



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

VIA E-MAIL ONLY

January 17, 2025

Mr. Brian Johnson
Mechanical Planner
Union Pacific Railroad Company
BJJohns3@up.com

Re: Docket Number FRA-2015-0036

Dear Mr. Johnson:

This letter is in response to the October 13, 2023, request from Union Pacific Railroad Company (UP) to the Federal Railroad Administration (FRA), seeking an extension of UP's waiver in Docket Number FRA-2015-0036.¹ In that docket, FRA previously granted UP relief from certain provisions of Title 49 Code of Federal Regulations (CFR) Section 232.213, *Extended haul trains*, to operate extended haul trains for distances of up to 1,680 miles.

On November 8, 2023, FRA published notice of UP's extension request.² FRA received three comments in response to that notice. First, the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART-TD) opposed the request, asserting that the waiver was intended as a temporary waiver to provide UP "some relief from certain scenarios where they are unequipped or under prepared to operate their railroad under a prescribed rule" and that the waiver was intended to provide "leniency while they adjust[ed] their operations to meet federal industry standards."³ Further, SMART-TD asserted that "[a]llowing one of the country's largest rail carriers to skirt . . . prescribed safety protocols" is unacceptable.⁴ In its comments, SMART-TD, however, repeatedly noted the value of ensuring quality inspections are performed by specially trained mechanical personnel (i.e., Qualified Mechanical Inspectors (QMIs)).⁵

Second, in a joint comment, several labor organizations represented by Transportation Trades Department, AFL-CIO (TTD), including SMART-TD,⁶ opposed the request asserting that UP's

¹ <https://www.regulations.gov/document/FRA-2015-0036-0013>

² 88 FR 77143.

³ <https://www.regulations.gov/document/FRA-2015-0036-0017>

⁴ *Id.*

⁵ *Id.* (noting that the regulatorily required 1,500-mile inspections performed by QMIs look for between "90 and 180 potential problems on each rail car," which are on a QMI's "punch list" and that "[v]isual inspections by QMIs catch problems daily" that keep railroad employees safe.) The term QMI is defined in § 232.5.

⁶ The labor organizations included American Train Dispatchers Association; Brotherhood of Locomotive Engineers

“recent record on mechanical inspections and safety is poor,”⁷ citing a focused inspection of UP mechanical operations and rolling stock in 2023 where “the defect ratio of freight cars was 19.93 percent and 72.69 percent for locomotives (which are both twice the national average).”⁸ Additionally, TTD asserts “UP does not possess the adequate staffing capacity necessary to ensure that railcar and locomotive inspections and repairs are done properly.”⁹ Finally, these labor organizations state “a patchwork system of waivers that enable inconsistent procedures and operations is simply not as safe and effective as a comprehensive approach to railroad safety. . . . FRA must scrutinize previously granted safety waivers to ensure that those waivers actually increase, not decrease, safety.”¹⁰

Third, Brotherhood of Locomotive Engineers and Trainmen (BLET) reiterated its and other rail labor organization’s 2015 comments in the docket opposing this relief “on the grounds that chipping away at safety regulations leads to a decline in safety.”¹¹ BLET also commented that UP was late in requesting the extension of its relief and requested that FRA allow the waiver to expire as scheduled on January 19, 2024.¹²

In response to TTD’s comment regarding defect ratios, FRA notes that the cited freight car defect ratio (19.93%) in the 2023 audit concerned all cars inspected from all trains. As part of its present field investigation, FRA inspected twenty-seven 1,680-mile extended haul trains comprising 1,597 freight cars and 10 locomotives and found 166 exceptions for a total defect ratio of 10.39%.¹³ FRA has determined that this improved ratio is due, in part, to the sole use of QMIs to inspect all 1,680-mile waived trains.

In response to the remainder of comments in this docket, FRA finds that increasing the transparency of operations and accountability on the part of all stakeholders involved in implementation of this waiver will benefit safety. Accordingly, in this letter, FRA is adopting revisions to certain previously granted conditions by removing previously existing conditions 5 and 9 as those conditions merely reiterate existing regulatory requirements and are therefore unnecessary and adding one new condition (condition 9) to address the recommendations in FRA Safety Advisory 2023-01.

