



August 7, 2023

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

**RE: CPKC Waiver of Compliance, Class I Brake Test - Initial Terminal Inspection  
Docket No. FRA-2007-28700**

Mr. Alexy,

The undersigned labor organizations are pleased to respond to the Federal Railroad Administration’s (FRA) notice regarding Kansas City Southern Railway Company’s (now known as CPKC) petition to modify its waiver providing conditional relief from certain provisions of the federal railroad safety regulations contained at 49 CFR parts 215 (Railroad Freight Car Safety Standards) and 232 (Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices). Our unions represent CPKC 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 CPKC’s petition to modify its waiver.

**Background**

Existing regulations established in 49 CFR 232.205 require rail carriers to perform a rigorous Class I brake inspection at the border when trains cross into the United States.<sup>1</sup> This inspection is crucial in mitigating any potential deficiencies in the Mexican Government’s rail safety regulations, which are much weaker than U.S. rail safety regulations, and ensuring that all U.S. safety regulations are met before a train continues on.

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<sup>1</sup> 49 CFR 232.205, 49 CFR 215

CPKC seeks to modify a waiver originally granted to Kansas City Southern Railway Company (KCSR) in 2007 that currently allows Class I brake tests and other mechanical inspections associated with a train entering the United States to be performed at its Laredo Yard in Laredo, Texas, rather than immediately at the border. CPKC's petition requests to modify this waiver to allow required Class I and Class III brake inspections to be performed at its Sanchez Yard in Mexico by employees of Kansas City Southern de Mexico (KCSM). This request follows a nearly identical one filed by KCSR in 2018, which the FRA denied based on lack of supporting documentation to justify the modification.<sup>2</sup> This most recent petition does little to strengthen KCSR's previous justification and does not demonstrate that CPKC's proposed operation would comply with the requirements *set by Congress* regarding brake inspections in Mexico. Because CPKC's petition does not comply with federal statute, the FRA must deny the petition.

### **Unsafe Brake Inspection Waiver Must Be Rejected**

Citing congestion, KCSR previously requested and received permission from the FRA to conduct the Class I inspection in the Laredo Yard, nine miles further north of the Laredo Rail Bridge (the Bridge). As a condition of that waiver, the FRA stipulated that a more basic Class III test was still required at the border before a train would be allowed to proceed into the United States. Now, CPKC is asking to be relieved of even this limited responsibility, and to be permitted to have the Class III and Class I inspections performed in its Sanchez Yard in Mexico. This proposed modification further removes brake inspections from the FRA's oversight and safety protocols, undermines the intent of current regulations, and is in direct conflict with applicable federal law.

Current federal law provides clear conditions under which any class of brake inspection for U.S.-bound trains can be conducted in Mexico. Section 416 of the Rail Safety Improvement Act of 2008 (RSIA) requires that such inspections be performed under regulations and standards equivalent to those in the United States, and that employees conducting inspections receive similar training to U.S. railroad employees. Section 416 reads as follows:

“SEC. 416. SAFETY INSPECTIONS IN MEXICO.

Mechanical and brake inspections of rail cars performed in Mexico shall not be treated as satisfying United States rail safety laws or regulations unless the Secretary of Transportation certifies that—

(1) such inspections are being performed under regulations and standards equivalent to those applicable in the United States;

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<sup>2</sup> <https://www.regulations.gov/document/FRA-2007-28700-0032>

- (2) the inspections are being performed by employees that have received training similar to the training received by similar railroad employees in the United States;
- (3) inspection records that are required to be available to the crewmembers on board the train, including air slips and blue cards, are maintained in both English and Spanish, and such records are available to the Federal Railroad Administration for review; and
- (4) the Federal Railroad Administration is permitted to perform onsite inspections for the purpose of ensuring compliance with the requirements of this subsection.”<sup>3</sup>

In support of its most recent request, CPKC explains that KCSM employees are trained and certified pursuant to CPKC’s existing Part 240, 242, and 232 training programs. As a result, CPKC claims that certified KCSM employees are qualified to conduct required inspections given that their training meets current FRA requirements. Yet the petition does not include evidence to support this claim. Further, there is no formal procedure in place for the FRA to verify that this training has been provided and completed in a way that satisfies existing regulations. In order to ensure compliance with Section 416 of RSIA, FRA inspectors must be permitted to perform onsite inspections of Mexican facilities. However, in rejecting a similar waiver from Burlington Northern Santa Fe Railway Company (BNSF) in 2011, the FRA noted that it lacks the authority to perform this function without a separate international agreement between Mexico and the United States. The FRA stated in its ruling that the statutory requirements in Section 416 “necessitate coordination with the Mexican Government, since under international law, the U.S. Government may not enforce its laws in a sovereign country’s jurisdiction without a bilateral agreement or treaty in place.” As no such agreement has been reached, fulfilling this requirement is currently impossible. Mechanical inspections and tests are vital in ensuring the safety of our rail system, rail employees, and the communities through which our trains travel. The FRA cannot allow such inspections to be completed by employees that CPKC merely claims are qualified. Section 416 of the RSIA, especially paragraph (4), requires much more than that.

