



Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference — International Brotherhood of Teamsters

NATIONAL LEGISLATIVE OFFICE

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JOHN P. TOLMAN

Vice President and

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May 4, 2007

Docket Clerk
DOT Central Docket Management Facility
Room PL-401
400 7th Street, SW (Plaza Level)
Washington, DC 20590-0001

Re: Docket No. FRA-2006-26174

Dear Docket Clerk:

On March 6, 2007, the Federal Railroad Administration (“FRA”) published a Notice of Proposed Rulemaking (“NPRM”) to revise federal standards for locomotive sanders set forth at 49 CFR Part 229. *See* DOT DMS FRA-2007-26174-1. In said NPRM, FRA solicited comments concerning its proposal from interested parties.

These comments are submitted by the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference of the International Brotherhood of Teamsters (“BLET”), which is the duly designated and recognized collective bargaining representative for the craft or class of Locomotive Engineer employed on all Class I railroads. BLET also represents operating and other employees on numerous Class II and Class III railroads. Consequently, FRA’s NPRM would have a significant impact upon our members. For the reasons set forth below, BLET respectfully requests that FRA amend its proposed rule as indicated herein.

As noted by FRA, the bulk of its proposal reflects the consensus recommendation of the Railroad Safety Advisory Committee (“RSAC”) and its Locomotive Safety Standards Working Group. 72 FR 9905. Indeed, FRA has addressed only one aspect of this issue in the absence of consensus; namely, “the use of sanders on locomotives performing switching service at outlying locations.” *Id.*

Accordingly, our comments are limited to (1) portion of the proposed rule addressing the non-consensus matter, (2) two areas where we believe additional clarification would be beneficial, and (3) the following four additional subjects concerning which FRA specifically solicited comment:

- Current railroad management of damage to track and equipment caused by wheel slip-page. Id. at 9907.
- Train handling alternatives to sand in yard switching operations. Id. at 9908.
- The sufficiency of FRA’s proposed definition of “sand delivery system.” Id.
- Trailing locomotives and distributed power locomotives in the application of proposed Section 229.131(b)(2). Id. at 9910.

With respect to those provisions based upon consensus — and concerning the issues raised by FRA in the NPRM’s preamble and Section-by-Section Analysis — we believe FRA has gone far in accurately reflecting what was produced by RSAC. That said, however, we believe that an additional degree of clarity is appropriate and necessary.

In the application of proposed Section 229.131(b), FRA has solicited comment on the question of the relationship between trailing locomotives and distributed power (“DP”) locomotives, including whether there is a need for both terms to be utilized in the rule. Id. Our view is that greater clarity prevents confusion and enhances locomotive utilization, which is a goal identified by FRA. Thus, we believe that both terms should be used in the rule, so there is no confusion.

However, the draft language in the NPRM could be read as indicating that DP locomotives are different than trailing locomotives when, in fact, DP locomotives are a subset of trailing locomotives. For this reason, we recommend that FRA revise Section 229.131(b)(2) to read as follows:¹

Trailing locomotives, including ~~and~~ distributed power locomotives, being used in road service that experience inoperative sanders after departure from an initial terminal may continue in service until the earliest of the following occurrence

Furthermore, our review of this subsection leaves us concerned about an omitted case, which we firmly believe FRA must address in the final rule. What distinguishes lead locomotives from all other locomotives under the proposed rule is that — absent the occurrence of an earlier trigger — a lead locomotive may not continue in road service beyond fourteen calendar days from the date the sanders are first discovered to be inoperative. *See* 72 FR 9912.

It is not uncommon for a lead locomotive to be set out on the line of road once a train has departed the initial terminal. A defect en route, fleet deployment, and delivery of a replacement locomotive all occur with varying degrees of frequency. When such a set out occurs, the lead

¹ For ease of review, inserted language appears in red and is underlined, while ~~deleted language appears in blue and is struck out~~.

