



TTD



June 20, 2023
(Via online at www.regulations.gov)

John Karl Alexy
Associate Administrator for Railroad Safety
Federal Railroad Administration
1200 New Jersey Avenue, SE, W12-140
Washington, DC 20590

**RE: Petition for Extension of Waiver of Compliance, BNSF
Docket No. FRA-2020-0033**

**Comments of the
American Train Dispatchers Association (ATDA)
Brotherhood of Locomotive Engineers and Trainmen (BLET)
Brotherhood of Maintenance of Way Employees Division (BMWED)
Brotherhood of Railroad Signalmen (BRS)
International Association of Machinists and Aerospace Workers (IAM)
Transportation Trades Department (TTD)**

Mr. Alexy:

The railroad Labor Organizations identified above (“Labor Organizations”) are the collective bargaining representatives for the vast majority of railroad industry workers engaged in train operations, train dispatching, signal, maintenance of way and mechanical maintenance, inspection, testing, and repair on passenger and freight railroads throughout the United States.

The Labor Organizations and their individual and collective memberships have a direct safety interest whenever FRA determines to waive safety regulations. The public also shares this interest, especially when a waiver of regulations regarding the performance of tests that confirm the proper functioning of locomotive and train air brake systems is involved. The classes or crafts of employees represented by the Labor Organizations include those who will be directly affected by the waiver of the safety regulations discussed in these comments. Particularly, we wish to dispel the notion that waiving current air test requirements promotes safety at a time when railroads simultaneously work to avoid any requirement to upgrade their current braking systems.

In 2020, BNSF filed a petition for waiver of compliance¹ regarding railroad safety regulations contained at 49 CFR part 215, Railroad Freight Car Safety Standards, and part 232, Brake System

¹ 85 Fed. Reg. 31850

Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-Of-Train Devices. Specifically, the FRA waived requirements of 49 CFR 215.13, Pre-Departure Inspection, when combining two existing trains (i.e., when two separate consists including one or more cars and on or more locomotives) when both trains have had a Class I brake test under § 232.205, Class IA brake test under § 232.207, or have been designated as extended haul trains under § 232.213.² The granted waiver allows BNSF to combine two existing, operating trains without additional inspection, other than a Class III brake test. Following the approval decision from the FRA, Montana Rail Link was added to the waiver, allowing more trains to operate under the waiver provisions.³

At the time that BNSF filed its original petition, Rail Labor filed comments opposing this unsafe and misguided waiver. Those comments explained, “The bottom line is that railroads have no other way to confirm the efficacy of air brakes—and the condition of air hoses, brake rigging, brake shoes and other appurtenances—other than to inspect and test the equipment at the time the trains are combined and before departure. Indeed, changing the lead unit of a train also changes main reservoir, brake valves, air compressor and many other modal elements. Simply put, along with those changes, there must be confirmation that all modes were successfully either engaged or disengaged when and where they are appropriate.”⁴

This waiver was unsafe at the time it was granted and should not have been granted. **We urge the FRA to re-examine the safety rationale for this waiver and revoke the waiver.**

In the current petition for modification of the existing waiver, BNSF has asked to modify data reporting to hide the originating terminal, where the initial terminal inspection and Class I brake test was completed. Instead, BNSF is requesting to report only the location of the combination under the existing waiver.⁵ These modifications are nominally intended to address concerns regarding the use of this waiver in addition to BNSF’s Brake Health Effectiveness (BHE) waiver, granted in 2018.⁶ The BHE waiver allows BNSF to use Wheel Temperature Detectors (WTDs) in place of certain intermediate brake tests. The BHE waiver has been plagued with issues and concerns, including unavailability of necessary data until after trains have been combined or separated, invalidating much of the data gathered under the BHE waiver. The modifications BNSF is currently proposing to the combination waiver do not adequately address the concerns raised by the BHE waiver, and the modifications would not increase rail safety at all and would in fact be a detriment to rail safety.

Obviously, the simultaneous effects of both waivers present a concerning overlap. If two trains have been combined with only a Class III brake test that is not able to fully confirm the working status of all brakes and then is subsequently waived from the 1,500-mile brake test required for

² <https://www.regulations.gov/document/FRA-2020-0033-0001>

³ <https://www.regulations.gov/document/FRA-2020-0033-0008>

⁴ <https://www.regulations.gov/comment/FRA-2020-0033-0004>

⁵ <https://www.regulations.gov/document/FRA-2020-0033-0011>

⁶ FRA-2018-0049

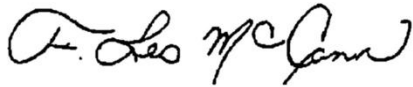
extended-haul trains under § 232.213, that could create a highly dangerous situation where a train is traveling hundreds of miles without an adequate brake inspection. As part of this waiver, BNSF is proposing to change the reporting criteria to report the location of combination under the waiver instead of the initial terminal, this is a critical change that in many cases would violate the safeguard provided by § 232.207, which requires Class IA brake tests to be completed when trains have traveled 1,000 miles. Further, condition number 12 begins with the words “For trains operating under this waiver...”. This negates BNSF’s statement that until trains are combined, they are only “potential waiver candidates.” If trains are not combined with adherence to the conditions in the waiver, they are not operating under the waiver.

In this request, BNSF is systematically attempting to evade brake inspection and testing, and this modification is simply one step further. This exercise in regulatory avoidance is emblematic of the industry’s approach to safety under the Precision Scheduled Railroading model where railroads have eliminated necessary workers and forced the remaining workers to work faster and cut corners through an endless stream of waivers. Trains have gotten longer and heavier, and inspections have not been able to keep up with the rise in risk that workers face daily. Further, workers on the ground have raised concerns that brake health effectiveness detector inspections have been ignored and, in some cases, falsified, in violation of other rules and waivers.

If BNSF really were simply attempting to provide more information and data to allow Labor Organizations to audit operations under this waiver, a waiver modification would not be needed. There is no provision in the original waiver conditions that prohibits BNSF from providing additional data. In fact, the Labor Organizations strongly encourage BNSF to do so, and we will be happy to review any documentation provided about this or any other issue.

For these reasons, we urge the FRA to deny BNSF’s requested modification and additionally to re-examine the safety of the original waiver, investigate our concerns that BNSF is falsifying brake health effectiveness inspections, and revoke the waiver entirely.

Respectfully submitted,



F. Leo McCann
President, ATDA



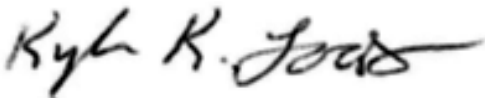
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