As a point of clarification, FRA notes that condition 2 in this docket relates to the extended haul train list required by § 232.213 for a railroad to operate trains up to 1,500 miles between brake

and Trainmen–IBT; Brotherhood of Maintenance of Way Employees Division–IBT Brotherhood of Railroad Signalmen; International Association of Machinists and Aerospace Workers; International Association of Sheet Metal, Air, Rail and Transportation Workers–Mechanical and Engineering Department; SMART-TD; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; National Conference of Firemen & Oilers, SEIU; Transportation Trades Department, AFL-CIO; and Transport Workers Union of America.

⁷ <https://www.regulations.gov/document/FRA-2015-0036-0015>

⁸ <https://www.railwayage.com/wp-content/uploads/2023/09/FRA-Letter-to-UP.pdf>

⁹ <https://www.regulations.gov/document/FRA-2015-0036-0015>, page 2.

¹⁰ *Id.*

¹¹ <https://www.regulations.gov/document/FRA-2015-0036-0016>

¹² *Id.*, page 2. FRA notes that UP’s use of its waiver was suspended on January 19, 2024.

¹³ All inspections were performed after QMIs inspected the trains. In some cases, the locomotives had not yet been attached to the train.

tests and inspections. Consistent with § 232.213(a)(1), condition 2 requires railroads to designate extended haul trains in writing and include with that designation: (1) the train identification symbol or identification of the location where extended haul trains will originate; (2) the origination and destination points for the train; and (3) the locations where **all** train brake and mechanical inspections and tests will be performed (not just the locations of extended haul inspections). Additionally, condition 2 requires UP to identify on its extended haul train list each train operating under this waiver.

FRA notes that both § 232.213 and condition 2 of this waiver require **all** inspection points to be designated, not just the locations of extended haul train inspections (which are required to be performed by QMIs). Further, FRA notes that the intent of the extended haul train list is not to identify the “true route” of a train, but instead to ensure railroads have appropriate inspection resources in place to conduct all required inspections and to allow FRA to effectively oversee compliance with the inspection requirements. To that end, FRA is revising condition 3 to clarify that any inspection location identified on UP’s extended haul list as an extended haul inspection location must be either staffed by QMIs or be a location where QMIs are available to conduct the required inspections (i.e., QMIs may access the location by road truck).¹⁴

Condition 6 requires mechanical department personnel responsible for inspecting trains operating under this waiver to have “the ability to review wayside detector data for the equipment prior to their inspection.” Previous commenters in a separate docket providing similar relief suggested that this condition be revised to require mechanical department personnel to review “all” wayside detector data from the railroad’s detector network.

FRA finds that mechanical personnel only “having the ability” to review wayside detector data is not sufficient and that relevant wayside detector data must be provided to those mechanical personnel for review and consideration prior to their inspection of the equipment. However, FRA recognizes that UP’s detector network consists of different types of detectors, some of which require immediate responses from UP’s mechanical desk and/or train crews (e.g., dragging equipment detectors, high/wide detectors) and other detectors which provide key data that can be used by properly trained and qualified mechanical personnel to enhance the quality of their visual inspections (e.g., HBDs and WILDs). Accordingly, FRA concludes that a requirement that mechanical personnel review **all** detector data is unreasonable because of the potential to overwhelm those personnel with irrelevant data, resulting in little safety benefit. Therefore, for clarity, FRA is revising condition 6 to ensure the most relevant data is provided to and considered by the responsible QMIs, and separately, FRA is revising condition 8 (previous condition 10) to require a more detailed monthly detector health report be submitted to FRA. FRA is adding a requirement to condition 8 that a corresponding summary report be submitted to the docket to reflect the health of HBDs and WILDs, the two key types of detectors that provide data that mechanical employees can utilize to enhance their visual inspections, on

¹⁴ FRA reminds all stakeholders that in the event of an emergency that alters normal train operations, such as a derailment or other unusual circumstance that adversely affects the safe operation of a train, § 232.213(a)(8) allows a railroad to change the location where a brake test or mechanical inspection is performed to a location not on the list of designated locations for performing brake tests and mechanical inspections, provided that the railroad notifies FRA’s Office of Railroad Safety within 24 hours after the designation has been changed and the reason for that change.