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locomotive for that train after the point of the set out is a locomotive that was a trailing locomotive at the time the train departed the initial terminal. Accordingly, the 14-day limit contained in Section 229.131(b)(1)(iv) would now apply to this locomotive because it has become the lead locomotive. However, we do not believe the proposed rule is sufficiently clear on this point and request that FRA provide appropriate clarification.

Before turning to the various issues involving sand use in switching service, we also wish to address FRA's proposed definition of "sand delivery system." FRA proposes to define a sand delivery system as "a permanently stationed or fixed device designed to deliver sand to locomotive sand boxes that do not require the sand to be manually delivered or loaded." 72 FR 9908. FRA also proposes that "permanent" — for purposes of the rule — means that the sand delivery system "is at a location at least five days a week for eight hours per day." *Id.*

Presumably, FRA means that the sand delivery system is attended during these five days per week and eight hours per day. We appreciate FRA's desire to identify a bright line delineating which sand delivery systems are permanent from those that are not. At the same time, however, and consistent with our position below and during the Working Group meetings, history has taught us to be wary of regulatory provisions that can be manipulated.

Specifically, we are concerned that a provision FRA intends to serve as a "floor" identifies a threshold a railroad will not approach, so as to escape the requirement entirely. We believe the proposed rule should be amended to (1) require railroads to identify to FRA all facilities that would fall within the definition of permanent sand delivery system in existence as of March 1, 2007, and (2) obtain permission from FRA to either close a permanent sand delivery system or reduce its hours of operation to a level below FRA's threshold. In that way, a railroad will not be able to evade having to comply with proposed Section 229.131(c)(2) simply by reducing staffing at existing sand delivery systems.

Turning to FRA's proposal for handling locomotives being used in switching service that develop defective sanders, we begin with a request for a clarification. With respect to such locomotives being used where a permanent sand delivery system is located, the Section-by-Section Analysis of proposed Section 229.131(c)(2) acknowledges that "FRA accept[ed] the RSAC's recommendation and retains the existing requirements applicable to these locomotives," and, therefore, "when sanders become inoperative on these locomotives they would have to be handled in accordance with the provisions contained in Section 229.9." *Id.* at 9910.

We note that — regarding a locomotive other than one in switching service — the relevant trigger is arrival "at a location where it is *placed in a facility* with a sand delivery system," while the trigger for a locomotive in switching service is that it is "being used ... *at locations equipped* with a sand delivery system." *Cf.* §§ 229.131(b)(1)(ii), 229.131(b)(2)(ii), and 229.131(c)(2). In

our view, a railroad cannot rely on the “placed in a facility” condition to extend use of a locomotive in switching service subject to proposed Section 229.131(b)(2) beyond that allowed by Section 229.9. We believe it would be helpful if FRA confirmed this is so, at least in preamble language.

Lastly, we turn to the issue of locomotives used in switching in service at locations that are not equipped with a sand delivery system. The NPRM Preamble notes that numerous unsafe conditions can arise when sanders are not operating properly. These include damage to wheel and rail, train forces spiking leading to track train dynamics problems, and rail corrugation and burns. *Id.* at 9907. FRA also reported that some members of the Working Group raised concerns that (1) damage to rail from slipping wheels can lead to development of transverse defects and broken rails, and (2) corrugation and shelling of the rail head can mask internal rail defects and can defeat internal rail flaw detection. *Id.*

These circumstances can lead to train derailments unless they are properly managed, and the heavy cumulative tonnages experienced by most rail now in service is already taxing the ability of the railroads to manage these issues successfully. *Id.* Further, when insufficient adhesion prevails during braking, the wheels may slide. *Id.* In response to FRA’s request for comments on this issue, we reiterate that the cornerstone element of railroad management of these problems has been disciplining operating crew members of all crafts when these incidents occur, and the docket already includes a number of examples of this management style and approach to safety. *See, e.g.,* FRA-2006-26174-8 at pp. 6, 8; FRA-2006-26174-9 at p. 7.

