



Transportation Trades Department, AFL-CIO

January 17, 2024

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

RE: Association of American Railroads Petition to Open an Emergency Docket for Extreme Winter Weather, Document: FRA-2024-0001-0001

Mr. Alexy,

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Association of American Railroads (AAR)'s request to the Federal Railroad Administration to open an emergency docket under 49 CFR 211.45 to provide relief from its waiver from certain provisions contained in 49 CFR 229 and 49 CFR 232.15 for upwards of 14 days. TTD consists of 37 affiliated unions representing the totality of rail labor, including employees on all the Class I railroads covered by the AAR's request. For the reasons outlined below, we ask that the FRA deny the AAR's request.

Current weather conditions do not rise to the level of an "emergency event" or "emergency situation" as required under 49 CFR 211.45. Unsurprisingly, in the middle of January, several parts of the country are experiencing very low temperatures and snow. Such conditions occur regularly and railroads should be prepared. Furthermore, this ongoing winter weather event is not as severe as other winter storms that have occurred in just the last five years.¹

Impacts of Workforce and Equipment Levels

Railroads had multiple days' notice of inclement weather allotting plenty of time to prepare networks, workers, and equipment for such conditions.² Long-standing methods and practices have been developed to deal with extreme cold so trains can continue to operate.³ Yet Class I railroads are unprepared to operate in these routine winter weather conditions because of steep workforce and equipment cuts they enacted. For years, TTD and our affiliated unions have warned that these reductions leave zero margin for error.

¹ See for example winter storm Elliott: <https://www.hsd1.org/c/tl/2022-winter-storm-elliott/>

² See <https://www.usatoday.com/story/news/weather/2024/01/11/extreme-cold-across-us/72187543007/>

³ <https://www.theatlantic.com/technology/archive/2019/02/chicago-railroads-fire-tracks/581875/>

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Greg Regan, President / Shari Semelsberger, Secretary-Treasurer

In January 2023, BNSF had 1,000 BNSF locomotives that were sidelined while waiting for full inspections and the railroad 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.”⁴ As a result, BNSF announced its intent to “outsource up to 30 locomotives per week to third party vendors for the next 3-6 months.”⁵ Rather than the results of a “winter storm,” 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. The AAR’s petition does not spell out steps that BNSF or other Class I railroads have taken to avoid situations like the one that happened last winter, further undermining the rationale that these similar conditions require “emergency relief” from the FRA.

Length of Waiver Request

AAR’s request that the locomotive inspection requirements under 49 CFR 229 and the movement of defective safety provisions under 49 CFR 232.15 be waived for a full 14 days, or two weeks, is an extraordinary length of time for the railroads to be exempt from these routine but important safety provisions. AAR’s own petition reinforces the importance of these provisions, stating that the “nation’s rail network continues to contend with weather driven issues like... ‘mechanical failures on cars and locomotives.’” In addition, the FRA found a 72.69% defect rate on Union Pacific’s locomotives in a surprise inspection last year. If the railroads are experiencing mechanical failures as a result of bad weather, and in some cases are already operating with significant defect ratios, it is even more vital that the affected locomotives and rail cars be inspected and repaired before safety issues occur. It simply should not take railroads a full two weeks to return to normal operations.

Setting a Dangerous Precedent

This request has also been sought in recent winters, further reinforcing our concerns that railroads are seeking relief from routine events they should be prepared to navigate. In December of 2022, BNSF submitted a request to the FRA for an “enforcement discretion” that would temporarily relieve BNSF from its obligation to perform periodic inspections and annual tests for hundreds of locomotives. The FRA granted BNSF’s request, citing a “winter storm” as the reason for granting BNSF temporary relief. Our affiliates were not aware of BNSF’s request until after the fact and once made aware, they vocally objected to the “enforcement discretion” that BNSF received from the FRA.

The fact that the Class I railroads are not prepared for normal winter weather does not mean that the FRA should bail them out by granting nation-wide emergency relief for a full two weeks. As the effects of climate change progress, more extreme weather events are expected to occur and the railroads need to be prepared. The railroads should use this experience to make the investments needed to have more resilient networks in the future.

The FRA will set a dangerous precedent if it grants the AAR’s request for emergency relief. Railroads would be incentivized to seek emergency relief from safety regulations for any extreme weather event that caused

⁴ February 2023 Rail Unions Lawsuit against BNSF. (Page 11) Accessed at <https://www.businesswire.com/news/home/20230307005934/en/IBEW-IAM-SMART-MD-Unions-File-Outsourcing-Suit-Against-BNSF-Railway>

⁵ February 2023 Rail Unions Lawsuit against BNSF. (Page 11) Accessed at <https://www.businesswire.com/news/home/20230307005934/en/IBEW-IAM-SMART-MD-Unions-File-Outsourcing-Suit-Against-BNSF-Railway>

operational challenges. Such a scenario would eviscerate the FRA's safety regulations and make a mockery of the "emergency standard" under 49 CFR 211.45 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,

A handwritten signature in black ink, appearing to read "Greg Regan", written over a circular stamp or seal.

Greg Regan
President