



Office of the Chairman

National Transportation Safety Board

Washington, DC 20594

July 9, 2021

Surface Transportation Board
395 E St., SW
Washington, DC 20423

Attention: Docket No. EP 282 (Sub-No. 2)

Dear Sir or Madam:

The National Transportation Safety Board (NTSB) has reviewed the Surface Transportation Board's (STB) June 7, 2021, notice of proposed rulemaking (NPRM), *Railroad Consolidation Procedures—Exemption for Emergency Temporary Trackage Rights*.¹ In the NPRM, the STB stated that, pursuant to a petition filed by the Association of American Railroads (AAR), it will initiate rulemaking to establish a new class exemption for emergency temporary trackage rights, including proposals for certain other related changes to the class exemptions for trackage rights and temporary trackage rights.

The STB solicits public comments by July 12, 2021, on the proposed rulemaking for railroads that seek temporary trackage rights exemptions under emergency conditions, such as unforeseen track outages caused by, but not limited to, natural disasters or accidents expected to last more than 7 days, with no reasonable alternative to maintain preoutage levels of service. Currently, an exemption cannot become effective until 30 days after the railroad files a verified notice, unless the STB approves a waiver. The new rule proposes that the exemption become effective 5 days after the verified notice in which the railroads certify that the trackage rights are needed is filed with the STB. The STB also proposes that the verified notice describes the circumstances, including: (1) the nature of the event that caused the unforeseen outage; (2) the location of the outage; (3) the date that the emergency situation occurred; (4) the date that the track outage was discovered; and (5) the expected duration of the outage.

The NTSB recognizes the need for expedited procedures that allow railroads to quickly respond to unforeseen track outages. The NTSB is supportive of reducing the delay for track exemptions under existing regulations.

However, the NTSB is concerned that the reduced time to grant waivers could reduce the level of safety, especially for railroad crews and others affected by trains operating in detour territories that may be unfamiliar. The NPRM does not address such safety considerations. For

¹ *Federal Register* 86, no. 107 (June 7, 2021): 30245.

example, the NPRM lacks discussion about existing regulations in Title 49 *Code of Federal Regulations (CFR)* 200-299, particularly 49 *CFR* 240.229 and 49 *CFR* Part 214, that require a train engineer to be familiar with the territory.² A 30-day notice provides time for familiarization with the territory and regulations; a 5-day period may not provide such opportunity, particularly when not explicitly spelled out in the rulemaking. Because the NPRM already proposes to require a verified notice describing the outage circumstances, the requirements of the notice could be expanded to include verification that safety hazards associated with unfamiliarity with the detour territory are identified and managed.

The NTSB has investigated several railroad accidents involving operating crews with limited familiarity of track territories. In the December 18, 2017, derailment of an Amtrak (National Railroad Passenger Corporation) train in DuPont, Washington, the train derailed on its first revenue service run over a new territory.³ During the course of the investigation, the NTSB learned that most operating crewmembers on that train had been qualified on the physical characteristics of the territory after making only a single roundtrip. During the accident trip, the engineer missed important track signs and other cues to identify his location on the territory and did not slow the train for a significant curve. As a result of the investigation, the NTSB found that the Amtrak qualification program for the Point Defiance Bypass did not effectively train and test qualifying crewmembers on the physical characteristics of the new territory.

In the November 30, 2007, collision between an Amtrak passenger train and a Norfolk Southern freight train in Chicago, Illinois, the Amtrak train, which was operated by an Amtrak engineer with about 1 year of experience, struck the rear of a standing freight train.⁴ During the trip, the engineer confused the meaning of a signal he had recently passed and failed to slow his train while approaching the stopped freight train. The Amtrak engineer had operated infrequently over the territory where the accident occurred. During this investigation, the NTSB determined that the engineer's lack of exposure to this territory may have made it more difficult for him to recall the meaning of the signal aspects. These two accidents highlight the safety risk associated with engineers operating over territories where they may not be qualified on or familiar with the physical characteristics of the territory; such risks need to be mitigated.

The NTSB is concerned that this NPRM does not assure that host and tenant railroads effectively and jointly manage the safety risks in detour territories that arise from crews operating in unfamiliar territory because of emergency track outages. The NTSB believes that the verified notice should also include a plan for addressing engineer familiarity with the detour territory on which they will be operating.

In summary, the NTSB believes that improved procedures addressing the operational disruptions of railroads caused by unforeseen track outages is an important step in maintaining transportation resiliency, but clear safety requirements are necessary to mitigate the risks

² Title 49 *CFR* 240.229, "Requirements for joint operations territory" and 49 *CFR* Part 214 "Railroad workplace safety."

³ National Transportation Safety Board, *Amtrak Passenger Train 501 Derailment, DuPont, Washington, December 18, 2017*, RAR-19/01 (Washington, DC: National Transportation Safety Board, 2019).

⁴ National Transportation Safety Board, *Collision of Amtrak Passenger Train 371 and Norfolk Southern Railway Company Freight Train 23M, Chicago, Illinois, November 30, 2007*, RAR-09/01 (Washington, DC: National Transportation Safety Board, 2009).

associated with crewmembers that are potentially unfamiliar with the detour territory and they should be addressed in the final rule.

The NTSB appreciates the opportunity to comment on this notice.

Sincerely,

Bruce Landsberg
Acting Chairman