



August 1, 2023

Mr. Karl Alexy
Associate Administrator for Railroad Safety & Chief Safety Officer
Federal Railroad Administration
1200 New Jersey Avenue SE
Washington DC, 20590

**RE: BNSF Waiver of Compliance, Class I Brake Test - Initial Terminal Inspection
Docket No. FRA-2007-28812**

Mr. Alexy,

The undersigned labor organizations are pleased to respond to the Federal Railroad Administration's (FRA) notice regarding BNSF Railway Company's (BNSF) petition to extend its waiver allowing Class I brake tests and other mechanical inspections associated with a train entering the United States at Eagle Pass, Texas, to be performed at alternate locations rather than immediately at the border as required by federal regulations. Our unions represent BNSF freight rail workers across various crafts and therefore have a vested interest in this matter. For the reasons outlined below, we ask that the FRA deny BNSF's petition to extend its waiver.

Specifically, BNSF is requesting a waiver extension from 49 CFR 232.205 and certain provisions of part 215 relative to the inspection of trains entering the United States from Mexico. BNSF seeks to continue to move trains received in interchange from Ferrocarril Mexicano, S.A. (FXE), approximately 12 miles outside of the community of Eagle Pass, Texas, to facilities at Ryan's Ruin, Texas, or Horan Siding, where the required inspections will be performed.

Existing regulations established in 49 CFR 232.205 require rail carriers to perform a rigorous Class I brake inspection at the border when trains cross into the United States.¹ This inspection is crucial in mitigating any potential deficiencies in the Mexican Government's rail safety regulations, which are much weaker than U.S. rail safety regulations, and ensuring that all U.S. safety regulations are met before a train continues on.

The FRA granted BNSF's original waiver from initial terminal Class I brake inspections in 2008 and extended it in 2013 and 2018. The waiver stipulates that a roll-by inspection must be performed at the point of interchange before the train continues into the U.S.² A roll-by inspection simply does not provide an adequate level of certainty that the train can and will travel safely the additional 12 miles to Ryan's Ruin or Horan Siding for full inspection without incident. In its petition BNSF states that since its first waiver was granted 10 years ago, it has been able to improve operational efficiencies and prevent blocked crossings in the community of Eagle Pass.³ While we share the goal of reducing blocked crossings, it is the railroads' operating practices, including running longer and longer trains, that are leading to the sharp increase in blocked crossings in communities across the country.⁴ Rewarding BNSF for causing more blocked crossings by giving them a waiver from important safety regulations on the grounds that it will reduce blocked crossings just incentivizes BNSF to continue its bad behavior.

The recent high-profile disaster in East Palestine, Ohio, where an undetected overheated wheel bearing on a Norfolk Southern (NS) train caused a catastrophic derailment, is an important reminder that safety inspections, including mechanical inspections, are a critical safeguard necessary to protect workers and surrounding communities. The wheel bearing in the East Palestine incident increased over 200 degrees fahrenheit in temperature in 30 miles, including increasing by over 150 degrees fahrenheit in just 20 of those miles.⁵ The National Transportation Safety Board (NTSB)'s hearing on the derailment in June highlighted the lack of inspections that the rail cars in that train received, with most of the rail cars in that train consist not receiving a full mechanical inspection before being added to the train. In a post-derailment inspection, the FRA found defects in 25% of the 77 cars it reviewed and it is extremely likely that a full inspection performed by a Qualified Mechanical Inspector would have found some of those defects, if given the opportunity.⁶

To be clear, the problems with the current mechanical inspections regime highlighted by the NTSB hearing and other public reporting is not just limited to NS; it's a problem among all the Class I's,

¹ 49 CFR 232.205, 49 CFR 215

² <https://www.regulations.gov/document/FRA-2007-28812-0026>

³ <https://www.regulations.gov/document/FRA-2007-28812-0026>

⁴ <https://www.washingtonpost.com/nation/interactive/2023/long-trains-block-intersections-paramedics/>

⁵ <https://abc6onyourside.com/news/local/norfolk-southern-wont-say-if-defect-detectors-picked-up-problems-before-crash-east-palestine-ohio-train-derailment-toxic-vinyl-chloride-ntsb-report>

⁶ <https://www.trains.com/trn/news-reviews/news-wire/ntsb-east-palestine-hearing-focuses-on-role-of-car-inspection-wayside-detectors/>

including BNSF. Since the Class I freight rail industry implemented Precision Scheduled Railroading, some railroads have slashed the number of mechanical employees, including carmen and other workers who perform inspections, by upwards of 40%. BNSF itself slashed its number of maintenance of equipment and stores employees from a recent high of 8,908 in March 2019 to 6,657 in June 2023, a decrease of over 25%.⁷

