



*A bold voice for transportation workers*

May 23, 2022

Mr. John 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 and Statutory Exemption  
FRA-2022-0018**

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Federal Railroad Administration's notice regarding Canadian Pacific and Union Pacific's petition for waiver of compliance and statutory exemption. TTD consists of 37 affiliate unions representing the totality of rail labor, including carmen and other rail workers who work on lines covered by this waiver.<sup>1</sup>

The requested waiver would provide relief from 49 CFR 232.213 and 49 USC 20303 would allow technology-based advanced testing (the Automated Brake Effectiveness (ABE) Test Process) performed by wheel temperature detectors as an alternative approach to manual Class I brake tests performed by Certified Car Inspectors (Qualified Mechanical Inspectors).

The waiver that CP and UP have requested in this docket is substantively similar to other petitions submitted to FRA that we will discuss in further detail below. Each time a similar petition has been submitted, FRA has found that the evidence supports the continued use of physical brake inspections performed by qualified mechanical inspectors (QMIs). In 2014, FRA found that ["wayside detectors and Class 1A brake tests serve complementary, but different, functions."](#) We concur with this assessment, and add that there has been no evidence discovered since then that would make the use of Wheel Temperature Detector (WTD) technology in lieu of physical inspections reasonable or safe. Without a change in the available evidence, we believe that the FRA must conclude, as it did in 2014, 2017, and 2021, that physical brake inspections cannot be replaced by WTDs.

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<sup>1</sup> Attached is a list of TTD's 37 affiliated unions.



In 2020, UP requested a waiver to allow the use of WTDs in lieu of physical brake inspections on certain trains. TTD affiliate, [SMART-TD filed in opposition to UP's 2020 petition](#), citing that WTDs were not designed to ensure that brakes are functioning properly. The technology is designed to detect high temperatures, which can indicate defects. However, as SMART-TD noted, blatantly obvious and dangerous defects can still be present and only caught with a physical brake inspection. [In response to the 2020 petition, FRA found](#) that UP had not performed an interim analysis or provided recommendations from the test committee overseeing its current test program to establish the safety and effectiveness of WTDs as an alternative to Class I brake tests. FRA also found that UP had an inconsistent history of compliance with existing waivers that had been granted previously.

In 2016, the Association of American Railroads (AAR) petitioned FRA for a waiver to allow a test program regarding the effectiveness of WTD technology. In response to this petition, rail labor organizations [filed comments](#) opposing the waiver and urging FRA to prioritize safety over cost-cutting for railroads. The petitioners wished to use WTDs instead of physical brake inspections rather than in concert with physical inspections. While TTD and our affiliates are not opposed to the use of technology to improve safety, we believe that the goal of implementing technology should truly be to increase the level of safety on our nation's railways. However, in these waiver requests, petitioners repeatedly propagate the idea that safety does not currently need to be improved, that redundancies are unnecessary - rather, they argue that technology can fully replace comprehensive brake safety inspections. TTD wholly rejects this proposition.

In a similar petition from 2013, AAR requested to use WTDs instead of physical brake inspections. In response to this petition, [FRA found](#) that the petitioner had not adequately addressed what safety procedures would be put in place in the case that WTDs identified a defect. This reveals a foundational failure to implement WTD technology, especially given that railroads hope that WTDs can replace comprehensive, physical safety inspections. Without a plan to address defects that are found by the WTD, the WTD is entirely useless. In its decision, FRA stated that ["the use of the WTD does not replace the inspections done at a Class 1A brake test."](#) FRA further stated that "wayside detectors and Class 1A brake tests serve complementary, but different, functions." TTD finds it extremely disappointing that railroads have a technology that could increase safety by finding defects in between physical inspections, and railroads have not taken steps to harness this technology and actively improve the safety of workers on the rail lines by leveraging the increased knowledge of safety defects. In effect, railroads have had the technology to improve safety available to them, but have failed to adequately implement it. During this time, the failsafe has been physical Class I and IA brake tests performed by qualified inspectors. Given this, we believe that removing those Class I brake tests would undermine the safety of the entire system.

TTD has heard from our members that the benefits of WTDs, when used in concert with traditional Class I brake tests, have been severely eroded because WTDs are frequently disabled when they detect too many problematic defects that could impact railroad operations. In their [2020 comments regarding WTD technology](#), SMART-TD raised concerns that WTD devices that detect defects too frequently were being turned off or tampered with. A [dissenting opinion from the Test Waiver Oversight Committee](#) identified that these problems could still happen because the petitioners have not identified

any solutions. Again, WTD technology can only provide an additional level of safety if they are turned on, functioning properly, and defects identified are investigated promptly. It would be wholly unconscionable to allow CP and UP to replace physical brake inspections with WTDs when they have proven they are willing to turn off any WTD that detects too many faults.

Even if the railroads were able to prove that they would not turn off or tamper with WTDs – which would be difficult to believe given the history of inconsistent compliance that FRA has documented – as identified in the dissenting opinion, physical brake inspections continue to find defects that the WTDs have not identified, continually proving that physical brake inspections are the bedrock of rail safety and very much needed.

Lastly, we feel it is necessary for the FRA to understand that rail safety has already been under attack due to railroads' choices to lay off workers and reduce the size of the workforce through attrition. As noted in the [dissenting opinion mentioned above](#), the number of qualified inspectors has been reduced in the areas covered by the waiver and throughout our rail system. This has led to an increased reliance on uncertified train and engine service workers to perform brake inspections. These are the same overly-fatigued workers that have been forced to endure [unsafe attendance policies](#) that do not allow for adequate rest. After years of dramatic and unnecessary cuts to their workforces, these Class I rail carriers found themselves shorthanded in the midst of the supply chain crisis and have forced the remaining employees to attempt to make up for workforce cuts at expense to their health and safety. Railroads' dogged pursuit of [precision scheduled railroading](#) has led to deferred maintenance, closed yards and shops, and longer and heavier trains that put more stress on brakes and components, as well as the employees that maintain, inspect, and operate our nation's trains.

TTD believes that the current petition has not solved any of the issues FRA and labor have identified in similar petitions requested in previous years. This waiver would explicitly put workers and the public at risk due to lack of adequate brake safety inspections. As [we stated earlier this year](#), UP and others have been granted test waivers to gather data supporting the replacement of physical brake inspections with WTD technology, and they have failed to gather compelling evidence simply because the data does not support replacing physical brake inspections. Without the support of data, logic, or basic common sense, we urge FRA to reject this petition.

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

Sincerely,



Greg Regan  
President