

[Federal Register: October 12, 2004 (Volume 69, Number 196)]
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[DOCID:fr12oc04-129]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 18, Notice No. 2]

Burlington Northern Santa Fe Railway Company; Notice Rescinding FRA Emergency Order 18, Requiring the Capability To Initiate Emergency Application of Air Brakes From the Head End and Rear of Trains, After a 60-day Interim Transition Period

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that, absent further notice, FRA will consider the emergency situation requiring the issuance of Emergency Order 18 to have abated at the conclusion of a 60-day interim transition period during which the Burlington Northern Santa Fe Railway Company (BNSF) will comply with a series of modified operational requirements before beginning full operation under the existing Federal regulations related to end-of-train (EOT) devices. Emergency Order 18 requires that all westward trains operated by the BNSF on the Cajon Subdivision, between Barstow milepost 745.9 and Baseline milepost 79.9, have the capability to initiate an emergency application of the air brakes from both the head and rear of the train and imposes certain inspection, testing, and operational requirements on the railroad.

Authority

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws. 49 U.S.C. 20101, 20103. FRA is authorized to issue emergency orders where an unsafe condition or practice "causes an emergency situation involving a hazard of death or personal injury." 49 U.S.C. 20104. These orders may immediately impose such "restrictions and prohibitions * * * that may be necessary to abate the situation." (Ibid.)

Background

BNSF's line of railroad between Barstow and Los Angeles, California, consists of double main track which passes through the San Bernardino Mountains via "Cajon Pass." The route for westward moving trains involves a steady climb from Barstow to Summit, California, a distance of approximately 55 miles. At Summit, the line begins a descent westward with a more than 3 percent grade on one track and a more than 2 percent grade on the other track.

Emergency Order 18 was issued on February 1, 1996, following two significant incidents in 1994 and 1996 on Cajon Pass resulting from an inability to control train speed following incomplete braking in the train. See 61 FR 5058 (February 9, 1996). Emergency Order 18 requires that all westward trains operated by the BNSF on the Cajon Subdivision, between Barstow milepost 745.9 and Baseline milepost 79.9, have the capability to initiate an emergency application of the air brakes from both the head and rear of the train. The Emergency Order set out a variety of ways in which the railroad could accomplish this task and imposes certain inspection and testing requirements for trains utilizing two-way EOT devices. See 61 FR 5059-60. BNSF has operated under the provisions of Emergency Order 18 for over eight years without any significant non-compliance.

Subsequent to the issuance of Emergency Order 18, FRA issued regulations that directly addressed the inspection, testing, design, and operation of two-way EOT devices. See 62 FR 294 (January 2, 1997). These regulations are now found in subpart E of the Brake System Safety Standards for Freight and other Non-Passenger Trains and Equipment contained at 49 CFR part 232. Other than the area covered by Emergency Order 18, the rest of the United States has effectively and safely operated under the requirements contained in these Federal regulations. In June of 2003, after seven years of compliant operation under Emergency Order 18, BNSF requested relief from the requirements of the Emergency Order. The railroad conducted a meeting involving representatives of railroad employees and FRA in Redlands, California on January 15, 2004, to discuss rescission of the Order and to gather suggestions for potential post-relief operating procedures. (The California Public Utilities Commission was also invited to the meeting.)

On July 30, 2004, FRA's Acting Associate Administrator for Safety provided some temporary relief from the provisions of Emergency Order 18 to allow the required inspections and tests to be conducted at locations other than at Barstow, California, while FRA continued to assess the continued necessity of the Emergency Order.

On September 23, 2004, BNSF filed a supplemental petition with FRA again seeking rescission of Emergency Order 18. BNSF asserts that an "emergency situation" within the meaning of 49 U.S.C. 20104 no longer exists at Cajon Pass. BNSF also identifies three primary reasons for FRA to rescind the Emergency Order 18. First, BNSF contends that it has met the requisite grounds for relief by continuously operating in compliance with the Order for a period of 180 consecutive days. Second, BNSF states that the issuance of the Federal regulations regarding two-way EOT devices ensures the safety of train operations over the Cajon Pass because BNSF operations on every other mountain grade territory over which it operates have safely and effectively utilized those regulations. Finally, BNSF asserts that the measures it voluntarily employs for operating trains through Cajon Pass further enhance the safety of such train movements.

Finding and Order

Based on the years that BNSF has operated pursuant to the requirements of Emergency Order 18 without any significant non-compliance, the occurrence of no significant train accident or injury related to the operation of trains over Cajon Pass during that time, and the existence of Federal regulations directly addressing the inspection, testing, and maintenance of two-way EOT devices that are effectively utilized throughout the rest of the country, FRA

concludes that BNSF has made a prima facie case for rescission of Emergency Order 18. However, due to the length of time BNSF has operated under Emergency Order 18, FRA believes it is prudent to have a short interim transition period of 60 days before complete rescission of the Order occurs and operation solely under the existing Federal regulation begins. During this interim 60-day period the original requirements of Emergency Order 18 will be rescinded and be replaced by interim requirements in order to allow the railroad to transition its operations through Cajon Pass to be consistent with existing Federal regulations. FRA considered the information and views provided by BNSF when developing the interim requirements. This short interim transition period will allow both FRA and the railroad to monitor the operations through Cajon pass during that period to ensure that any personnel and operating issues that may arise in the transition are adequately and safely addressed. Accordingly, pursuant to the authority of 49 U.S.C. 20104, delegated to me by the Secretary of Transportation (49 CFR 1.49), it is hereby ordered that:

