



August 15, 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 Extension of Waiver of Compliance, Extended Haul Trains**  
**Docket No. FRA–2006–24812**

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 from 49 CFR 232.213 to continue operating extended haul trains for distances of up to 1,702 miles, beyond the limit of 1,500 miles as stated in the regulation. 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.

Current regulations stipulate that extended haul trains are permitted to move up to, but not exceeding, 1,500 miles between brake tests and inspections.<sup>1</sup> In addition, current rules require that equipment with defective or insecure power brakes only be moved from the place at which the defect or insecurity was first discovered to the nearest available place at which the repairs can be made.<sup>2</sup> BNSF is petitioning the FRA to extend its waiver, first granted in 2006, which permits extended haul trains to travel 1,702 miles between brake tests and inspections. It is apparent in the waiver request that BNSF is intent on aligning brake testing requirements with its own scheduling

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<sup>1</sup> 49 CFR 232.213(a)

<sup>2</sup> 49 CFR 232.15 and 49 U.S.C. 20303

needs, rather than adhering to the regulation as prescribed, merely for the sake of convenience. This extension request comes at a time of widespread safety concerns within the freight rail industry, which should not be overlooked in favor of the convenience that BNSF claims this waiver provides.

Our affiliates have repeatedly flagged concerns to BNSF directly and to the FRA through the Brake Health Effectiveness (BHE) Test Waiver Committee, that BNSF is not complying with all of the requirements contained in the 2018 waiver extension. Our affiliates found numerous instances, including in November 2022 and January 2023, where BNSF was not conducting the inspections required under the conditions of the 2018 waiver, especially when rail cars were picked up en route. Despite our affiliates repeatedly flagging these instances for the BHE Test Waiver Committee, they have yet to be fully resolved. The FRA noted BNSF's difficulty complying with extended haul train inspection and Class I brake test requirements when it modified in 2020 a separate, but similar, waiver under docket FRA-2018-0049. That waiver dealt with the same regulatory requirements to account for the fact that BNSF had so many cars with brake defects that "the number of cars identified as not qualified under the waiver has, in some instances, overwhelmed the capacity of repair tracks, resulting in congestion and delays."<sup>3</sup> The FRA made clear in its 2018 decision letter that "FRA reserves the right to modify or rescind this waiver upon receipt of information pertaining to the safety of railroad operations and/or in the event of noncompliance with any condition of this waiver."<sup>4</sup> We do not believe that BNSF has been in compliance with the terms of the waiver in this docket and therefore don't believe the conditions warrant the FRA granting an extension, especially in light of BNSF's clear problems complying with the same regulatory requirements for extended haul trains under other waivers.

BNSF's noncompliance is reflective of problems that it is having elsewhere on the mechanical side. BNSF's petition to delay mechanical inspections normally required at 1,500 miles comes at a time when it is struggling to complete basic federally-required locomotive inspections. In January, BNSF had 1,000 locomotives that were sidelined waiting for full inspections and 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."<sup>5</sup> 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 its 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

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<sup>3</sup> <https://www.regulations.gov/document/FRA-2018-0049-0017> (Page 1)

<sup>4</sup> <https://www.regulations.gov/document/FRA-2006-24812-0049> (Page 3)

<sup>5</sup> [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>

begin hiring to fill the positions those employees would have held, leaving it woefully understaffed in the mechanical crafts.<sup>6</sup>

In 2020, BNSF filed a petition for waiver of compliance<sup>7</sup> regarding railroad safety regulations contained at 49 CFR part 215, Railroad Freight Car Safety Standards, and part 232, Brake System 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. 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. Obviously, the simultaneous effects of the 2020 waiver and this most recent request for extension present a concerning overlap.<sup>8</sup> 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 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.

Contrary to BNSF's claim in its petition, this waiver is not consistent with safety and BNSF is wrong to draw the conclusion that this waiver has "no adverse operational effect on safety." 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.<sup>9</sup>

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.<sup>10</sup> The National Transportation Safety Board (NTSB)'s hearing on the derailment in June highlighted the lack of inspections that

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<sup>6</sup> Ibid 8, Page 6

<sup>7</sup> 85 Fed. Reg. 31850

<sup>8</sup> <https://www.regulations.gov/document/FRA-2020-0033-0008>

<sup>9</sup> <https://safetydata.fra.dot.gov/officeofsafety/publicsite/query/TenYearAccidentIncidentOverview.aspx>

<sup>10</sup> <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>

the rail cars in that train received, with most of the rail cars in that 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.<sup>11</sup> BNSF wants to continue to be able to delay inspections by more than 200 miles, well more than the 20 miles it took for a wheel bearing to fail in East Palestine and cause a catastrophic derailment. This request is especially dangerous in light of the examples that our affiliates flagged for the BHE Test Waiver Committee and for the FRA of rail cars covered under this waiver that had cold wheel defects that were not found and didn't undergo the proper inspections.

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, 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%.<sup>12</sup>

Our affiliates have been clear that BNSF does not currently have the mechanical personnel necessary to fully carry out the required rail car inspections, locomotive inspections, and Class I brake tests. The FRA should not reward BNSF for its own decision to make dramatic and dangerous cuts to its workforce with an extension of a waiver that is contrary to safety.

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 not as safe and effective as a comprehensive approach to railroad safety and makes it harder for the public to know what rules the railroads, including BNSF, are operating under. The FRA needs to scrutinize previous safety waivers that have been granted to ensure that those waivers actually increase—not decrease—safety. The FRA's statutory mandate is to enforce the safety of our railroad system—not to help railroads become more efficient.

This petition is especially contrary to safety and the public interest because BNSF has not complied with the conditions of the 2018 waiver extension in terms of meeting the modified 1,702 mile inspection and Class I brake inspection requirements. BNSF had 5 years to comply and showed it

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<sup>11</sup><https://www.trains.com/trn/news-reviews/news-wire/ntsb-east-palestine-hearing-focuses-on-role-of-car-inspection-wayside-detectors/>

<sup>12</sup> <https://www.stb.gov/reports-data/economic-data/employment-data/>

is not capable of complying with the requirements in the 2018 waiver, no matter how much time is given to them. We respectfully request that the FRA deny BNSF's petition to extend its 2018 waiver.

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

Sincerely,

American Train Dispatchers Association

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–Mechanical and Engineering Department

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

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers

International Brotherhood of Electrical Workers

National Conference of Firemen & Oilers, SEIU

Transportation Trades Department, AFL-CIO

Transport Workers Union of America