BNSF's petition to waive mechanical inspections in Eagle Pass comes at a time when it is struggling to complete basic locomotive inspections required by the FRA. In January, BNSF had 1,000 locomotives that were sidelined waiting for full inspections and BNSF stated that they "do not have the necessary manpower and shop capacity available on the property to address the unusually high out of service count and back log of scheduled maintenance events."⁸ BNSF's inability to inspect and maintain its locomotives is a direct consequence of its decision to eliminate or decrease its workforce at 21 maintenance shops across its network since 2020. In the same time period, BNSF furloughed over 400 maintenance employees performing work across BNSF's network. When BNSF finally started recalling furloughed employees in late 2021 and early 2022, many declined to return. As mechanical employees declined recall, BNSF did not immediately begin hiring to fill the positions those employees would have held, leaving it woefully understaffed in the mechanical crafts.⁹ That does not inspire confidence that BNSF has the workforce levels to complete basic mechanical inspections, including for the trains that pass through Eagle Pass.

BNSF's petition to extend its waiver also comes at a time of widespread safety issues in the freight rail industry. These safety issues contribute to more than 1,000 freight rail derailments a year – nearly three a day. And contrary to the railroads' rhetoric, the industry's safety record is getting worse, not better. In fact, according to data from the FRA, the accident and incident rate has gotten worse over the last decade at the biggest Class I railroads: BNSF Railway, Union Pacific, CSX, and Norfolk Southern. BNSF's total rate of accidents/incidents per million train miles increased from 7.314 in 2013 to 7.901 in 2022 while its rate of yard accident/incidents per million yard switching miles increased from 16.615 in 2013 to 18.191 in 2022.¹⁰

BNSF's request to waive these important existing safety regulations regarding mechanical and brake inspections flies in the face of the FRA's sharpened focus on mechanical safety following the events in East Palestine. BNSF's draconian cuts to its workers who perform rail car and other mechanical inspections as well its ongoing struggles to complete the FRA's mandatory locomotive inspections is reflective of a company that is not taking safety inspections seriously. Delaying this testing and inspection process unequivocally exposes workers, residents in Eagle Pass, and the surrounding border communities to unnecessary risk. We urge the FRA to consider the safety

⁷ <https://www.stb.gov/reports-data/economic-data/employment-data/>

⁸ [February 2023 Rail Unions Lawsuit against BNSF](https://www.businesswire.com/news/home/20230307005934/en/IBEW-IAM-SMART-MD-Unions-File-Outsourcing-Suit-Against-BNSF-Railway). (Page 11) Accessed at <https://www.businesswire.com/news/home/20230307005934/en/IBEW-IAM-SMART-MD-Unions-File-Outsourcing-Suit-Against-BNSF-Railway>

⁹ Ibid 8, Page 6

¹⁰ <https://safetydata.fra.dot.gov/officeofsafety/publicsite/query/TenYearAccidentIncidentOverview.aspx>

implications for the community of Eagle Pass should a train crossing the border experience a malfunction that would have been detected by the waived Class I brake requirements. The 12 miles BNSF is seeking to forgo a full Class I brake test and other mechanical inspections is not that much shorter than the 20 miles that the NS train in East Palestine traveled undetected between wayside detectors before it derailed.

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. The East Palestine derailment is a tragic reminder of the need for strong safety rules **and** robust enforcement of those rules by the FRA. 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 and also makes it harder for the public, including the residents of Eagle Pass, to know what rules railroads, including BNSF, are operating under. In the wake of the East Palestine derailment, the FRA needs to scrutinize previous safety waivers that have been granted to ensure that those waivers actually increase, not decrease, safety. This waiver reduces the standard of mechanical inspections that BNSF trains traveling through Eagle Pass receive and unnecessarily increases the risk of derailments, all for the sake of operational efficiency. The FRA's statutory mandate is to enforce the safety of our railroad system, not help railroads become more efficient. We therefore respectfully request that the FRA deny this petition.

We appreciate the opportunity to comment on this petition and look forward to working with the FRA in the future.

Sincerely,

Brotherhood of Locomotive Engineers and Trainmen–IBT

Brotherhood of Maintenance of Way Employees Division–IBT

Brotherhood of Railroad Signalmen

International Association of Machinists and Aerospace Workers

International Association of Sheet Metal, Air, Rail and Transportation Workers–Transportation Division

National Conference of Firemen & Oilers, SEIU

Transport Workers Union of America