A bold voice for transportation workers

July 7, 2021

John Karl Alexy
Associate Administrator for Railroad Safety, Chief Safety Officer
Federal Railroad Administration
1200 New Jersey Avenue SE
Washington, DC 20590

RE: UP Brake Inspection Waiver
FRA 2021-0031

Dear Mr. Alexy,

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Federal Railroad Administration's request for comment on its petition for waiver of compliance from Union Pacific Railroad Company. TTD consists of 33 affiliate unions representing workers in all modes of transportation, including employees who operate trains and carmen who perform brake inspections. We therefore have a vested interest in this policy.[1]

The requested waiver would allow Union Pacific (UP) to combine two existing and operating trains without additional inspections, besides a Class III brake test, and subsequently separate the two trains without additional inspections, besides a Class III brake test, provided that a record of the original consist remains intact. The waiver would apply to current requirements at 49 CFR 215.13, *Pre-departure inspection*, which requires an inspection when combining two separate consists including one or more cars and one or more locomotives that have been properly inspected and tested in compliance with all applicable regulations, meaning that both consists have had a Class I brake test (§ 232.205), Class IA brake test (§ 232.207), or have been designated as extended haul trains and are compliant with all requirements of § 232.213.

TTD opposes this petition and urges FRA to reject it as the conditions requested by UP will not provide equivalent levels of safety (as required by 49 U.S.C. § 20103(d)) and present clear potential for decreases in safety of critical braking functions. Adding or removing cars from a train

[1] Attached is a list of TTD's 33 affiliated unions.

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Greg Regan, President / Shari Semelsberger, Secretary-Treasurer

always poses a risk of interrupting the consistency of brake mechanisms. These risks are serious enough that it is not appropriate to assume that the Class I brake test performed on each separate consist will suffice once the cars are newly connected. The new train needs to be fully inspected to ensure that the connection was performed properly and that the act of connecting the cars did not introduce new issues or defects, as is currently required by current regulation.

Under current procedures, before departing from an originating terminal, all brakes must be engaging and disengaging properly as required by 49 CFR § 232.205. These origination inspections also include checks of important safety devices such as grab irons, brake components, hand brake wheels, brake release levers, brake shoes, platforms, and chains to actuate brakes manually. There are a variety of common issues frequently identified by pre-departure inspections such as missing brake shoes or wheel flanges that can pose serious risks to operators and other rail users if not addressed.

Adding cars to a train is a delicate process for which the current inspection process is critical to ensure safety. There is no guarantee that simply combining trains will mean that every brake is properly engaging as part of the newly formed train. There are also safety concerns regarding on-board air compressors anytime trains are combined. Added length will always cause additional strain on the air compressor, and if there are any kinks or restrictions in the air brake mechanisms, the affected part of the train may not be able to brake properly, potentially causing serious harm. UP has argued that by limiting the origin and destination points where this waiver would apply, the safety concerns are mitigated. We believe this argument is fundamentally flawed. If the policy is not safe for the entire rail system, it is not safe for a subset of origins and destinations. Further, the list of origins and destinations provided by UP represent a range of locations with a variety of conditions and local staffing and infrastructure. There can be no argument made that these locations, many of which are particularly large terminals, represent anomalies that warrant special consideration.

TTD believes, based upon the prevalence of errors identified by qualified mechanical inspectors, that Class I brake tests are the only reliable method to ensure that every brake is engaging and disengaging as designed. A Class III brake test is simply not adequate to ensure the same level of safety. UP has argued that the use of distributed power (DP) configuration will mitigate the risk posed by skipping the Class I brake tests. We believe that this logic is highly problematic. While DP can reduce some forces a train experiences, that benefit is not unlimited. Advances in technology are not an excuse to whittle away at bedrock safety regulation. Abandoning critical safety checks does not serve the public interest and the presence of distributed power units should not be an invitation to take one step forward and two steps back.

