

**Federal Railroad Administration****49 CFR Parts 229, 231, and 232**

[FRA Docket No. PB-9, Notice No. 4]

RIN 2130-AA73

**Power Brake Regulations****AGENCY:** Federal Railroad Administration (FRA).**ACTION:** Extension of comment period.

**SUMMARY:** By notice of proposed rulemaking (NPRM) published on September 16, 1994 (59 FR 47676) and a subsequent notice published on October 20, 1994 (59 FR 52953), FRA established a deadline for the submission of written comments of January 18, 1995. Due to the strong objections raised by a large number of commenters at the six days of public hearings held on the NPRM, FRA has determined that it will defer action on the NPRM for a short period, leave the docket open until further notice, and establish deadlines for the submission of alternative approaches regarding any of the passenger and freight service issues and initial comments on FRA's NPRM. After FRA has considered any alternative approaches or initial comments on the NPRM submitted in accordance with the established deadlines, FRA will determine how it will proceed in this matter and issue a subsequent notice detailing that determination.

**DATES:** Written Comments: The date by which alternative approaches must be received is February 27, 1995 for passenger service issues and April 1, 1995 for freight service issues. During these periods other comments on specific requirements contained in the NPRM will also be considered. If FRA receives meaningful and specific alternative approaches, FRA intends to provide interested parties with a more extensive comment period in order to further discuss and develop the alternatives. However, if FRA receives alternative approaches lacking in detail or substance, FRA reserves the right to establish a somewhat limited final comment period on the NPRM and move rapidly toward development of a final rule.

**ADDRESSES:** Written Comments: Written comments should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Room 8201, Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA

should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in room 8201 of the Nassif Building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Rolf Mowatt-Larssen, Chief, Motive Power and Equipment Division, Office of Safety, RRS-14, Room 8326, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202-366-4094 or 202-366-9186), or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202-366-0628).

**SUPPLEMENTARY INFORMATION:****Freight Service Issues**

FRA has sought to develop revised power brake regulations that work well in the context of contemporary railroad operations, advancing safety without imposing unnecessary burdens. If possible, such regulations should be structured in such a way as to promote compliance with the Freight Car Safety Standards and the Safety Appliance Standards, as well. FRA has noted that particular care should be exercised if train brake-test distances are to be lengthened, since the frequency with which cars will be subject to inspection for all purposes will inevitably be reduced. The NPRM also sought to avoid poor power brake performance in the future by insisting that the industry's innovative programs for repair track/single car tests become an enforceable baseline for periodic attention to the air brake systems on individual cars.

At the public hearings, representatives of the railroad companies expressed strong objections to the NPRM and asked for its withdrawal. The railroads were joined by major shippers, who feared delays and additional cost. Representatives of the Brotherhood of Railway Carmen supported the thrust and general intent of the NPRM but expressed the view that carriers would avoid its requirements by exploiting what they viewed as loopholes in the proposal.

It is apparent that many of the comments lodged in the hearing process were based on a serious misunderstanding of the intended thrust of the regulatory proposal. Railroad witnesses, for instance, expressed the view that the NPRM would require all

trains to be operated no more than 500 miles between Class 1 brake tests. The proposed performance-based criteria (for operating significantly longer distances than now permitted) were apparently judged to be so onerous as to offer no alternative. That was not the intent of the proposal. However, railroad commenters were not persuaded by the agency's reassurances on this point in the preamble to the NPRM and during the hearing process.

Whatever the basis of commenters' response to the NPRM may have been, it is clear that the NPRM was not as successful as FRA had hoped in eliciting constructive comments on freight issues. Further, FRA agrees with comments of the Brotherhood of Railway Carmen that current abuse of the 1,000-mile inspection could very well be repeated under the structure of the proposed rule (with 500-mile tests being conducted by train crews, perhaps at frequently shifting locations so as to avoid effective oversight by FRA).

The railroad companies, through the Association of American Railroads (AAR) and The American Short Line Railroad Association (ASLRA), have urged that FRA withdraw or hold in abeyance the NPRM and pursue a collaborative rulemaking process such as a negotiated rulemaking. Given the statutory timetable established for this proceeding, this is a request that should more appropriately have been made immediately following the workshops conducted in February and March of 1993, which themselves were convened to elicit dialogue and suggestions regarding the content of the agency's proposal. Nevertheless, FRA continues to welcome participation in the development of these regulations.

FRA has been advised that representatives of rail labor and the railroads will explore whether they can identify a common basis for undertaking discussion with FRA regarding development of an alternative rulemaking proposal. In order to facilitate those consultations and receipt of concrete approaches from any other interested party, FRA will defer action on the NPRM for a short period. The docket will remain open until further notice.

