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

Re: Docket No. FRA-2020-0033

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

The railroad Labor Organizations identified above (“Labor Organizations”) are the collective bargaining representatives for the vast majority of railroad industry workers engaged in train operations, train dispatching, signal, maintenance of way and mechanical maintenance, inspection, testing, and repair on passenger and freight railroads throughout the United States.

The Labor Organizations and their individual and collective memberships have a direct safety interest whenever FRA determines to waive safety regulations. The public also shares this interest, especially when a waiver of regulations regarding the performance of tests that confirm the proper functioning of locomotive and train air brake systems is involved. The classes or crafts of employees represented by the Labor Organizations include those who will be directly affected by the waiver of the safety regulations discussed in these comments. Particularly, we wish to dispel the notion that waiving current air test requirements promotes safety at a time when railroads simultaneously work to avoid any requirement to upgrade their current braking systems.

These comments are submitted in response to the Notice of Petition for Waiver of Compliance published in the Federal Register, on May 27, 2020 by the Federal Railroad Administration (“FRA”). 85 Fed. Reg. 31850. The Notice states that

BNSF Railway Company (BNSF) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 215, Railroad Freight Car Safety Standards, and part 232, Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-Of-Train Devices.

*Id.*

There are three primary reasons FRA to deny the Petition, which we will address in detail below. First, BNSF has failed to comply with FRA's requirements that govern the filing of petitions for waiver of railroad safety regulations. Rather, the Petition establishes merely that BNSF does not want to obey the regulation.

Further, Class I railroads have resisted upgrading their existing air brake technology, claiming that such upgrades are too costly and burdensome. This is consistent with the industry's position as far back as the original Power Brake Act of 1893, as well as subsequent revisions thereto.<sup>1</sup> Indeed, for over 75 years the industry has only willingly supported technologies that it believes railroads can parlay into the elimination of jobs.

Finally, adding locomotives to a train—whether within the train's consist or at the rear end—is as old as railroad operations in grade territory. While the adoption of distributed power (“DP”) technology has eliminated the need for additional locomotive engineers to operate these “helper” locomotives, this economic “advantage” is not mystically propagated to functionality or sufficiency of the train's air brake system. Therefore, the Labor Organizations submit, when the original configuration of a train is changed, all car inspection and air brake testing safety regulations that are already in place must be preserved, including 49 C.F.R. § 215.13.

FRA's Rules of Practice require that each “petition for a permanent or temporary waiver of a safety rule, regulation or standard [must be] filed as prescribed in §§ 211.7 and 211.9.” 49 C.F.R. § 211.41(a). As to the content of a waiver petition, FRA requires as follows:

**§ 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.

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<sup>1</sup> Most recently, the Association of American Railroads (“AAR”) has played an almost devotional role in preserving the *status quo* on the nation's railroads at a time when better brake technology exists. For example, when a regulation was proposed to require the use of Electronic Controlled Pneumatic (“ECP”) brakes—which stop trains faster and more efficiently, release car brakes release faster, and eliminate the need for a locomotive's compressor to recharge a locomotive's main reservoir before the locomotive engineer can reapply the train brakes—AAR led the charge for industry obstructionism of the highest order. After prevailing, AAR was quoted as saying, “The ECP brake mandate was not justified and must be repealed. The Association of American Railroads is pleased with the U.S. Department of Transportation's decision to rescind the rule in accordance with the FAST Act.” *See Railway Age*, Dec. 5, 2017 ed. (retrieved June 10, 2020).

As will be shown below, BNSF has not set forth either the text not the substance of the regulation it seeks to have waived, as required by § 211.9(a). BNSF also has not explained the need for the waiver, or the extent of the relief sought, and it has not identified and describe the persons, installations and locations to be covered by the waiver, as mandated by § 211.9(b). Nor has BNSF provided any evaluation of anticipated impacts of the waiver and all relevant safety data, contrary to § 211.9(c).

Instead, the entirety of BNSF's stated rationale for the waiver request is as follows:

BNSF Railway Company ("BNSF") requests regulatory relief from the inspection requirements of 49 CFR 215.13 Pre-Departure Inspection when combining two existing trains (i.e., when two separate consists including one or more cars and on or more locomotives) that have been properly inspected and tested in compliance with all applicable regulations (i.e. both trains have had a Class I brake test under § 232.205, Class IA brake test under § 232.207, or have been designated as extended haul trains § 232.213 and are compliant with all requirements of that section). This request will allow BNSF to combine two existing, operating trains without additional inspection, other than a Class III brake test. This relief will also allow any subsequent separation of the two consists without the need of any additional inspections of either consist (with the exception of a Class III brake test), provided a record of the original consist remains intact.

