



A bold voice for transportation workers

January 18, 2023

John Karl Alexy
Associate Administrator
Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

**RE: BNSF Petition for Waiver of Compliance
Docket No. FRA-2022-0082**

Dear Associate Administrator Alexy:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Federal Railroad Administration's (FRA) notice regarding BNSF Railway's recent petition for waiver of compliance regarding certain brake inspection requirements. TTD consists of 37 affiliated unions representing the totality of rail labor, including both passenger and freight rail workers.¹ TTD endorses the comments of our affiliates, the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART-TD) and the Brotherhood of Railroad Carmen (BRC). Our positions are fully aligned with our affiliates' comments in this docket.

In this docket, BNSF is requesting a waiver from requirements under 49 C.F.R. sections 232.205 (c) (ii) (B) and 232.207 (b) (1). The railroad is asserting that an incomplete FRA-sponsored study, conducted June 28, 2022, in Staples, Minn., is definitive proof that the established safety regulations should be waived. As SMART-TD states, "As FRA is fully aware, the test being referenced by BNSF is just one phase of a multi-year four-phase study. To this point, FRA is still receiving comments from the involved parties to consider in its analysis for this particular phase of the test's results. Again, as FRA knows, the final phase of the test will not be completed until sometime late in the summer of 2023. Upon its completion, only then will an accurate and robust assessment be able to be made."

¹ Attached is a list of TTD's affiliated unions.

Transportation Trades Department, AFL-CIO
815 Black Lives Matter Plaza, NW / 4th Floor / Washington DC 20006
Tel: 202.628.9262 / Fax: 202.628.0391 / www.ttd.org
Greg Regan, President / Shari Semelsberger, Secretary-Treasurer



This is not the first time that rail labor organizations have commented on waiver requests by Class 1 Railroads similar to this request from BNSF. Rail labor has consulted previously with train crews working in extreme cold temperatures on Canadian National Railway (CN)/Wisconsin Central Ltd. during a previous phase of this testing where the cubic feet per minute (CFM) is above normal despite having done leakage tests with multiple sources of air.² Those crews have reported back with reliable information regarding the operations of trains under the relevant conditions of the proposed waiver request from BNSF.

For example, the proposed CN waiver that was denied by FRA during a previous phase of testing would have required train crews to not depart until the flow reaches the allowed values.³ There also existed provisions specific in CN's denied waiver request to en-route air flow values that are not to be exceeded for distributed power (DP) trains. Trains in this territory operating with high flow values in extreme cold temperatures do attain benefits from additional supply points of air. As noted by several rail labor organizations in their comments on CN's denied waiver request, there may be some benefits of using multiple supply points under certain circumstances.⁴ However, there were concerns with CN's approach that caused several rail labor organizations to oppose CN's request for a waiver.⁵

In denying CN's request for a waiver in September 2022, FRA noted that "FRA determined that the testing conditions CN proposed to follow are insufficient to ensure that the testing would be conducted in a manner that would be in the public interest and consistent with railroad safety."⁶

There likely have and will be similar issues confronting train crews in Minnesota during BNSF's testing where the weather can reach cold temperatures analogous to the temperatures that were considered in the waiver request by CN.⁷ One of the purposes of this next phase of ongoing testing by BNSF is to take simulations using conditions in Canada and test them in real-world conditions in the United States. For example, all bench simulations during the previous phase of testing involving CN were conducted with uniform train leakage. The purpose of the current real-world testing is to see whether the system will react the same under random and varying leakage scenarios. However, our concern during this current phase of testing is that it will be difficult, if not impossible, to control train leakage characteristics because as the state of slack within the train changes, so will those leakage characteristics. Because of this phenomenon, it is not uncommon to get almost-constant "Unexpected Flow" alarms with DP units in the extreme cold.

² See "Joint Labor Comments" from <https://www.regulations.gov/comment/FRA-2021-0091-0004>

³ See <https://www.regulations.gov/document/FRA-2021-0091-0006>

⁴ Supra 1

⁵ Id.

⁶ Supra 2

⁷ See FRA- 2021-0091

BNSF's current incomplete testing does not allow the collection of the information necessary to answer these questions and ensure that BNSF's proposed request is safe. FRA must not allow BNSF to manipulate the test's intentions to determine a safe level of operations within the railroad industry. It is far safer and prudent to allow the ongoing testing to be completed later this year and give interested stakeholders, including rail labor organizations, the opportunity to comment on those results before proceeding rather than prematurely granting BNSF's request for a waiver.

On a systemic level, FRA must be highly critical of incoming waivers, such as the waiver that BNSF has requested. Regulating something as important as the safety of a highly interconnected and national railroad system with countless individual waivers is simply asking for trouble. The granting of waivers only further invites additional applications for waivers from railroads, which is problematic for the reasons outlined below.

If BNSF, or any other railroad, believes that the existing safety regulations that have been finalized through a rigorous negotiation and public comment process are inadequate or unnecessary to meet current needs, there is an established process to initiate regulatory changes through the Rail Safety Advisory Committee (RSAC). Safety regulations exist for a reason, and they are often created after a catastrophe demonstrates the precise need for regulations and the consequence of operating without such safety rules. A patchwork system of waivers that enable inconsistent procedures and operations is simply not as safe and effective as a comprehensive approach to railroad safety.

It is not sustainable to effectively regulate the rail industry through countless individual waivers. If a member of the public who lives near a rail line wanted to learn more about the provisions protecting their town from the risks inherent in railroad operations, they would not get a full picture of operating rules by reading the relevant FRA regulations unless they also research the hundreds of waivers that have been granted to railroads for everything from safety-critical brake inspections to refresher training. These waivers are not easy for the public to find on FRA's website alongside regular railroad operating rules. And yet, these waivers, taken collectively, have created operating procedures that change from railroad to railroad, and subdivision to subdivision.

TTD also strongly requests that FRA not grant waiver requests for the sole reason that FRA has not received formal opposition to those requests for waivers. The granting of waivers, absent an objection from a stakeholder or member of the public, is a troubling practice that TTD has observed from FRA that other USDOT modal agencies do not seem to follow. To be clear, the lack of an objection does not mean the waiver request is a good idea. Rather, TTD believes that FRA should generally take a skeptical approach to waiver requests and conduct an independent analysis regardless if a stakeholder or member of the public objects to the waiver request. To further promote transparency around FRA's decisions regarding these waivers, FRA should expand the existing discussions of its analyses of these waivers included in the approval or disapproval letters that are publicly posted to the docket. This requested approach is consistent with FRA's responsibility as the federal agency tasked with the oversight of and safety of our rail system.

For these reasons, and the reasons that SMART-TD and BRC have more fully elaborated in their respective comments, we call on FRA to deny BNSF's waiver request.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Regan", enclosed within a circular stamp or seal.

Greg Regan
President