FRA will expect firm, detailed submissions from the parties not later than April 1, 1995, setting forth a statement of principles and detailing alternative approaches which can form the basis for further discussion. These submissions should identify any underlying data used to develop the alternative approaches and preliminary estimates regarding the economic impact of any approach. Upon receipt of

such submissions from the AAR, ASLRA, and the principal labor organizations (or a filing from any other party offering alternative approaches), FRA would then evaluate which course of action to take. Among the options available to FRA are the following:<sup>1</sup>

1. Initiate a public regulatory conference to discuss development of one or more alternative approaches.
2. Without further proceedings, issue a supplemental notice incorporating the alternative approaches submitted by the parties and/or developed by FRA.
3. Establish a new final date for submission of comments on the original NPRM, after which a final rule would be issued.

If parties submit alternative approaches which lack the substance for producing further discussion or development, FRA may act in accordance with the third alternative and provide a relatively short comment period and move this proceeding toward the issuance of a final rule. However, given the objections expressed to the NPRM, FRA would prefer to act in a manner consistent with the first or second of these alternatives. If possible, safety regulations should be structured

<sup>1</sup> FRA does not at this time believe that it would be practical to conclude this rulemaking within a reasonable period as a formal negotiated rulemaking. The conduct of a negotiated rulemaking requires establishment of a Federal Advisory Committee, which involves significant lead time. Where outside facilitation is employed, the process also involves cost that must be accommodated within strict limitations imposed on total Federal Advisory Committee expenditures under the Department of Transportation and Related Agencies Appropriation Act, 1994. Also it is unclear that a committee of workable size could be formed that would adequately represent the interests of all parties (e.g., shippers, car owners, existing equipment manufacturers, small suppliers, several rail labor organizations, and railroads with varying characteristics). Finally, based upon the positions of the principal parties to date, FRA questions whether complete agreement can be reached on issues that have so long divided the industry. The fact that a process under the Negotiated Rulemaking Act is not practicable, however, does not exclude the use of less formal procedures providing free access by all interested parties.

to meet with the general acceptance of regulated entities. This enhances materially the likelihood that good compliance will result and offers further assurance than unnecessary burdens have not been imposed.

However, FRA wishes to emphasize that completion of this proceeding and issuance of final rules remains a very high priority. By law, a final rule was to have been issued not later than December 31, 1993.

FRA also stresses that FRA currently does not intend to defer implementation of the requirement for 2-way end-of-train telemetry devices (2-way EOTs) beyond an effective date of December 31, 1997, as contemplated by the Congress, for any main line freight train operating at greater than 30 miles per hour or operating in mountain grade territory on a Class 1 railroad. The Rail Safety Enforcement and Review Act provided that 2-way EOTs "acquired for use on trains" prior to the date of promulgation of the final rule must be "grandfathered" (deemed to comply with any final rule). 49 U.S.C. § 20141. Accordingly, carriers should have little reason to complain. Indeed, railroads should already have begun to make incremental purchases in order to avoid shortages approaching the effective date.

The need for carriers to acquire and utilize 2-way EOTs was underscored when, on December 14, 1994, an Atchison, Topeka and Santa Fe Railway intermodal train experienced insufficient braking effort descending from the Cajon Pass. The Santa Fe train collided with a Union Pacific Railroad train near Victorville, California, seriously injuring two employees and extensively damaging railroad and shipper property. Although the accident is under investigation, every present indication suggests that presence of a 2-way EOT would have prevented this occurrence. The accident occurred just after an Amtrak passenger train cleared the main line. Although the Santa Fe intends to institute use of 2-way EOTs

on its trains over this territory, similar safety exposure exists elsewhere on the rail system. As Canadian railroads have already done, U.S. railroads should be moving to take advantage of this technology, beginning with trains required to negotiate heavy, long grades.

### Passenger Service Issues

Comments on the passenger safety elements of the NPRM presented a stark contrast to those on the freight elements. Passenger service commenters focused on constructive comment directed at improvement of the agency's proposal. Commuter service entities agreed to submit additional, concrete alternatives to certain elements of this proposal. In order to take full advantage of the parties' undertakings while moving this phase of the rulemaking forward as quickly as possible, FRA will request that alternative approaches and initial comments regarding strictly passenger service issues be submitted by February 27, 1995.

FRA recognizes that there are several issues which cut across both passenger and freight service (e.g., training) thus, FRA would expect alternative approaches regarding these issues to be submitted by the deadline established for freight service issues. Commenters interested in passenger service issues will retain the option to file any additional comments that might be appropriate until the final comment closing date for this docket, which will be established by a future notice. However, FRA will utilize the alternative proposals and comments filed by February 27, 1995 to assist in evaluating whether it is necessary to issue any further notice or convene any further discussions regarding strictly passenger service issues in this proceeding.

**Jolene M. Molitoris,**

*Administrator.*

[FR Doc. 95-1167 Filed 1-13-95; 8:45 am]

BILLING CODE 4910-06-P