



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

OCT 30 2018

Mr. Aaron Ratledge
General Director, Operating Practices & Rules, Safety, and Technical Training
BNSF Railway
2600 Lou Menk Drive
Fort Worth, TX 76131

Re: Docket Number FRA-2001-10660

Dear Mr. Ratledge:

This letter is in response to your May 24, 2018, petition on behalf of BNSF Railway (BNSF), to renew a waiver of compliance from certain provisions of Title 49 Code of Federal Regulations (CFR) Part 218, *Railroad Operating Practices*, initially granted in 2002, and extended in 2007 and 2012, in Docket Number FRA-2001-10660. Specifically, BNSF seeks a waiver from 49 CFR § 218.22, *Utility employee*, to permit train crew members, yard crew members, and utility employees to remove and replace batteries in two-way end-of-train (EOT) devices while the EOT device is in place on the rear of the train the individual has been assigned to without establishing any blue signal protection. *See* 49 CFR § 218.22(c)(5).

In its petition, BNSF states that there are several safety benefits that will be gained if the regulatory relief is granted. First, BNSF contends the safety of train service employees and utility employees will be enhanced by reducing the time such employees are performing a safety sensitive task by eighty percent. Second, train service employees and utility employees will lift and handle significantly lighter loads. The "Smartpack" batteries currently used by BNSF weigh 10.1 pounds or less as opposed to a PULSE EOT device unit weighing 32-34 pounds.

FRA's Railroad Safety Board (Board) has reviewed the waiver petition, the results of FRA's field investigation, and the technical staff findings, and has determined that granting BNSF's request for continued relief is in the public interest and consistent with railroad safety. Accordingly, the Board grants the waiver, subject to the following conditions:

1. This waiver applies only to BNSF train and yard crew members and utility employees.
2. Battery change-outs can be performed on EOT devices by train and yard crew members and utility employees only on railroad rolling equipment that they have been called to operate (or been assigned to as "utility employees").

3. If the function of changing out the EOT device batteries requires the use of tools, then establishing blue signal protection specified by 49 CFR Part 218 is required.
4. BNSF shall immediately report any accident involving this procedure to the FRA Office of Technical Oversight.

This waiver expires five years from the date of this letter. At the conclusion of this period, FRA reserves the right to extend the waiver, if conditions warrant, and if BNSF has made a written request for an extension at least six months prior to the expiration date. Any request for extension must comply with the requirements of 49 CFR § 211.7, *Filing requirements*, § 211.9, *Content of rulemaking and waiver petitions*, and must also be submitted via email 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 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 future correspondence regarding this waiver, please refer to Docket Number FRA-2001-10660. If you have any questions, please contact Mr. Leith Al-Nazer, Mechanical Engineer, Motive Power & Equipment Division, at (202) 493-6128 or Leith.Al-Nazer@dot.gov.

Sincerely,



Robert C. Lauby
Associate Administrator for Railroad Safety
Chief Safety Officer