As the FRA is well aware, Canadian Pacific Railway and Kansas City Southern Railway Company formally merged earlier this year to form CPKC. This merger established the first single-line transnational railroad linking Canada, the United States, and Mexico. CPKC has been clear on their expectations that the merger will result in higher rail traffic coming from Mexico into the United States.<sup>4</sup> Higher freight traffic and longer trains compound the need for comprehensive mechanical inspections and further underscore our strong concerns with CPKC’s petition. CPKC’s petition to modify its waiver also comes at a time of widespread safety issues in the freight rail industry. These safety issues contribute to more than 1,000 freight rail derailments a year – nearly three a day. CPKC’s plan to simultaneously dramatically increase the number of trains coming

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<sup>3</sup>[https://railroads.dot.gov/sites/fra.dot.gov/files/fra\\_net/2189/RSIA\\_Pub.%20L.%20No.%20110-432%20in%20pdf.pdf](https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/2189/RSIA_Pub.%20L.%20No.%20110-432%20in%20pdf.pdf)

<sup>4</sup><https://www.trains.com/trn/news-reviews/news-wire/cpkc-raises-merger-related-growth-expectations-to-5-billion-in-new-revenue/>

into the United States from Mexico while also relying on a safety inspection regime that violates federal law will only exacerbate the existing safety problems in the industry.

In what is perhaps an effort to ease concerns about the validity of KCSM certifications and training, CPKC offers to utilize new technologies that would allow the FRA to remotely confirm that successful Class I and III tests were performed at the Sanchez Yard once a train reaches the Bridge. This technology would be further utilized by CPKC's Qualified Mechanical Inspectors (QMIs) to remotely confirm the mechanical soundness of the train by reviewing scans of the equipment produced prior to the train's departure. Simply put, technology is not an adequate replacement for hands-on inspections performed by a QMI. The proposed technology is also entirely unproven and we are not aware of any FRA data proving that reviewing scans of equipment provides an equivalent or better level of safety than hands-on inspections. In truth, the FRA cannot independently confirm that a KCSM inspector is trained, qualified, and certified in accordance with established U.S. federal rail safety regulations and the requirements. Reviewing scans of images is in no way equivalent to on-site inspections by FRA safety inspectors.

CPKC also claims that outsourcing brake inspections to Mexico is necessary to avoid delays at the border, increase border security, and increase cross-border shipping capacity. However, CPKC is currently constructing a new rail bridge at the border to run alongside the current Laredo Rail Bridge and it is expected to relieve congestion at the crossing when it's completed in 2024.<sup>5</sup> That means the rail infrastructure in Laredo next year will be better than at any point in recent memory. The addition of this infrastructure, and the accompanying improvement in efficiency at the border crossing, further prove CPKC's request for modification to be unnecessary.

CPKC further states that trains stopped on the Laredo Rail Bridge for Class III tests, as required by its existing waiver, have had air brake lines cut and components stolen.<sup>6</sup> This claim, however, is not accompanied by an estimate of the number of times this has occurred beyond "several times per year." It is difficult to conclude that these security problems are pervasive enough to warrant such a drastic change in the existing waiver if CPKC fails to provide any specificity with regard to how frequently they occur.

## **Conclusion**

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 federal rail 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

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<sup>5</sup> <https://www.railway-technology.com/news/kcs-breaks-ground-on-new-international-railroad-bridge-in-us/>

<sup>6</sup> <https://www.regulations.gov/document/FRA-2007-28700-0037>

increasing by over 150 degrees fahrenheit in just 20 of those miles.<sup>7</sup> The National Transportation Safety Board (NTSB)'s June hearing on the derailment highlighted the lack of inspections that the rail cars in that train received, with most of the 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 QMI would have found some of those defects, if given the opportunity.<sup>8</sup>

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 Is. 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%.

CPKC's petition is another attempt by the railroad to undermine existing, critical federal safety regulations at a time when the United States Department of Transportation (USDOT) and the FRA are rightly focused on improving safety in the industry. Conducting Class I brake inspections in Mexico would eviscerate the requirements of 49 CFR 232.205 and expose communities in the United States to safety risks from trains that have not had the proper mechanical inspections. CPKC's efforts are undoubtedly part of a larger strategy to outsource labor at the expense of U.S. workers and its request amounts to little more than a long-term strategy to cut labor costs by outsourcing jobs.

CPKC has failed in this petition to surmount the regulatory and statutory requirements designed to prevent dangerous behavior in the rail industry. In the 2008 Rail Safety Improvement Act (RSIA), Congress was very clear what requirements must be met before the FRA can accept safety inspections conducted in Mexico. This petition fails to meet Congress' mandate. We therefore respectfully request that the FRA deny this petition.

We appreciate the ability to comment on this docket 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

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<sup>7</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>

<sup>8</sup><https://www.trains.com/trn/news-reviews/news-wire/ntsb-east-palestine-hearing-focuses-on-role-of-car-inspection-wayside-detectors/>

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

National Conference of Firemen & Oilers, SEIU

Transportation Trades Department, AFL-CIO

Transport Workers Union of America