Thus, proper inspection, maintenance and repair of sander systems on locomotives used in switching in service at locations that are not equipped with a sand delivery system continues to be a major concern for us. FRA accurately notes that the need for sanders varies in certain circumstances, such as the following:

- heavier six-axle locomotives can develop a higher tractive effort than the lighter four-axle locomotives of the same horsepower (72 FR 9906);
- adhesion limits on locomotives equipped with AC traction motors both with and without sanding are higher than on locomotives equipped with DC traction motors (*id.*); and
- the use of dynamic brakes may significantly reduce the need for sand (*id.* at 9907), although some railroads require stopping the locomotive consist on sand, even when using dynamic braking, as a train handling practice.

These relative advantages seldom, if ever, apply to locomotives used in switching service. The majority of those locomotives have only four axles, and it is a rare exception that a locomotive

equipped with AC traction motors is used for switching work. Moreover, the nature of switching service is such that — even if so equipped — the use of dynamic braking is neither effective nor efficient. Indeed, FRA acknowledges that sand applied on multiple axles could be an important contributor to maintaining satisfactory stopping distances of lite locomotive consists under unfavorable conditions (wet rail, etc.). Id. Switching service regularly and consistently includes lite engine movements, where operative sanders provide an important benefit.

Generally, switching operations are conducted on the poorest track structures — relatively speaking — and with the oldest and/or least sophisticated locomotive power. Thus, there are no ready alternatives to the use of sand. Furthermore, we believe FRA's proposal in Section 229.131(c)(1) to permit locomotives being used in switching service at a location not equipped with a sand delivery system to be continued in service until the earlier of (1) seven calendar days from the date the sanders are first discovered inoperative or (2) its next periodic inspection under § 229.23 is inappropriately long, because it almost guarantees that most such locomotives will have inoperable sanders at any given point in time.

Sander inoperability may come from one of two causes: mechanical failure or lack of sand. Railroads routinely dispatch mechanical forces to outlying points — where no sand delivery system would be located — to perform other inspections, repairs and/or maintenance on locomotives. Both of the causes of sander inoperability can be easily and safely cured at such times. Accordingly, we suggest that FRA amend paragraph (c) of its proposed rule to read as follows:

(c) Locomotives being used in switching service shall be equipped with operative sanders that deposit sand on each rail in front of the first power operated wheel set in the direction of movement. If the sanders become inoperative, the locomotives shall be handled in accordance with the following:

(1) Locomotives being used in switching service at a location not equipped with a sand delivery system may continue in service until the earliest of—

(i) For sanders inoperative because of a lack of sand—

(A) the next occasion when mechanical forces fuel the locomotive;

(B) the fourth calendar day from the date the sanders are first discovered inoperative; or

(C) the locomotive's next periodic inspection under § 229.23; or

(ii) For sanders inoperative because of a mechanical failure or defect—

(A) the next occasion when mechanical forces inspect or repair another Part 229 defect on the locomotive;

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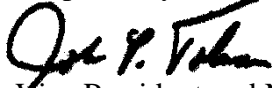
(B) the fourth calendar day from the date the sanders are first discovered inoperative; or

(C) the locomotive's next periodic inspection under § 229.23; and

(2) Locomotives being used in switching service at locations equipped with a sand delivery system shall be handled in accordance with the requirements contained in § 229.9.

We sincerely appreciate the opportunity to have participated in the RSAC Locomotive Safety Standards Working Group, and to submit these comments.

Respectfully submitted,



Vice President and National Legislative Representative

cc: Grady C. Cothen, Jr., Esquire, FRA Deputy Associate Administrator for Safety Standards and Program Development
All BLET Members, RSAC Locomotive Safety Standards Working Group
Thomas A. Pontolillo, Director of Regulatory Affairs