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September 19, 2018

The Honorable Elaine Chao
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Secretary Chao:

A letter signed by several Members of Congress including House Committee on Transportation and Infrastructure Ranking Member DeFazio and Subcommittee on Railroads, Pipelines, and Hazardous Materials Ranking Member Capuano dated September 17, 2018 has been sent to you expressing opposition to The Kansas City Southern Railway Company's (KCSR's) request that the Federal Railroad Administration (FRA) modify one of twelve conditions on the existing brake test waiver KCSR has had since January of 2008. Unfortunately, KCSR was not approached by any of the letter's signers to comment or respond to the assertions in the letter before the letter was sent to you. Accordingly, we want to share with you the facts about this requested modification of the long-standing waiver.

This requested modification would allow the Class III brake test currently performed in the middle of the International Rail Bridge between the U.S. and Mexico to be performed at a secure rail yard near the border. By allowing this Class III inspection at a more secure yard near the border instead of stopping trains on the bridge, which causes them to hang out through downtown Nuevo Laredo blocking local crossings, the inspections will be safer, more secure, allow for more fluidity over the border and reduce the time crossings are blocked by stopped trains.

Since January 2008, KCSR has conducted operations at the border at Laredo pursuant to a brake test waiver¹ from FRA. That waiver allows trains to move approximately nine miles from the U.S.-Mexico border at Laredo to KCSR's Laredo Yard for performance of a Class I initial terminal brake inspection,² rather than performing that time-consuming test on the International Rail Bridge. KCSR has moved many thousands of trains pursuant to that waiver in the past ten years.

¹ Docket No. FRA-2007-28700.

² See 49 CFR 232.205.

KCSR's waiver contains twelve conditions. On May 31, 2018, KCSR requested that FRA modify one of those conditions, which requires that a Class III brake test³ be performed in the middle of the International Rail Bridge over the Rio Grande River connecting the U.S. and Mexico. KCSR requested modification of that condition so the Class III brake test could be performed in one of the Kansas City Southern de Mexico, S.A. de C.V. (KCSM) yards approximately 9 miles south of the bridge, rather than by stopping the train on the International Rail Bridge to perform the test.

In support of its modification request, KCSR noted that the failure rate when the Class III test is performed on the International Rail Bridge is 0.2%. Moreover, KCSR noted, most of those failures were due to vandalism of the train while it was stopped on the bridge, with much of the train stationary in downtown Nuevo Laredo, Tamaulipas.

The Federal Railroad Administration (FRA) published KCSR's modification request for comment in the July 24, 2018 Federal Register. 83 Fed. Reg. 35052.

Several misconceptions have been voiced in opposition to modification of KCSR's brake test waiver. Among them are:

- ***That FRA is acting contrary to the law in considering KCSR's waiver modification request.***

In fact, the U.S. Code – 49 U.S.C. 20103(d) and 20141 - and FRA regulations - 49 C.F.R. 232.7 - specifically allow brake test waivers and exclusions when FRA finds that to be in the public interest and consistent with railroad safety. When commenting on KCSR's original brake test waiver request in 2007, the union representing KCSR train crews in Laredo recommended conditioning, not denying, the waiver, saying in part -

“The increase of cross-border traffic in recent years poses a challenge because the infrastructure was built during a time when traffic between the U.S. and Mexico was only a small fraction of what it is today and what is predicted for the future. The appropriate disposition of the instant petition necessarily requires a balancing of (1) the safety processes required by applicable FRA regulations, (2) the need to expedite movements to the extent permitted by safety considerations, and (3) the interests of the local community.”

- ***That KCSR's waiver is unique.***

In fact, other railroads have similar waivers at Laredo and at other crossings on the U.S.-Mexico border.

- ***That KCSR's requested modification would allow KCSR to operate trains without a brake test.***

³ See 49 CFR 232.211.

In fact, KCSR simply seeks to move the test location approximately 9 miles to a more controlled environment

- ***That operation pursuant to the waiver modification KCSR has requested would be unsafe.***

In fact, the de minimis 0.2% failure rate for the Class III brake test performed on the bridge (many of which failures are due to vandalism of a train stopped to perform the test or other functions) shows that KCSM, which prepares the trains that cross the bridge, does an excellent job ensuring that the brakes on trains coming to the bridge function properly.

In 2016, the management of approximately 321 KCSM carmen and 58 KCSM managers transitioned to KCSR Mechanical Leadership from the prior management by a U.S.-headquartered international third party service provider. Since that time, job roles, processes and procedures for KCSM Mechanical have been reorganized and defined to align with the train inspection and testing requirements that are followed in the U.S.

