

BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION

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FEDERAL RAILROAD ADMINISTRATION

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FRA WAIVER PETITION DOCKET No. FRA-2018-0049

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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)

August 15, 2018

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

3 Research Place  
Rockville, Maryland 20850

## ***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 47 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. In addition, BRC also joins and supports the joint comments filed by rail labor regarding this matter as well.

BNSF Railway (BNSF) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 232.213, 232.15, and 232.103(f). In addition, BNSF requests an exemption from the requirements of Title 49, United States Code (U.S.C.), section 20303, which prohibits the movement of a rail vehicle with defective or insecure equipment beyond the nearest available place at which the repairs can be made. See 49 U.S.C. 20306.

BNSF seeks waiver from these provisions so that FRA will approve a five-year pilot program conducted on a segment of the BNSF system to demonstrate that the use of wheel temperature detectors to prove brake health effectiveness (BHE) will improve safety, reduce risks to employees, and provide cost savings to the industry. Currently, the effectiveness of railroad brake systems is verified by Class I initial terminal and Class IA intermediate brake tests. BNSF proposes to supplement these visual inspections with a wayside WTD, a device designed to directly measure the rise in wheel temperatures because of a brake application. For the reasons provided below, the BRC requests that FRA deny BNSF's petition for waiver.<sup>1</sup>

## ***I. Discussion***

This is the fourth time in the last 12 years that the Carriers have attempted to substitute wayside detectors for Class IA brake tests in designated pilot programs. The Union Pacific Railroad (UP) was unsuccessful in 2006 (FRA-2006-25564) as was the Association of American Railroads (AAR) in 2013 (FRA-2013-0080). However, UP did succeed in 2017 (FRA-2016-0018) in a situation similar to the present petition filed by BNSF. This will be referred to as the "UP pilot program."

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<sup>1</sup> As an initial matter, BRC would like to note that the time period for allowing comments by FRA in this matter was unusually short; only 30 days were provided for public comment. This represents a change to agency practice that is detrimental to the notice and comment process as it limits the ability of the public to participate in important matters such as this petition for waiver.

The proposed pilot effort in BNSF's petition for waiver will focus on the revenue-service unit intermodal trains running on the BNSF between the intermodal facilities in California and unloading facilities at Chicago, Illinois. The WTDs that monitor the system are located at locations on both the east and west of Belen, New Mexico. Under current BNSF train operations, the intermodal trains running in this service are classified as extended haul trains and operate intact up to 1,702 miles between brake tests required under part 232. Each test train will receive a Class I brake test in accordance with part 232 and a pre-departure inspection in accordance with section 215.13 at the intermodal facility in California or Chicago, IL. Each test train will then leave the intermodal facilities or Chicago and travel to destination in Chicago or California. In-route the trains cars will pass WTD monitors near Belen for recording of braking performance through power braking events.

It is BRC's position that while wayside technologies may in fact be a very useful tool for detecting certain safety defects, such technology should only be used in conjunction with the inspection regime now required and not in place of it. Simply put, comprehensive hands-on brake inspections such as what is now known as the Class I and Class IA brake tests have a long history of contributing to safety in the railroad industry and their use must continue. It should also be noted that, hands-on, visual inspections include critically important tactile components such as pulling or pushing as well as olfactory components to validate whether detected conditions are compliant with FRA safety provisions. These are abilities that the wayside detectors clearly do not possess. The following reasons support our position that FRA should deny BNSF's petition for waiver.

First, if FRA grants this petition of waiver, there will be two active pilot programs without field tested data to support either of them. This is an extraordinary situation. The UP pilot program was just created and no train has even been tested under it. This is especially concerning given that UP's pilot program was supposed to assist in determining future issues regarding WTDs. Indeed, in the FRA Safety Board's February 23, 2017, decision letter, the FRA noted that:

FRA believes that this waiver's limitation of WTD use to a temporary testing program requiring stakeholder participation, input, and oversight addresses the labor organizations' concerns. The collaborative process of all interested parties working in the test committee framework will ensure the integrity of the test plan and test data, and will provide a mechanism where the work products of the committee can be used with confidence to inform potential future waivers and rulemaking regarding the use of WTD technology.

(FRA-2016-0018).

Since no trains have even begun to operate under the UP pilot program, there is no collaborative data from the UP pilot program to assist in determining whether BNSF's petition is justified. This is a particular concern given that BNSF is requesting waiver from section 232.213 which governs the inspection requirements for extended haul trains. If waiver of this section is granted, the applicable BNSF trains will travel 1,702 miles between testing. However, since no UP train has yet to move under the parameters of the UP pilot program, there are no supporting facts to justify waiver from section 232.213. Moreover, even if there were data available, it

would not necessarily support the BNSF's position given that its trains will go up to 1,702 miles between testing while the UP trains will only be traveling up to 1,500 miles.

Second, BNSF wants to waive the requirements of section 232.15. This section requires the railroad to repair defective equipment once it reaches a destination where that equipment can be repaired. Instead, BNSF requests that the trains keep going with the defective equipment beyond the point of repair. This, in turn, asks the train crew to assume the risk of travelling with defective equipment past a point where that risk can be repaired. It is a normal part of railroad operations to move defective equipment to a facility where it can be repaired; however it is not normal to bypass a repair facility because it might save money. Any cost savings referred to in the request have not been demonstrated.

Third, BNSF also wants to waive the requirements of section 232.103(f). Waiving this section would abandon the requirement to have air-brakes that are in "effective operating conditions," prior to departure. Furthermore, the rule contains standards that air-brake systems must comply with and defines the standard in the rule. To abandon this rule without an effective regulation in its place does not, in the opinion of BRC, take the safe route.

Fourth, BNSF also states that the waiver will also "permit the railroads, in due course, to focus mechanical activities more toward fixing the increased numbers of cars." All this statement demonstrates is that the railroads cannot comply with the regulations because either they have too many cars or too many of their cars are defective. If the waiver somehow allows the railroad to identify more problem cars, that would seem to simply exacerbate the problem they are already saying is at issue. Rail Labor testified in a hearing before FRA on this issue on February 19, 2014. See FRA-2013-0080. After that hearing, FRA denied the AAR request to waive section 232.103(f) and section 232.15. This is simply one of AAR's member railroads trying to get another bite at the apple when they have not shown why WTDs should work alone without the aid of human beings to decipher the data WTDs generate and humans to fix the problems discovered and missed by WTDs.

Finally, the lack of regulation is a grave concern to BRC given the carrier's need for economic efficiency. Since WTDs are a non-regulated piece of technology, they do not have to be functioning all of the time in any particular manner. Any railroad can choose to equip WTDs, change their location or turn their power off. Such circumstances do not bode well for enhanced safety.

## ***II. Conclusion***

BRC always welcome the opportunity to participate in the regulatory process. Safety issues addressed in this process are among the primary concerns to us. In accordance with our commitment to maintaining safety on the nation's railroads, BRC suggests that FRA deny the BNSF petition for waiver.