(1) As of October 9, 2004, the inspection, testing, and operating requirements mandated in Emergency Order 18, Notice 1, issued on February 1, 1996, are rescinded. Instead, starting on that same date, BNSF must ensure that all westward operating trains between Barstow milepost 745.9 and Baseline milepost 79.9 have the capability to effectuate an emergency brake application of the air brakes from both the head and rear of the train in accordance with 49 CFR part 232, subpart E--End-of-Train Devices, and abide by the additional requirements stated in paragraph (2), below.

(2) Beginning on October 9, 2004, and continuing for a period of 60 days, BNSF shall comply with the following inspection, testing, and operational requirements, except when the train is operated in accordance with paragraphs 1(B), 1(C), or 1(D) of the Order in effect prior to the issuance of this notice:

(A) All westward train movements over the Needles Subdivision that are intended to continue between Summit milepost 55 and Baseline milepost 79.9 shall include an emergency brake test at some location between Needles and Summit, California. For purposes of this notice, an emergency brake test means a test to determine that an emergency brake application can be initiated from the rear of the train and that it propagates throughout the entire train. The test may be activated by using the head-end device and determining that the brake pipe pressure drops to zero, and it is not necessary to place an employee at the rear of the train to conduct this test.

(B) All westward train movements over the Mojave Subdivision that are intended to continue between Summit milepost 55 and Baseline milepost 79.9 shall include an emergency brake test at some location between Hinkley and Summit, California.

(C) BNSF shall maintain a written record in the cab of the lead-locomotive for each emergency brake test performed under paragraphs (2) (A) and (B) of this Order if the emergency brake test was performed by a crew other than the crew responsible for the train during its descent over the Cajon Pass.

(D) Any westward train operating with a non-turbine EOT device between Summit milepost 55 and Baseline milepost 79.9 shall be equipped with batteries that are sufficiently charged at the time of installation to ensure that the EOT device remains operative until the train reaches destination as

required in 49 CFR 232.407(f)(2). In addition, the following requirements shall also apply:

(i) BNSF shall comply with all applicable provisions of its Air Brake and Train Handling Rules that require EOT Device batteries to be tested every 60 days to ensure that they can be adequately charged;

(ii) If a "low battery" indication is displayed during any westward train movement from Barstow through Summit, California, BNSF shall bring the train to a stop prior to departing Summit, California and change the battery.

(iii) If a "low battery" indication is displayed during any westward train movement at or from Summit through Baseline, California, BNSF shall immediately bring the train safely to a stop in accordance with the railroad's operating rules and change the battery.

(iv) BNSF shall maintain a written or electronic record of each battery change made pursuant to paragraph (2)(D)(ii) of this Order.

(3) The inspection, testing, and operational requirements contained in paragraph (2) of this Order will terminate, and this Order will no longer be in effect, on December 8, 2004 unless FRA finds a pattern of non-compliance by BNSF with either the provisions of this Order or of 49 CFR part 232, subpart E and issues a subsequent notice containing a finding that the emergency situation still exists and imposing any necessary requirements. Any such finding will be provided to the railroad in writing from FRA's Associate Administrator for Safety before any extension in the above-noted date is effectuated. After December 8, 2004, BNSF operations subject to this Order shall comply with all applicable portions of 49 CFR part 232, subpart E. If during the period covered by this notice, FRA determines that an emergency situation exists, as the term is used in 49 U.S.C. 20104, FRA reserves the right to issue an emergency order to address the situation if necessary.

Relief

Emergency Order 18 will be rescinded in accordance with the dates and procedures identified in paragraphs (1) and (3) of the Finding and Order section of this notice. FRA will, at any time, consider requests by BNSF to exclude certain train operations from the scope of this order based on satisfactory demonstration that those operations can be safely performed using other procedures. However, all aspects of this order apply to all westward trains departing Barstow unless and until written special approval is granted permitting other procedures for specific train operations. The Associate Administrator for Safety is authorized to issue such special approvals without amending this order.

Penalties

Any violation of this order shall subject the person committing the violation to a civil penalty of up to \$20,000. 49 U.S.C. 21301. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. 20112.

Effective Date and Notice to Affected Persons

This order shall take effect at 12:01 a.m. (P.s.t.) on October 8, 2004, and apply to all westward trains operating between Barstow milepost

745.9 and Baseline milepost 79.9. Notice of this Order will be provided by publishing it in the Federal Register. Copies of this Emergency Order will be sent by mail or facsimile prior to publication to the Vice President-Operations of BNSF, counsel for BNSF, officials of interested labor organizations, the California PUC, and the Association of American Railroads.

Review

Opportunity for formal review of this Emergency Order notice and the new requirements imposed herein will be provided in accordance with 49 U.S.C. 20104(b) and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211. See 49 CFR 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, DC on October 6, 2004.
Betty Monro,
Acting Administrator.
[FR Doc. 04-22941 Filed 10-8-04; 8:45 am]