



Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Teamsters

Freddie N. Simpson
President

Perry K. Geller, Sr.
Secretary-Treasurer

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

Re: Track Safety Standards, Improving Rail Integrity, Docket No FRA-2011-0058,
Notice No 1.

Comments of the Brotherhood of Maintenance of Way Employes Division (BMWED)

The Brotherhood of Maintenance of Way Employes Division (BMWED) of the Teamster Rail Conference submits these comments to the docket in the above-referenced matter. BMWED is a railroad labor organization representing approximately 35,000 roadway workers who build, construct, inspect and maintain railroad tracks, bridges, building and related infrastructure on all Class I railroads, several Class II and Class III railroads, Amtrak, and numerous commuter railroads throughout the United States. As such, BMWED has a vested interest in track safety including procedures for improving rail integrity and the enhancement of rail flaw detection processes.

BMWED was an active participant in the Track Safety Standards Working Group and the Rail Integrity Task Force (RITF). BMWED reached consensus on numerous issues within the RITF including, but not limited to, revisions to the remedial action table, qualifications of rail flaw equipment operators, maintenance of inspection records, maximum intervals of tonnage and time between automated rail inspections, and the removal of the requirement for joint bar fracture reports.

However, there was one area of contention and significant debate among the Task Force; that being the definition of “track segment” in relationship to the application of

§213.237, Inspection of Rail. The issue of what constitutes a “track segment” was the only area of non-consensus within the RITF and these comments will focus solely upon that singular area of non-consensus.

Under §213.237, FRA proposes to adopt a concept for determining rail flaw detection frequency often referred to as the “self-adaptive scheduling method.” The NPRM notes that the “self-adaptive scheduling method” has been utilized for many years by railroads. As stated in the NPRM, “Under this method, inspection frequency is established based annually on several factors, including the total detected defect rate per test, the rate of service failures between tests, and the accumulated tonnage between tests.”

Under the heretofore voluntary implementation of the “self-adaptive scheduling method,” railroads solely determined what constituted a “track segment.” The problem at issue with “track segment” under the railroad’s “self-adaptive scheduling method” is that averaging out service failure rates over excessively large “segments” of track often fail to identify discreet areas of weakness with chronically high concentrations of service failures. BMWED points out that the railroads’ heretofore voluntary implementation of the “self-adaptive scheduling method” coupled with the railroads’ sole discretion as to what constitutes a “track segment” failed to identify internal rail defects that resulted in several catastrophic derailments, including but not limited to, the October, 20, 2006 derailment near New Brighton, PA (NTSB No. DCA-07-MR-002); the July 11, 2012 derailment near Columbus, OH (NTSB No. DCA-12-MR-006); and the August 20, 2012 derailment near Ellicott City, MD (NTSB No. DCA-12-RM-009).

During the RITF deliberations, BMWED advocated that each railroad be required to establish a reasonable and uniform track segment length that must not be exceeded when calculating its service failure rate. Railroads advocated that the length of a track segment over which the service failure rate is calculated should remain the sole discretion of the railroad. BMWED believes that allowing railroads to solely determine “inspection segment” length under §213.237(b) seriously undermines the intent and effectiveness of the rule as it relates to “service failure” rates.

Section 213.237(a) proposes that service failure rates shall not exceed:

- (1) 0.1 service failure per year per mile of track for all Class 4 and 5 track;

- (2) 0.09 service failure per year per mile of track for all Class 3, 4 and 5 track that carries regularly-scheduled passenger trains or is a hazardous material route; and
- (3) 0.08 service failure per year per mile of track for all class 3, 4, and 5 track that carries regularly-scheduled passenger trains and is a hazardous material route. (*Emphasis added*)

In the NPRM, FRA has chosen to allow railroads complete discretion to designate what constitutes an “inspection segment.” Under the FRA proposal, a railroad could designate an “inspection segment” to be a mile, 10 miles, 100 miles, a 1,000 miles or even greater distances. Therefore, BMWED contends that the provisions of §213.237 simply codify the current industry practices and do little to improve upon them.

In rationalizing its decision not to impose a maximum “designated segment length” the NPRM states,

“FRA believes that requiring a designated segment length that focuses on these localized areas could disrupt current engineering policies and result in problematic and costly adjustments to the railroad’s current maintenance programs without providing significant safety benefits. In addition, recognizing BMWED’s and NTSB’s concerns, FRA believes that railroads, as well as FRA, will be able to capture rail failure data, even in large segment areas, by simply looking at rail failure records and comparing milepost locations.”

BMWED recognizes FRA’s concern regarding the potential costs and problems that may be associated with adjusting current maintenance programs and inspection lengths. Therefore, notwithstanding designated segment lengths, BMWED proposes that FRA should amend the proposed rule to *require* each railroad to review rail service failure records annually per “variable¹” mile of track (i.e., a “floating mile” within an inspection segment) for compliance with the provisions of §213.237(a)(1), (a)(2) and (a)(3), and apply the provisions of §213.237(d) to any “variable” mile of track exceeding the service failure rates identified in §213.237(a)(1-3). Additionally, BMWED proposes that FRA shall annually audit each railroad for compliance by comparing rail failure

¹ A “variable” mile of track would be any continuous mile of track within an inspection segment without regard to beginning or end point, or milepost. Any “variable” mile of continuous track exceeding the rail service failure rates stipulated in §213.237(a)(1-3) would trigger application of §213.237(d).

records utilizing the “variable” mile of track concept within inspection segments. Utilization of this approach would readily identify discrete areas of weakness with chronically high concentrations of service failures without regard to the size of any designated inspection segment.

BMWED urges FRA to adopt our “variable” mile of track service failure rate proposal in the penultimate paragraph above. BMWED believes it represents a reasonable and cost-effective means to resolve the issue at hand. BMWED appreciates the opportunity to provide these comments to the docket and we look forward to working with FRA and the railroad industry to enhance and improve railroad safety.

Respectfully,

A handwritten signature in black ink, appearing to read "Freddie N. Simpson". The signature is written in a cursive style with a large initial 'F' and 'S'.

President