



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

VIA E-MAIL ONLY

May 12, 2023

Mr. Brian J. Johnson
Mechanical Analyst
Union Pacific Railroad Company
BJJohns3@up.com

Re: Docket Number FRA-2007-28339

Dear Mr. Johnson:

This letter is in response to the October 26, 2022, petition from Union Pacific Railroad Company (UP) to the Federal Railroad Administration (FRA) for an extension of its existing waiver in Docket Number FRA-2007-28339. The existing waiver involves relief from 49 CFR § 232.205, *Class I Brake Test—Initial Terminal Inspection*, and certain provisions of Part 215 related to the inspection of trains entering the United States from Mexico at the Laredo, Texas border.

In support of its request for continued relief, in a letter dated August 1, 2022, UP states that it has “been operating under the requirements” of this “waiver for the past fourteen years and no adverse effect on the safety of operations has occurred.” Subsequently, in its October 26, 2022, petition, UP explains that the territory between the Laredo border crossing and Port Laredo is a residential area with multiple public grade crossings and heavy pedestrian traffic. UP further explains that the “inspection point at Port Laredo was designed and built with input from [relevant government agencies] for the sole purpose of inspecting and testing equipment” traversing the Laredo border and that its inspecting and testing operations are aligned with the operations of Customs and Border Patrol agents and other security related agencies. Finally, UP asserts that allowing trains to travel to Port Laredo for the Class I brake test avoids unnecessary public disruptions within the city of Laredo, Texas (e.g., mitigates blocked crossings and reduces locomotive emissions from excessive idling times). Regarding this last assertion, FRA notes that UP’s operational capacity to avoid blocked crossings and similar circumstances is not relevant to the underlying relief in this docket.

FRA published notice of UP’s extension request on October 27, 2022.¹ In response to that notice, citing a published Association of American Railroads (AAR) “fact sheet,” the Brotherhood of Locomotive Engineers and Trainmen (BLET) submitted comments² asserting

¹ <https://www.regulations.gov/document/FRA-2007-28339-0012>.

² <https://www.regulations.gov/comment/FRA-2007-28952-0024> (Note that BLET appears to have submitted this comment to Docket Number FRA-2007-28952 as opposed to Docket Number FRA-2007-28339.).

that UP's October 26, 2022, petition contained a false statement. Specifically, BLET asserted that the statement in UP's petition that "[f]oreign crews divest the train to [UP] crews at the border" and UP crews "operate ... the train into the US continuing to Port Laredo" is "simply an error, or a deliberate attempt to misstate the facts." Although FRA's investigation has determined that UP's statement is not false (i.e., UP crews typically take control of any train destined to UP's Port Laredo Yard as those trains cross the international bridge at Laredo). Nonetheless, to clarify that this waiver is specifically conditioned on UP crews operating any train crossing the Laredo international bridge and destined for UP's Port Laredo Yard, FRA is adding a thirteenth condition to this relief. That condition mandates the use of UP crews to operate such trains.

Subsequent to BLET's comments, the Transportation Trades Department, AFL-CIO (TTD) requested that the comment period be extended 14 days (i.e., until January 10, 2023). Because the existing relief in this docket was set to expire on November 20, 2022, by a letter dated November 7, 2022,³ FRA temporarily extended the existing relief in this docket to May 8, 2023, to provide an opportunity for public comment on UP's request and to allow FRA adequate time to evaluate and make a final decision on the extension request. TTD did not, however, file any subsequent comments in this docket.

FRA's Railroad Safety Board (Board) reviewed UP's incoming petition, the results of FRA's field investigation, and technical staff findings, and has determined that granting UP's request to extend the existing relief in this docket is in the public interest and consistent with railroad safety. Accordingly, the relief granted in Docket Number FRA-2007-28339 is extended for 5 years from the date of this letter under the following conditions:

1. A roll-by inspection will be performed by a qualified UP employee or UP's qualified agent as the train comes off the international bridge on the U.S. side of the border.
2. Any non-complying condition identified by the roll-by inspection must be addressed according to UP rules and Federal regulations.
3. The UP train crew must obtain an accurate train consist and proper hazardous material documents before departing the interchange point at Laredo.
4. The accuracy of the train's consist will be verified by using the AEI reader or by conducting a manual visual check to ensure 100% accuracy before the train departs the Laredo interchange point.
5. A successful Class III brake test (set and release) must be performed before departing the interchange point at Laredo.
6. In lieu of a full calendar day inspection as required under 49 CFR § 229.21, all lead locomotives entering the U.S. must have functioning air brakes, a working bell and horn, and working headlights before departing for UP's Port Laredo yard. If the lead locomotive fails to meet the minimal requirements listed above, it must be switched out

³ <https://www.regulations.gov/document/FRA-2007-28339-0015>.

of the lead at the border and replaced with a locomotive that meets these minimum requirements before leaving for Port Laredo yard.

7. Train speed between Laredo and Port Laredo will not exceed restricted speed.
8. All trains will be inspected by a Qualified Mechanical Inspector (QMI) upon arrival at Port Laredo, and all defects will be corrected and logged into a database. The database will record the following information for each car found with FRA defects:
 - Train ID
 - Date
 - Time
 - Description of defect(s)
 - Car initials
 - Car number
 - Name of QMI

The database will also include the initial and number of each car received through interchange under this waiver. The database will be designed to permit appropriate analysis of cars deemed defective in accordance with FRA regulations and AAR's standards. The database shall be made available to FRA upon request.

9. UP will transmit defect information to Kansas City Southern de Mexico (KCSM) Mechanical Management daily.
10. Prior to departure from Port Laredo, interchanged freight cars from Mexico must be inspected and tested in accordance with all applicable regulations, including 49 CFR parts 215 and 232.
11. A quarterly meeting will be conducted to review the traffic flow, defect ratios, and any other specific issues relative to trains interchanged at Port Laredo. FRA will participate in these meeting at FRA's discretion.
12. All trains moving under this waiver must be equipped with an armed two-way EOT or distributed power.
13. All trains crossing the international bridge at Laredo and destined for UP's Port Laredo Yard must be operated from the bridge to that Yard by a properly qualified and certified UP locomotive engineer and conductor.

This waiver expires 5 years from the date of this letter. At the conclusion of this period, FRA may at its discretion extend the waiver if conditions warrant, and if UP has made a written request for an extension at least 6 months prior to the expiration date. Any request for extension must (1) demonstrate Petitioner's compliance with the above-identified conditions; (2) comply with the requirements of 49 CFR §§ 211.7, *Filing requirements*, and 211.9, *Content of rulemaking and waiver petitions*; and (3) be submitted via e-mail to FRAWaivers@dot.gov.

FRA reserves the right to modify or rescind this waiver upon receipt of information pertaining to the safety of rail operations or in the event of noncompliance with any condition of this waiver. Further, FRA reserves the right to take enforcement action under 49 U.S.C § 20111 for noncompliance with any condition of this letter or applicable Federal regulations.

In any future correspondence regarding this waiver, please refer to Docket Number FRA-2007-28339. If you have any questions, please contact Mr. Steven Zuiderveen, Senior Safety Specialist, Motive Power and Equipment Division, at 202-493-6337 or steven.zuiderveen@dot.gov.

Sincerely,

Karl Alexy
Associate Administrator for Safety
Chief Safety Officer