

BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION

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FEDERAL RAILROAD ADMINISTRATION

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FRA WAIVER PETITION DOCKET No. FRA-2019-0107

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

February 11, 2020

STATEMENT OF RICHARD A. JOHNSON, GENERAL PRESIDENT,  
BROTHERHOOD OF RAILWAY CARMEN DIVISION  
TRANSPORTATION COMMUNICATIONS UNION/IAM

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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 49 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 BNSF Railway Company (BNSF) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from 49 CFR 232.215, *Transfer train brake tests*, with respect to transfer movements between BNSF's Old South Yard and New South Yard in Houston, Texas. More specifically, BNSF proposes to conduct a Class III brake test in lieu of a transfer train brake test prior to making a transfer movement governed by this waiver. For the reasons discussed below, BRC requests FRA deny the BNSF petition for relief.

## ***II. Discussion.***

The BNSF petition for waiver should be denied. BNSF previously petitioned FRA for a waiver on this topic in 2004. (Docket Number FRA-2004-19949) There, the FRA Safety Board denied that petition without prejudice principally due to the absence of any conditions or alternate procedures included within the petition to ensure an adequate level of safety. Now, BNSF believes that the limited waiver it seeks in this context is appropriate because the risk of proceeding with the transfer movements without a full transfer train brake test is minimal and is adequately addressed by the conditions BNSF proposes. However, substituting a Class III brake test in lieu of a transfer train brake test does not provide the same level of safety to both railroad workers and the general public. In fact, several points made by the Safety Board in its denial of BNSF's previous petition in Docket Number FRA-2004-19949 still support this view.

First, the Safety Board found that "the movement of cars between the Old South Yard and the New South Yard constitutes a train movement, thereby requiring an air brake test under 49 CFR part 232." More specifically, the Safety Board found that:

[t]he determination as to whether a particular movement is a train movement is a multi-factor analysis based upon various court decisions dealing with the subject. See 66 FR 4148-49 (January 17, 2001). FRA believes that the following factors necessitate a determination that these movements involve conditions that create a need for power brakes during the movements: the movements between these yards (from starting point to ending point) exceed one mile in distance, the movements involve a substantial number of cars, many of which contain hazardous materials, the movements utilize a main line track with heavy traffic, the movements traverse both a navigable water way and a major

State highway, and the movements occur within 1/4 mile of a major residential area and the University of Houston. As FRA believes these movements constitute train movements, FRA's Safety Board considered the specific merits of BNSF's request for waiver of the provisions contained in 49 CFR part 232. Based on its review of the petition, the Safety Board is denying the petition without prejudice.

Second, the Safety Board also noted that “[l]ocal FRA inspectors insist that they have always required the performance of an air brake test for these train movements and that a transfer train brake test would be the most likely test to be expected.” Indeed, according to information gathered from our representatives in the field, local FRA inspectors still believe that a transfer train brake test should be done at this location. In fact, our representatives recently spoke to a local FRA inspector about BNSF’s current petition for waiver. The inspector stated that some type of request to allow these transfer trains to move between the yards without an air test is made to FRA from time to time but that these requests have always been denied. In addition, the inspector was also very confident that this waiver would be denied due to the safety issues involved in the requested relief. Indeed, similar to the issues raised by the Safety Board in its previous denial, the inspector provided that safety was still a concern because the transfer train travels on the main line, the main line parallels another main line, and the main line crosses over the Old Spanish Trail which is State Highway 90.

Finally, the Safety Board also found issues with BNSF’s shared trackage rights at the location with the Union Pacific Railroad (UP) and the Houston Belt Terminal Railroad (HBTR). Pursuant to a joint facilities agreement, HBTR leases the main line from BNSF while UP dispatches and maintains the main line. On this point, the Safety Board provided that:

[t]he main line over which a portion of these train movements occur is heavily traveled. Local UP representatives estimate that there is an average of one train every 20 to 30 minutes traversing the main line. Furthermore, UP officials state that they believe transfer train brake tests are required on the involved trains and were being performed by BNSF prior to engaging in these movements.

The Safety Board went on to note that since “UP is the owner of the involved main track and operates a significant number of trains over the trackage, the Safety Board is reluctant to grant the requested waiver without UP’s support for such an action.” BNSF points out in its current petition for waiver that UP does not actually own the main line and only dispatches and maintains the main line under the joint facilities agreement mentioned above. However, the Safety Board’s point is still valid; since UP dispatches and maintains the main line, its input is still an important factor in granting the requested relief. As far as we are aware, there is currently no input from UP or even HBTR regarding the instant petition for waiver.

### ***III. Conclusion.***

The Brotherhood 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 petition for waiver.