UP's network. Ensuring this detector health information is available to all stakeholders, including interested labor organizations, will enable routine transparent evaluation of detector health to ensure adequate data is being generated and made available to mechanical personnel under this waiver. Consistent with condition 5 of UP's relief under Docket Number FRA-2007-28454 (In-Train Wheelset Replacement), FRA is adding condition 9 to this waiver to reiterate inspection and maintenance procedures to ensure this detector health.

FRA finds that requiring operations to revert to regulatorily-specified extended haul mileage restrictions if isolated incidents of wayside detector outages occur, or if the system for providing detector information to mechanical forces at inspection locations fails, could lead to negative safety consequences (e.g., fewer QMI inspections being performed or causing train crew or mechanical personnel to inspect the equipment at unsafe locations). Further, FRA understands that UP's system of wayside detectors is designed to ensure a statistically significant and operationally sufficient number of detectors are functional at any given time. Accordingly, FRA finds that imposing an additional condition is unnecessary and could potentially adversely impact safety.

FRA notes that consistent with § 232.213 and previously established conditions 1 and 2, a train subject to this waiver must be designated as such on UP's extended haul list, and that list must include the origination and destination points for the train. Any train designated as a 1,680-mile train is subject to the conditions of this waiver for the entirety of its movement. Further, to simplify and clarify previous condition 11 of this waiver (now condition 10), FRA is revising that condition to incorporate condition 4's requirements that UP maintain a database of train accident/incident data for all trains operating under this waiver and to require UP to report within 24 hours to FRA any accident, incident, or injury that occurs involving any train subject to this waiver (regardless of the distance the train has traveled at the time of the accident or incident).

For the reasons set forth above, FRA's Railroad Safety Board (Board) has determined that granting UP an extension of the previously granted relief in this docket, subject to certain modified conditions as described above, is in the public interest and consistent with railroad safety. Additionally, the Board notes that over the life of the relief in this docket, the rate of incidents for trains subject to the relief has been consistently lower than for trains not subject to this relief. While UP provided Incident Risk Percentages in its initial petition, these figures were unclear as the percentages had not been normalized by actual car numbers. FRA requested and received from UP "Reportable Equipment Incidents/Million Car Miles" data which indicate that all non-extended haul trains on UP experience .002 incidents/ million car miles; while both 1,500 and 1,680 extended mile trains experience .001 incidents / million car miles.¹⁵

Based on the above data, the Board concludes more defects are being identified and repaired on waiver trains than on non-waiver trains, indicating an overall improvement in the condition of the equipment, and thus an improvement in safety. Further, FRA notes that the relief in this docket ensures the subject trains are inspected by QMIs at each train's initial terminal. All the

¹⁵ Email from Selva Karunakaran (UP) to Kar Gazarov (FRA), October 14, 2024. See <https://www.regulations.gov/document/FRA-2015-0036-0013>

public comments submitted in response to FRA's latest notice in this docket emphasize the importance of quality QMI inspections. FRA notes that absent the relief in this docket, UP could operate the subject trains without having any QMI inspections performed by breaking each train's route into smaller segments and allowing "Qualified Persons"¹⁶ (e.g., conductors and trainmen) to conduct the inspections, rather than QMIs.

With the exception of the 1,680-mile distance specified, all other requirements of § 232.213 apply to trains operating under this waiver.

Accordingly, the Board grants the requested relief, subject to the following conditions:

1. This relief applies (subject to changes under condition 3, below) to the designated extended haul trains and the mileages limited to a maximum distance of 1,680 miles, designated in the attachment to UP's letter of October 12, 2023 (FRA-2015-0036 Renewal Request).¹⁷
2. UP must clearly identify each train operating under this waiver by Docket Number FRA-2015-0036 on all lists of designated extended haul trains submitted to FRA as per § 232.213(a)(1). This list must also identify all locations where all train brake and mechanical inspections and tests (not only extended haul required tests) will be performed on each train. UP will provide a 24-hour hotline number (402-544-7170), to support FRA in identifying active trains operating under this waiver and answering any operational questions.
3. UP and FRA must jointly review the list of trains under the waiver on a quarterly basis and confirm that each extended haul inspection location is staffed by QMIs or is a location where QMIs are made available to conduct the required inspections and make adjustments accordingly. This review will also accommodate the addition or removal of trains due to changes in routes (i.e., added lines or capacity), business adjustments, analysis of safety data, or other circumstances not anticipated at the time UP assembled the list. At least 30 days before each quarterly review, UP will invite interested labor organizations to participate in the review.
4. UP must track the rate of identified detector anomalies for equipment subject to this waiver and, on a monthly basis, compare the fleet average of detector anomalies for waiver trains to the fleet average of detector anomalies for non-waiver trains. This data and analysis must be provided to FRA and interested labor organizations at least two weeks prior to the quarterly review conducted under condition 3.
5. The mechanical department personnel responsible for inspections and tests, as well as train crewmembers hauling the designated extended haul trains above, must be notified in writing of the status of the trains they are inspecting/hauling, and must be notified in writing regarding the conditions of this waiver. These inspections and tests must be

