednesday February 6, 2019*

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**Petition for a Waiver from 49 CFR § 232.203**

**SUBMITTED BY THE Norfolk Southern Railway Company**

**November 15, 2018**

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**Transport Workers Union of America**



**Railroad Division**

**501 3<sup>rd</sup> Street, NW – 9<sup>th</sup> Floor**

**Washington, D.C. 2001**

**February 27, 2019**

The Transport Workers Union of America, AFL-CIO is submitting these comments in response to the Federal Railroad Administration's February 6, 2019 notice announcing Norfolk Southern Railway Company. (NS) Petition for Waiver of Compliance from certain provisions of the Federal railroad training regulations, 49 CFR 232.203 -Training requirements. Reference Docket FRA-2018-0100 (*FR Vol. 84, No. 25 – 02/06/2019*).

### **Background**

The TWU represents Carmen on several freight railroads, commuter railroads and the National Passenger Rail Corporation (Amtrak). TWU representatives also participate on the Federal Railroad Administration's Railroad Safety Advisory Committee (RSAC). Moreover, TWU has been deeply involved with power brake rulemakings. Beginning with FRA's December 31, 1992 Advance Notice of Proposed Rulemaking (*57 FR 62546*) TWU participated in workshops conducted by FRA leading-up to FRA's September 16, 1994 Notice of Proposed Rulemaking (*59 FR 47676*), and hearings that followed. Beginning in 1996 TWU was deeply involved on the Power Brake Working Group, tasked by the RSAC to assist FRA in the development of revisions to the regulations governing power brake systems for freight equipment, participating in numerous working group sessions through 1997 and beyond, leading-up to FRA's Final Rule governing Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices published January 17, 2001 (*FR Vol. 66, No. 11*). Given this background, TWU is well versed with FRA's safety regulations governing the inspection and testing of freight train braking systems.

### **Norfolk Southern Railway Company (NS) Petition for a Waiver of Compliance from 49 CFR 232.203**

As stated in the Norfolk Southern Railway Company (NS) November 15, 2018 petition for waiver, Norfolk Southern seeks a waiver from compliance with 49 CFR §232.203- Training requirements.

Norfolk Southern seeks to modify current training requirements by changing section Five where is reads

*(5) Require all employees to individually demonstrate "hands-on" capability by successfully applying the skills and knowledge the employee will need to possess in order to perform the tasks required by this part that the employee will be responsible for performing to the satisfaction of the employee's supervisor or designated instructor;*

Specifically, Norfolk Southern is seeking to use a Training simulator for the Class 1 Brake Test, in place of an actual “Hands on” training. In our view there should never be a replacement for the hands-on requirement of 49 CFR §232.203.

What is concerning to this Organization is the statement on page 2 of the redacted copy “ *The Class 1 Brake Test Simulator will also be utilized to enhance training of other crafts and supervisors including Freight Car repair and Conductors,*” It is the opinion of this organization that the Norfolk Southern Railway Company, is using their request for this waiver as a way to circumvent Regulation **49 CFR §232.205**. Norfolk Southern is well aware that the Carman Craft provides the Class 1 Brake Test on all equipment yet wants to use this Class 1 Brake Test simulator to train other Crafts. **49 CFR §232.205 Class 1 Brake Test** reads in part, “*Where a railroad's collective bargaining agreement provides that a carman (emphasis added) is to perform the inspections and tests required by this section, a carman alone (emphasis added) will be considered a qualified person. In these circumstances, the railroad shall ensure that the carman is properly trained and designated as a qualified person or qualified mechanical inspector pursuant to the requirements of this part.*”

For whatever reason Norfolk Southern has only supplied a “REDACTED” copy to be viewed by the interested parties, making it impossible to comment on positions that may or may not be relevant. The FRA should only consider the redacted submitted version and what the interested parties are able to comment on in making their decision on this waiver request.

The Organization requests that the petition for waiver from 49 CFR §232.203 should be denied and that and in accordance with **49 CFR §232.205** no craft other than Carman’s Craft should be trained on a Class 1 brake test.

Based on the foregoing, and in the interest of consistent training on the nation’s railroads, the Transport Workers Union of America respectfully urges that FRA to reject Norfolk Southern Railway Company’s petition (FRA-2018-0100).

We appreciate this opportunity to participate in this important “safety related” regulatory proceeding.



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