FRA-2020-0033-0001 at 1.

The FRA's Railroad Safety Board ("Board") has a long-standing policy which prohibits "splitting" Class I air brake inspections between two trains. The Board made this determination in 2015 when it denied a similar waiver request for this reason and because the request was defective on the process as written in §211.9(c). BNSF has introduced no evidence in their current request that would lead the FRA Railroad Safety Board to a different conclusion or that conflicts with the Board's long-standing policy.

See FRA-2015-0126

The remainder of the Petition consists of a page and a half of promises of a future filled with rainbows and unicorns if the waiver is granted, along with a 45-slide commercial from the vendor of the DP technology that does not address FRA-required car inspections and air brake tests in any form or fashion. The Petition clearly does not meet the requirements of FRA's Rules of Practice and should be denied for this reason alone.

BNSF indicates that it is relying on research purporting to show that DP technology "improves overall braking characteristics by having multiple points within the train with cut-in brake valves." However, it does not share this research and FRA may not infer what this invisible research "proves." And, again, research pertaining to air brake characteristics during the operation of a train has nothing to do with FRA's pre-departure inspection and testing requirements.

The specific regulation that BNSF requests be waived—49 C.F.R. § 215.13—requires that ***"[a]t each location where a freight car is placed in a train, the freight car shall be inspected*** before the train departs", and permits "[t]his inspection [to] be made before or after the car is placed in the train." § 215.13(a) (emphasis added). If a § 215.11-designated car inspector is on duty for the purpose of inspecting freight cars at the location where the car is placed in the train, then the inspection must determine whether the car fully complies with all of the requirements of Part 215. § 215.13(b). However, in the absence of a § 215.11-designated car inspector, the rule mandates that "the inspection required by paragraph (a) ***shall, as a minimum, be made for those conditions set forth in appendix D*** to this part." § 215.13(c) (emphasis added).

Appendix D to Part 215, in turn, states

At each location where a freight car is placed in a train and a person designated under § 215.11 is not on duty for the purpose of inspecting freight cars, the freight car shall, as a minimum, be inspected for the imminently hazardous conditions listed below that are likely to cause an accident or casualty before the train arrives at its destination. These conditions are readily discoverable by a train crew member in the course of a customary inspection.

1. Car body:
  - (a) Leaning or listing to side.
  - (b) Sagging downward.
  - (c) Positioned improperly on truck.
  - (d) Object dragging below.
  - (e) Object extending from side.
  - (f) Door insecurely attached.
  - (g) Broken or missing safety appliance.
  - (h) Lading leaking from a placarded hazardous material car.
2. Insecure coupling.
3. Overheated wheel or journal.
4. Broken or extensively cracked wheel.
5. Brake that fails to release.
6. Any other apparent safety hazard likely to cause an accident or casualty before the train arrives at its destination.

To suggest that combining two trains with one another does not involve adding the inbound cars from the rear portion of the combined train to those comprising the front portion of the combined train would be to contort the English language into an unrecognizable shape. Moreover, and as should be obvious, the LOCOTROL technology is not designed to and cannot detect any of the unlucky 13 “imminently hazardous conditions”—as Appendix D describes them—the § 215.13 inspection is intended to identify.

Furthermore, BNSF seeks to rely on each train’s prior § 232.207 Class IA brake test, or the prior § 232.213 extended haul train test where applicable, to serve as the only necessary brake system inspection and testing, supplemented by a § 232.211 Class III trainline continuity inspection. A § 215.13 inspection by a § 215.11-designated car inspector will identify any “wear-and-tear” on the cars’ brake system components, as well as any visible anomalies in the brake system that occurred after the § 232.207 or the § 232.213 test was performed, in addition to the hazards enumerated in Appendix D. Granting the waiver would eliminate this safeguard.

The bottom line is that railroads have no other way to confirm the efficacy of air brakes—and the condition of air hoses, brake rigging, brake shoes and other appurtenances—other than to inspect and test the equipment at the time the trains are combined and before departure. Indeed, changing the lead unit of a train also changes main reservoir, brake valves, air compressor and many other modal elements. Simply put, along with those changes, there must be confirmation that all modes were successfully either engaged or disengaged when and where they are appropriate.