In its justification, UP further states that abandoning the required Class I brake test would actually be safer for rail workers because they would not be exposed to the threat of tripping over tracks, potentially falling into live tracks with oncoming trains. While the risk of tripping is worthy of consideration, Class I brake tests are a proven tool that overall improves safety of the rail system drastically. Additionally, there are many practices that can reduce the risk of tripping or slipping

on tracks including ensuring inspectors have adequate time in which to conduct their inspections, even during challenging conditions. We feel that UP should first employ other strategies to protect their workers before abandoning critical safety tests.

Finally, UP's petition cites that the proposed Class III brake test would rely on End-Of-Train (EOT) devices, which are subject to technology failures caused by increasingly long trains. The National Transportation Safety Board found that failures in the EOT and related brake tests led to a 2018 train collision that killed two rail workers.[2] There is no substitute for a full inspection conducted by an experienced inspector who can verify that every brake on the train is working and the equipment is in proper order and free of that which could create dangerous situations when brakes are applied, particularly if the train is being combined with additional cars that make it longer and heavier.

In a similar petition submitted in 2020 by BNSF, FRA found a lack of justification to support that Class III brake tests would maintain the same level of safety as Class I tests after labor organizations raised serious concerns. In response, FRA issued many stipulations such as an exception for high-hazard flammable trains, use of an emergency hotline, robust data collection, mileage limits, and review of wayside detector data. FRA also required that should an accident or derailment occur, BNSF must immediately return to performing Class I brake tests. While it is our firm belief that FRA erred in the granting of BNSF's waiver in 2020 and that this request should be denied, if it decides to proceed with UP's request it must apply as robust, if not more strenuous, conditions. The need for these additional control mechanisms illustrates the risk posed by avoiding Class I brake tests, and we ask FRA to consider the issue fully.[3]

For these reasons, TTD believes that UP has failed to demonstrate that a Class III brake test would ensure the same level of safety as a Class I brake test when combining or separating consists. We urge FRA to reject this petition and thus protect rail employees as well as all users of our nation's rail system. We appreciate the opportunity to comment on this matter and look forward to working with the administration in the future.

Sincerely,

Greg Regan
President

[2] https://www.trains.com/trn/news-reviews/news-wire/ntsb-brake-and-end-of-train-device-problems-led-to-deadly-sherman-hill-runaway-updated/
[3] https://www.goiam.org/wp-content/uploads/2020/09/FRA-2020-0033-BNSF-train-splitting-Decision-Letter.pdf

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TTD MEMBER UNIONS

Air Line Pilots Association (**ALPA**)
Amalgamated Transit Union (**ATU**)
American Federation of Government Employees (**AFGE**)
American Federation of State, County and Municipal Employees (**AFSCME**)
American Federation of Teachers (**AFT**)
Association of Flight Attendants-CWA (**AFA-CWA**)
American Train Dispatchers Association (**ATDA**)
Brotherhood of Railroad Signalmen (**BRS**)
Communications Workers of America (**CWA**)
International Association of Fire Fighters (**IAFF**)
International Association of Machinists and Aerospace Workers (**IAM**)
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (**IBB**)
International Brotherhood of Electrical Workers (**IBEW**)
International Longshoremen's Association (**ILA**)
International Organization of Masters, Mates & Pilots (**MM&P**)
International Union of Operating Engineers (**IUOE**)
Laborers' International Union of North America (**LIUNA**)
Marine Engineers' Beneficial Association (**MEBA**)
National Air Traffic Controllers Association (**NATCA**)
National Association of Letter Carriers (**NALC**)
National Conference of Firemen and Oilers, SEIU (**NCFO, SEIU**)
National Federation of Public and Private Employees (**NFOPAPE**)
Office and Professional Employees International Union (**OPEIU**)
Professional Aviation Safety Specialists (**PASS**)
Sailors' Union of the Pacific (**SUP**)
Sheet Metal, Air, Rail and Transportation Workers (**SMART**)
SMART-Transportation Division
Transportation Communications Union/ IAM (**TCU**)
Transport Workers Union of America (**TWU**)
UNITE HERE!
United Automobile, Aerospace and Agricultural Implement Workers of America (**UAW**)
United Mine Workers of America (**UMWA**)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (**USW**)

These 33 labor organizations are members of and represented by the TTD