## **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