

BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION

FEDERAL RAILROAD ADMINISTRATION

FRA WAIVER PETITION DOCKET No. FRA-2007-28454

Brake System Safety Standards for Freight and Other Non-passenger Trains Railroad Freight Car
Safety Standards and Railroad Safety Appliance Standards
(49 C.F.R. Part 232)

August, 2007

STATEMENT OF RICHARD A. JOHNSON, GENERAL PRESIDENT,
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TRANSPORTATION•COMMUNICATIONS INTERNATIONAL UNION

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I. Introduction.

My name is Richard A. Johnson. I am the General President, Brotherhood Railway Carmen Division, Transportation•Communications International Union (BRC) and an International Vice President of the Transportation•Communications International Union (TCU). I have been a carman for 36 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 appliance 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 the Federal Railroad Administration's (FRA) safety regulations is the surest way to improve railroad safety and, to that end, the BRC will address the safety and other issues raised by this petition for waiver.

Union Pacific Railroad Company (UP) seeks a waiver of compliance from certain provisions of 49 CFR Part 232, Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment. Specifically, UP is seeking relief from the requirements for performing the single car air brake test as prescribed in subpart 232.305(b)(2). For the reasons provided below, BRC requests FRA deny the UP's petition for waiver.

II. UP's petition should be denied.

UP's petition should be denied. UP seeks waiver from part 232.305(b)(2) which provides that a carrier must perform a single car air brake test on a car when "a car is on a shop or repair track, as defined in part 232.303(a), for any reason and has not received a single car air brake test within the previous 12-month period." In the alternative, UP proposes that it will perform any repairs to the airbrakes in-train or in the yards.

In 1998, FRA, the carriers and the unions took part in a rulemaking process which codified the various provisions of the American Association of Railroads (AAR) Field Manual of Interchange Rules. Part 232.305(b)(2) is the codified version of AAR Interchange Rule 3 which became effective in 2001.

Conducting single car air brake tests at least once every 12 months on shop or repair tracks is an integral part of the safe operation of trains. Among other things, these tests check for inoperative air brakes and evaluate the sensitivity of the valves. Tests and evaluations such as these increase the performance of the cars and prevent unintended emergency application of the brakes.

Single car airbrake tests should be performed in the best possible environment. Under part 232.303(b)(2), these tests are performed in the repair shop or on the repair track. The repair shop and the repair track provide safer conditions for carmen inspectors to perform the tests which include, but are not limited to, audible or visual warnings of movement of equipment on adjacent track. These same conditions are not present in the yard where the inspectors would

only have Blue Signal protection making movement of equipment on adjoining tracks more dangerous.

In the same 1998 rulemaking process mentioned above, FRA, the carriers and the unions, also considered how a carrier could modify single car air brake testing procedures. The result of this process was part 232.307(a) which, like part 232.303(b)(2), also became effective in 2001. Part 232.307(a) places three (3) requirements on a carrier in order to modify its single car airbrake test procedures. As illustrated below, UP has not followed the special approval method provided in part 232.307(a) and therefore BRC requests FRA deny UP's petition for waiver.

First, part 232.307(a)(2) requires that UP explain its proposed modification in detail. UP has not provided any specific details in its petition for waiver. Instead, UP simply states that it will make all the necessary repairs to the air brakes in-train or in its yards. Surely UP should have at least indicated the number of cars this proposal would apply to and what the procedures will be for inspectors making repairs in-train or in the yard. Details such as these must be provided by UP in order for FRA to evaluate UP's proposal under part 232.307(a)(2).

Second, part 232.307(a)(3) requires that UP also provide "[a]ppropriate data or analysis, or both, for FRA to consider in determining whether the modification will provide at least an equivalent level of safety." UP has failed to provide any data or analysis on which to base its proposed modification of single car air brake tests. Such data or analysis can only be acquired through a joint study between UP, FRA and BRC that looks for any possible adverse consequence that may occur as a result of the waiver and how these consequences will be identified and corrected. Without such data or analysis, UP cannot meet its burden under part 232.307(a)(3).

In the absence of data or analysis showing that its proposal will provide at least the equivalent levels of safety as part 232.305(b)(2), UP simply offers general statements regarding the safety of its proposal. First, UP claims that safety will be increased under its proposal because performing all the repairs in-train or in the yard will reduce the risk of injury and derailment in that the number of switching events will be reduced. BRC fails to see the relevance of this statement. Switching events occur numerous times throughout the travel of the cars not including the times when the cars are being switched onto the repair or shop track. In order to support this claim, UP would have to provide some specific evidence that stopping these particular switching events somehow increases safety. Moreover, any evidence that UP would provide to support its claim must be contrasted with the fact that UP would also be discontinuing the current single car air brake testing requirements mandated by part 232.305(b)(2). As such, any benefit the reduced switching may actually create would have to be considered in light of the more relaxed testing procedures used for testing air brakes.

In addition, UP also states that waiver should be granted because the majority of the cars to which the waiver would apply are privately owned and receive independent periodic maintenance making the current single car air brake tests required under part 232.305(b)(2) unnecessary. BRC fails to see the relevance of this statement as well. There are numerous privately owned cars in the industry that receive the same independent periodic testing that also receive single car air brake tests in accordance with part 232.305(b)(2). UP has not provided any data to show that the privately owned cars to which this waiver would apply are so well maintained as to not need single car air brake tests as proscribed by part 232.305(b)(2). Surely UP could provide some data of the past failures of these specific cars so that FRA may consider this information in its evaluation of UP's proposal. Without such specific data, there can be no

claim that the privately owned cars to which this waiver would apply would be as safe as they would have been if UP complied with part 232.305(b)(2).

Finally, part 232.307(a)(4) additionally requires that UP file:

[a] statement affirming that the railroad industry has served a copy of the request on the designated representatives of the employees responsible for the equipment's operation, inspection, testing, and maintenance under this part, together with a list of the names and addresses of the persons served.

To our knowledge, the information discussed in part 232.307(a)(4) has not been included in UP's petition for waiver and BRC has not received any further information from UP as well.

Based on the information provided above, UP has not met its burden under part 232.307(a) to modify its current single car testing procedures. UP's attempt to bypass the procedures in part 232.307(a) are simply for its own convenience. If FRA grants this petition for waiver it would set a precedent for other carriers to similarly bypass the specific procedures that apply to the modification of single car air brake tests required by part 232.307(a) effectively nullifying the regulation that FRA, the carrier and the unions partnered to create.

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 UP petition for waiver.