¹⁶ Per § 232.5.

¹⁷ <https://www.regulations.gov/document/FRA-2015-0036-0013>

performed by UP employee mechanical inspectors or authorized agents trained, qualified, and designated in compliance with § 232.203, *Training requirements*, and § 215.11, *Designated inspectors*.

6. The mechanical department personnel responsible for inspections and tests of the designated extended haul trains above must have the ability to review, before inspecting the equipment, a summary of all relevant equipment-related anomalies identified by UP's detector network, including at a minimum all anomalies from HBDs and WILDs, and any other detector type that provides data relevant to the mechanical condition of the equipment and that a QMI could use to enhance visual inspection of the equipment. All mechanical department personnel responsible for inspecting and testing the equipment must consider this data in the course of their inspection activities. The summary made available to mechanical department personnel must include all data that reflect conditions exceeding industry accepted thresholds or other predetermined thresholds for watch status, trending, or alarms in the previous 30 days. Wayside detector data reports for the designated extended haul trains and a table of currently applicable industry accepted levels must be made available to FRA inspectors upon reasonable request.
7. For trains operating under this waiver, UP will provide notification identifying the location where all train brake and mechanical inspections and tests will be performed to each crew, via work orders, from originating terminal, through crew change points to destination.
8. UP must compile and report monthly to FRA's Office of Railroad Safety on the operational health of the detector network, including any out-of-service or defective wayside detectors on the routes of the trains operating under this waiver. Monthly, UP must also submit a summary of this report to the public docket on www.regulations.gov. This published summary report must focus on the health of HBDs and WILDs in the relevant portions of UP's network.
9. Consistent with the recommendations in FRA's Safety Advisory 2023-01 and the two supplements to that Safety Advisory,¹⁸ UP must ensure its training and qualification procedures for personnel responsible for installing, inspecting, and maintaining the wayside detectors relevant to this relief sufficiently ensure the responsible personnel have the appropriate knowledge, skills, and ability to properly install, inspect, and maintain the devices.
10. UP must maintain a database of train accident/incident data for all trains operating under this waiver and report to FRA's FRAWaivers@dot.gov any accident or incident within 24 hours of its occurrence regardless of the distance the train has traveled at the time of the accident or incident.

¹⁸ Safety Advisory 2023-01 (88 FR 13494 (Mar. 3, 2023)); Safety Advisory 2023-01 (Supplement) (88 FR 38933 (June 14, 2023)); and Safety Advisory 2023-01 (Second Supplement) (89 FR 58243 (July 17, 2024)).

This waiver expires 5 years from the date of this letter. At the conclusion of this period, FRA reserves the right to extend the waiver if the Petitioner has made a written request for an extension at least 6 months prior to the expiration date, and if conditions warrant. Any request for extension must (1) demonstrate the Petitioner's compliance with the above-identified conditions; (2) comply with the requirements of § 211.7, *Filing requirements*, and § 211.9, *Content of rulemaking and waiver petitions*; and (3) be submitted via e-mail to FRAWaivers@dot.gov.

FRA reserves the right to modify or rescind this waiver upon receipt of information pertaining to the safety of railroad operations and/or in the event of noncompliance with any condition of this waiver. Further, FRA reserves the right to take enforcement action under 49 U.S.C. § 20111 for noncompliance with any condition of this waiver or applicable Federal regulations.

In any correspondence regarding this waiver, please refer to Docket Number FRA-2015-0036. The point of contact for this action is Mr. Steven Zuiderveen, Senior Safety Specialist, Motive Power and Equipment Division, at 202-493-6337 or steven.zuiderveen@dot.gov.

Sincerely,

Karl Alexy
Associate Administrator for Safety
Chief Safety Officer