



July 19, 2018

(Via online at www.regulations.gov)

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

Re: Docket No. FRA-2018-0049

**Comments of the
American Train Dispatchers Association (ATDA)
Brotherhood of Locomotive Engineers and Trainmen (BLET/IBT)
Brotherhood of Railroad Signalmen (BRS)
Brotherhood Railway Carmen Division TCU/IAM
Sheet Metal, Air, Rail and Transportation Division (SMART-TD)**

The five railroad Labor Organizations identified above (“Labor Organizations”) are the collective bargaining representatives of the vast majority of railroad industry workers engaged in train operations, train dispatching, signal and mechanical maintenance, inspection, testing, and repair on passenger and freight railroads throughout the United States. The undersigned Organizations and their individual and collective memberships have a direct safety interest in the outcome of this petition for a waiver from compliance of a safety regulation. The classes or crafts represented by the Labor Organizations are those who would be directly affected by the petition by the BNSF Railroad (“BNSF”)

For the reasons provided below, the Labor Organizations request that FRA deny BNSF’s petition for waiver.

The Labor Organizations appreciate this opportunity to participate in the regulatory process, and we bring to that process a great deal of experience and practical knowledge in the area of railroad safety. The time period for allowing comments by FRA is unusually short and represents a significant change in what historically has been a longer time window for accepting public comment. Our experience has taught us that full compliance with FRA’s safety regulations is the surest way to maintain railroad safety and, to that end, the Labor Organizations will address the safety and other issues raised by this petition for waiver of compliance from 49 C.F.R. §§ 232.213, 232.15, and 232.103(f).

The BNSF requests a waiver by FRA in order to use wayside detectors to replace intermediate air brake inspections for trains between California and Chicago. Specifically, BNSF petitions FRA to conduct a pilot program on a segment of their system to

“...Demonstrate that the use of wheel temperature detectors (WTD) to prove brake health effectiveness (BHE) will improve safety, reduce risks to employees, and provide cost savings to the industry.”

See FRA-2018-0049-0003.

To support its claim, BNSF has provided FRA with a “Safety Assurance Plan,” a “Video Link for Brake Health Effectiveness,” and a “Brake Health Effectiveness Development Summary.” BNSF goes to great lengths to demonstrate the technical prowess of its Wheel Temperature Detectors (“WTDs”). WTDs are a non-regulated piece of technology that do not have to be functioning. Any railroad can install such technology, change its location (or not), and/or turn the power on or off at its whim. This is the problem with the request. The Labor Organizations do not take issue with requests for pilot programs as a general matter, when the purpose is to discover how certain operations may work in a given location with certain equipment and measured over time.

The Labor Organizations also do not take issue with the WTDs *per se*, and our members work with them on a daily basis because of their value as supplemental tools for the inspector. The Labor Organizations have held this position because their experience instructs that people working together with new tools (devised by people) can lend a powerful hand in improving safety. What BNSF proposes here is the ability to waive the regulation (§ 232.15) where the railroad is required to repair defective equipment once it reaches the first destination where that equipment can be repaired and, instead, continue the trip with the defective equipment *beyond* the point where it can be repaired. This waiver has nothing to do with the detection and identification of a defect; instead, it exposes the train crew to the risk of travelling with defective equipment past a point where that risk can be mitigated or eliminated by timely repair.

So the very reason the BNSF argues that its WTDs will improve safety and find more defects in the same request, it appeals to FRA to allow defective equipment to remain defective while it travels down the railroad past the point where repairs can be made. This is dangerous and unnecessary. The Labor Organizations understand on a first-hand basis that defective equipment needs to be moved to a point where repairs can be performed. That is a normal part of railroad operations. What is not normal is to bypass a repair facility because someone believes that provides cost savings. Any cost savings referred to in the request are not demonstrated, but — even if assumed — those costs come solely at the expense of the safety of the crew.

BNSF’s request for FRA to waive regulations contained in § 232.213 would waive so many requirements we only reference the rule here because to waive § 213.213 would be a wholesale abrogation of a longstanding safety rule that, itself, provided significant relief from historic air brake requirements that were established pursuant to positive federal law. Waiving part § 232.103(f) would abandon the requirement that air brakes must be in “effective operating condition,” prior to departure. Further 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 the Labor Organizations, take the safe course.

There is no need for a waiver to deploy WTDs. Indeed, they already are deployed and the current regulations do not prohibit their use. BNSF also states that its waiver, if granted

“...will 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 (used plural by BNSF, without further clarification what other railroads BNSF refers to) cannot comply with current 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. Continuing defective cars in service beyond repair points only makes the situation worse, and will severely degrade railroad safety. Labor made precisely this point during a hearing before FRA on this issue on February 19, 2014.

After that hearing FRA denied the Association of American Railroads’ (“AAR”) request — including on behalf of BNSF — to waive § 232.103(f) and § 232.15. *See* FRA-2013-0080. This is simply one of AAR’s member railroads trying to get another bite at the apple when it has 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. We respectfully request that FRA deny the railroad’s request once again, because it simply does not need a waiver to use WTDs. It would only need a waiver to abandon safety inspections, which FRA should not permit. Thank you for the opportunity to comment.

Respectfully submitted,



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