



A bold voice for transportation workers

December 7, 2010

Mr. Robert C. Lauby
Deputy Associate Administrator for Regulatory and Legislative Operations
U.S. Department of Transportation
Docket Operations Facility
1200 New Jersey Avenue, SE, W12-140,
Washington, DC 20590

RE: Petition for Waiver of Compliance; Docket No. FRA-2010-0126

Dear Deputy Associate Administrator Lauby:

On behalf of the Transportation Trades Department, AFL-CIO (TTD)¹, I urge you to deny the request by BNSF Railway Company (BNSF) and Ferrocarril Mexican Railway Company (FXE) to seek a test waiver of compliance from the requirements of 49 CFR 232.205 Class I Brake Test, Initial terminal inspection; 232.409 – Inspection and testing of end-of-train devices; and 215.13 – Pre-departure Inspection. This request is a blatant effort to cut costs by outsourcing important safety jobs to a foreign country and must be rejected by the Federal Railroad Administration (FRA).

Train inspections currently performed by U.S. rail workers play an important role in ensuring the safe and secure movement of U.S.-Mexico cross-border operations. As the Transportation Communications International Union (TCU) has explained in its comments, current U.S. train inspectors receive extensive training – including apprenticeship training, classroom instruction and hands on training. In addition, new U.S.-based inspectors often have the benefit of working alongside experienced co-workers and managers with 20 to 30 years of safety inspection experience. Direct FRA oversight of inspection work also ensures that procedures are carried out correctly and in full compliance with agency regulations. The waiver request by BNSF and FXE does not adequately explain how these critical inspections and tests will be conducted in Mexico without jeopardizing safety. Furthermore, the waiver request makes no mention of existing statutory requirements for inspections performed in Mexico in lieu of U.S. inspections, and how compliance with these requirements will be accomplished. The burden must be on the applicant to demonstrate that moving these inspections to Mexico will not lower the bar on safety and are consistent with the law. They waiver request filed by BNSF and FXE simply does not contain adequate information or assurances to meet this threshold.

¹ Attached is a list of TTD affiliated unions.

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Edward Wytkind, President / Larry I. Willis, Secretary-Treasurer



It is important to note that similar requests to conduct these inspections in Mexico have been denied by the FRA. In 2004, the Union Pacific Railroad Company (UP) submitted a petition to the FRA to permit Transportacion Ferroviaria Mexicana (TFM) to perform required tests and inspections in Mexico instead of in the U.S.² TTD, TCU, the United Transportation Union and our other affiliated unions opposed this request and over twenty members of Congress submitted a letter requesting the FRA to deny the request. After reviewing the submitted comments and reviewing the application, the FRA rejected the petition and concluded that UP failed to demonstrate that such action would be consistent with safety. In 2006, UP renewed its efforts to seek a waiver to conduct tests in Mexico. Once again TTD and our affiliates argued that granting such a waiver would not be consistent with safety. UP withdrew this second petition when it appeared likely that it would be rejected by the FRA.

Shortly after UP's last request to conduct safety inspections in Mexico, Congress enacted the Rail Safety Improvement Act of 2008, (P.L. 110-432) which included a provision imposing certain conditions and requirements on any similar move. Section 416 of that law specifically states that mechanical and brake inspections of rail cars performed in Mexico shall not be treated as satisfying United States rail safety laws or regulations unless the Secretary of Transportation certifies that:

- (1) such inspections are being performed under regulations and standards equivalent to those applicable in the United States;
- (2) the inspections are being performed by employees that have received training similar to the training received by similar railroad employees in the United States;
- (3) inspection records that are required to be available to the crewmembers on board the train, including air slips and blue cards, are maintained in both English and Spanish, and such records are available to the FRA for review; and
- (4) the FRA is permitted to perform onsite inspection for the purpose of ensuring compliance with the requirements for this subsection.

As stated above, the application by BNSF and FXE makes no mention of these statutory requirements and thus makes no claim that they have met these conditions. While the application claims that FXE will comply with all parts of CFR 232 and 215, there is absolutely no detailed or sufficient explanation of how that will be accomplished. The brief letter to the FRA simply repeats perfunctory statements that the carriers "expect" the test waiver to demonstrate that the FXE inspections are "on par" with U.S. inspections. Given the clear statutory mandate that inspections must be performed under "equivalent" regulations and standards more is needed by the applicant before the FRA can even consider whether this condition has been met.

² Dockets FRA-2004-18746 and FRA-2006-25765

As discussed earlier in these comments, U.S. workers performing these inspections receive extensive training. Section 416 requires that inspections are performed by employees that have received training similar to the training received by railroad employees in the United States. In their waiver request, BNSF and FXE fail to provide information as to type of training actually received by FXE Carmen and how this training will be delivered.

Section 416 also requires inspection records to be available in both English and Spanish. While BNSF and FXE suggest that training documentation and records be provided to FRA, there is nothing in the application as to whether the documentation going to FRA and the receiving BNSF crewmembers will be made available in both English and Spanish as required by Section 416.

While BNSF suggests that FRA schedule regular audits during the test waiver period to confirm FXE compliance and offers to regularly audit for FRA and AAR, Section 416 requires that the FRA be permitted to perform onsite inspection for the purpose of ensuring compliance with the requirements for this subsection. We are not aware, and the application makes no mention of, any agreement between the Government of Mexico and the FRA on enforcement of these requirements. This leaves the FRA without the authority, as it does in relation to U.S. railroads, to impose sanctions on FXE for failure to abide by safety related regulations. Without the ability to hold the railroad accountable, FXE inspections cannot be used as a substitute for those administered at the border by U.S. personnel.

The FRA should categorically deny any such waivers that fail to meet the requirements set forth in Section 416 of the Rail Safety Improvement Act.

Thank you for taking the time to consider the views of transportation labor.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward Wytkind', with a stylized, looping flourish at the end.

Edward Wytkind
President

TTD MEMBER UNIONS

The following labor organizations are members of and represented by the TTD:

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Federation of Professional and Technical Engineers (IFPTE)
International Longshoremen's Association (ILA)
International Longshore and Warehouse Union (ILWU)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Aviation Safety Specialists (PASS)
Sailors' Union of the Pacific (SUP)
Sheet Metal Workers International Association (SMWIA)
Transportation · Communications International Union (TCU)
Transport Workers Union of America (TWU)
United Mine Workers of America (UMWA)
*United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,
Allied Industrial and Service Workers International Union (USW)*
United Transportation Union (UTU)