Thus, even though the cars have been tested under the previous configuration, these cars now have a different source from which air is added to and subtracted from the brake pipe, and a different source is triggering every car’s air brake control valve. Both Train A and Train B may have been found to compliant with all FRA air brake requirements upon inspection and testing, as independent and unique entities. However, is irrelevant

regarding combining these two unique trains into a new Train AB. Fidelity to railroad safety demands inspection and testing to confirm compliance, rather than guesswork or a strong economic desire to move trains faster or with fewer employees. The complexity of combining trains together and separating them with the change in lead locomotives for what once was Train B only underscores the importance of complying with the very regulation from which BNSF here seeks relief.

BNSF contends that performing a Class III brake test on the combined trains is sufficient. We disagree, for the reasons previously stated. There currently is no “fail safe” protection in the normal operation of air brake systems, except when the continuity of the train line is broken. Thus, it is dangerous to remove the safety redundancy provided by the regulation that is the target of BNSF’s petition. Two trains, each of which passed inspection and an air test when it was 6,500-foot long may or may not pass that same air test when they are combined, perhaps hundreds of miles down the road, into a 13,000-foot long new, single train. The only way to determine this with certainty is to conduct an inspection that complies with 49 C.F.R. § 215.13.

Not to be deterred, BNSF’s Petition contends:

“BNSF operates thousands of trains each month using the proven advances of LOCOTROL or Radio-Controlled Distributed Power Technology (DP) developed by GE Transportation Systems. The wireless control of multiple locomotives separated by extended stretches of cars has been successfully developed, tested and implemented with over 35 years of safety innovation. The utilization of DP technology allows locomotives to be placed strategically in a train and be controlled remotely by a leading locomotive at the head of the train. DP equipped locomotives can be placed throughout the train and be conditioned to respond to radio commands to push, pull and brake using both dynamic and air thereby optimizing the desired effects of in train forces which are varying with changing grades and elevations across the train.”

FRA-2020-0033-0001 at 1.

BNSF’s argument confounds LOCOTROL—an operational and train control technology—with the purposes of the § 215.13 inspection requirement, which does not, by its very nature, occur during train operations. It seems as though, by shouting “technology”, BNSF expects FRA to make the Pavlovian response “waiver”. Regardless of how robust LOCOTROL may be, the technology cannot overcome a braking system that has become deficient because two trains were combined or discover imminently hazardous car defects that arose after the train left the location where its § 232.205 or § 232.213 brake inspection/test was performed.

Trains that are longer than 10,000 feet—operating over a track profile with different portions of the train on different gradients and traversing different curve structures—present a constant challenge in maintaining in-train forces. Longer trains also means more cars and more weight, which requires more braking capacity and distance to stop. By failing to submit an “evaluation of anticipated impacts of” the waiver in this regard, as required by § 211.9(c), BNSF seemingly asks for an act of faith on FRA’s part; but faith is not proof, underscoring the need to deny the Petition.

If granted, the waiver would foist a considerable amount of risk onto BNSF employees and the public. This is because the employees who operate the equipment are the first employees to pay the price—sometimes with their lives—when brake equipment either fails, or under-performing braking apparatus goes undetected for lack of inspections. The carriers may suffer only less monetary gain, while the risk to the employees and the public is monetary *and* physical.

A railroad accident can be a terrifying and dangerous. They can occur even when all safety regulations are being faithfully obeyed. A runaway train that derailed in San Bernardino, California on May 12, 1989, led to six deaths, 20 injuries and resulted in damages totaling \$29.9 million, when adjusted for inflation, including a post-derailment rupture and explosion of a gasoline pipeline. *See* NTSB RAR 90-02. This accident led to the End of Train Device (“ETD”) regulation, but even this important safety measure could not prevent all loss of train control. The industry learned that lesson the hard way after the Granite Canyon, Wyoming collision and derailment in 2018, which was caused by a kinked air hose. *See* NTSB RSR 1902. Another kinked air hose negated the efficacy of a train’s ETD in the November 23, 2018 accident west of Cheyenne, Wyoming.

LOCOTROL cannot, and is not intended to, perform the mandatory § 215.13 inspection. The petition should be denied. Denying this petition will be consistent with—if not mandated by—FRA’s previous ruling.

Once again, we appreciate the opportunity to comment.

Respectfully submitted,



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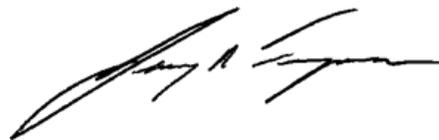
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