Additionally, a Spanish Language Qualified Mechanical Inspector Training curriculum that is aligned with KCSR Training curriculum has been developed for all affected employees, along with a bi-lingual Electronic Air Slip within the KCSM and KCSR transportation service system (aka MCS). FRA Inspectors have met with KCSM carmen on multiple occasions in Laredo, TX to offer feedback and instruction on inspection processes to reinforce understanding of FRA inspection requirements.

- ***That relocating the Class III test to a KCSM yard approximately 9 miles south of the bridge would allow trains with untested brakes to operate long distances into the U.S.***

In fact, these trains would operate only about nine miles into the U.S., operating at less than 20 miles an hour on relatively flat terrain, before they are subjected to a Class I brake inspection at Laredo Yard.

- ***That this waiver modification would allow Mexican crews to operate into the U.S.***

In fact, the KCSR brake test waiver does not affect what crews operate trains from the International Rail Bridge to Laredo Yard. KCSR's requested modification of one condition on the waiver will not alter operations at Laredo other than whether the Class III test is performed more safely in KCSM's yard or less safely while the train extends as much as a mile into downtown Nuevo Laredo, Tamaulipas.

- ***That there's no way to check whether a Class III test is actually performed if it is done in a KCSM yard.***

In fact, KCSM and KCSR could confirm for FRA electronically, by an e-mail sent from an on-board train system, that a test is performed on each train under the modified waiver. KCSR and KCSM are willing to work with FRA in other ways, as FRA deems

necessary, to confirm that the tests authorized by the requested modification are being conducted.

- ***That KCSR is giving U.S. jobs to Mexican train crews.***

No KCSR employee has lost his or her job because of relocating KCSM's interchange with KCSR 9 miles from the International Rail Bridge to Laredo Yard. KCSR has no plan to allow KCSM to conduct anything other than interchange operations at KCSR's rail facilities near the border, which is no different than interchange operations that have been and are occurring at the northern border. KCSR anticipates an increase of about 22 in employee headcount in Laredo by the end of the year. The modification of the condition on KCSR's brake test waiver is one of several initiatives associated with KCSR's Secure Corridor Project that is expected to allow increased traffic over the bridge, leading to more work in Laredo and the potential for greater U.S. exports.

- ***That FRA has no authority over KCSM trains or their crews, including for drug testing.***

FRA's authority applies to railroad operations in the U.S. FRA's authority is not dependent on the domicile of the railroad or the train's crew. While KCSM crews are exempted from random and pre-employment drug testing under FRA regulations dating back to 2001, KCSM crews are subject to reasonable suspicion and post-accident drug tests while in the U.S. Moreover, Mexico-licensed train crews are subject to a pre-employment, periodic, random and post-accident drug testing in Mexico.

Finally, please note that the letter's statement that FRA eliminated a requirement for a crew change on the International Rail Bridge is mistaken. FRA had no such requirement. The crews operating KCSM trains to KCSR's Laredo Yard are all experienced train operators licensed by the Mexican government to operate trains in Mexico and, in addition, have met FRA certification requirements and qualifications under the same programs applicable to KCSR employees for operating trains in the U.S. FRA did not waive or change a regulation to allow KCSM's interchange with KCSR to be moved off the bridge to Laredo Yard.

In short, there is nothing significantly new or different about the KCSR's request that FRA modify KCSR's existing brake test waiver that has worked successfully for over a decade, other than that KCSR has asked that the Class III brake test currently performed on the bridge be performed at KCSM's Sanchez Yard approximately 9 miles south of the bridge instead. Rather than stopping trains on the International Rail Bridge for this inspection, it would prevent trains from stopping on the bridge for things that could be done more securely in the nearby yards. This will result in reduced blocked crossings and improved safety, security and fluidity at the border. Customs and Border Protection has frequently told KCSR that a train at rest is a train at risk of vandalism, stowaways and contraband. Moving the Class III brake test to Sanchez Yard rather than while the train is sitting in downtown Nuevo Laredo is expected to help prevent all of these problems.

Secretary Chao
September 19, 2018

KCS believes that the FRA process for determining such matters is thorough and should be followed without political interference.

We hope this is helpful and that you might grant a representative of the Association of American Railroads and me an opportunity to discuss this further in person if that would help to answer any remaining questions you might have.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick J. Ottensmeyer", with a long horizontal flourish extending to the right.

Patrick J. Ottensmeyer
President & Chief Executive Officer

PJO/blb

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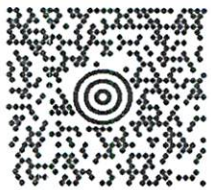
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