



Transportation Trades Department, AFL-CIO

October 7, 2024

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

**RE: Petition for Waiver of Compliance  
Docket No. FRA-2016-0086**

Mr. 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 Company's petition to make permanent its existing waiver from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 232 (Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-Of-Train Devices), and 229 (Railroad Locomotive Safety Standards). TTD consists of 37 affiliated unions representing the totality of rail labor, including freight rail employees. For the reasons outlined below, we ask that the FRA deny this petition. In addition, we endorse 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 Locomotive Engineers and Trainmen (BLET).

Specifically, BNSF seeks a test waiver to investigate whether the 92-day interval for calibration of the air flow method (AFM) indicator required by 49 CFR 229.29(b) and 232.205(c)(1)(iii) can be safely extended to 184 days on locomotives equipped with New York Air Brake (NYAB) CCB-II air brake systems.

TTD filed comments in February of this year in response to BNSF's request to make its existing AFM waiver permanent, stating:

As BNSF and other carriers are keenly aware, requests for permanent waivers are akin to seeking permanent changes to regulations and only serve to circumvent the proper regulatory process. Allowing railroads to obtain permanent waivers would arbitrarily and

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Greg Regan, President / Shari Semelsberger, Secretary-Treasurer

capriciously remove transparency, accountability, and opportunity for public comment, likely violating the Administrative Procedures Act (APA).<sup>1</sup>

Waivers granted by the FRA should always provide an expiration date within no more than five years of approval to allow the waiver to be reviewed on a regular basis to ensure the waiver is still necessary and that the railroad is continuing to abide by all relevant safety and reporting requirements. This waiver is especially illustrative of this point.

In 2022, the FRA found issues with BNSF locomotives operating under its current 184-day AFM waiver that were not aligned with the periodic inspection required under 49 CFR 229.<sup>2</sup> These issues resulted in at least a six-month suspension of the waiver. At this time, BNSF claims that 98% of trains are in compliance with its existing waiver.<sup>3</sup> However, given BNSF's continuing struggle to conduct basic locomotive maintenance and inability to complete required periodic locomotive inspections due to self-inflicted workforce cuts, it is unclear if BNSF has actually fixed the issues that led to the suspension of its AFM waiver in 2022.

As our affiliate, the BLET, notes in its comments on this request, "it only takes one locomotive with a faulty brake line to have a catastrophic accident." A 98% compliance rate leaves far too much room for mechanical failures that will undoubtedly have disastrous consequences. The safety of the extended inspection interval is simply not supported by the data. Similarly, SMART-TD argues in its comments, "Whereas a straightforward analysis of this test program would be in the best interest of all parties, BNSF has proven incapable of being taken at its word, and therefore, even the unfavorable results being proposed must be evaluated with skepticism." Given these unfortunate realities and ongoing safety concerns, we 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,



Greg Regan  
President

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<sup>1</sup> 5 U.S. Code § 706 (2)

<sup>2</sup> <https://www.regulations.gov/document/FRA-2016-0086-0025>, Page 1

<sup>3</sup> <https://www.federalregister.gov/documents/2024/08/08/2024-17565/petition-for-extension-of-waiver-of-compliance>