



ASSOCIATION OF  
AMERICAN RAILROADS

**Edward R. Hamberger**  
Office of the President  
President and Chief Executive Officer

September 25, 2018

The Honorable Elaine L. Chao  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Secretary Chao:

*Merlome Secretary*

On behalf of the U.S. freight railroad industry, I would like to address some of the recent mischaracterizations regarding the Kansas City Southern Railway Company's (KCSR's) request to the Federal Railroad Administration to modify one of twelve conditions on an existing brake test waiver published in the July 24, 2018 Federal Register (83 Fed. Reg. 35052).

As described in detail in a letter sent to you on September 19, 2018 by KCSR President and CEO Patrick J. Ottensmeyer [enclosed], the proposed modification would result in safer, more secure brake inspections by moving the testing location from the bridge, where much of the train is stationary in downtown Nuevo Laredo, Tamaulipas, to a more controlled environment in a rail yard. Specifically, it would allow trains to cross the International Rail Bridge in Laredo without stopping, thereby improving border fluidity and strengthening the safety and security of cross-border rail operations.

As a point of information, I am enclosing a letter I recently sent to the United States Trade Representative describing freight railroad cross-border operations and the use of international crews, which are currently being discussed in the ongoing NAFTA negotiations. It provides context for the importance of safe and efficient cross-border operations to the integrated North American freight railroad network.

We are concerned that some stakeholders are misrepresenting the KCSR request, but stand ready to answer any questions or provide any additional information that you or your staff require to make a fair determination on this matter.

Sincerely,

Edward R. Hamberger  
President and CEO

Cc: The Honorable Ronald Batory, Administrator, Federal Railroad Administration

Enclosure(s)

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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 waiver<sup>1</sup> 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,<sup>2</sup> 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.

<sup>1</sup> Docket No. FRA-2007-28700.

<sup>2</sup> 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 test<sup>3</sup> 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.***

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<sup>3</sup> 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

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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



# ASSOCIATION OF AMERICAN RAILROADS

**Edward R. Hamberger**

Office of the President

President and Chief Executive Officer

September 18, 2018

The Honorable Robert E. Lighthizer  
United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

Dear Ambassador Lighthizer:

On behalf of the U.S. freight railroads, I write to strongly oppose any proposals that would enshrine the principle of crew exclusivity—prohibiting railroad crews from operating trains beyond their own country's border—into a renegotiated NAFTA, as recently proposed by some North American labor organizations.

When a freight train from Canada or Mexico crosses the border into the United States, a U.S. crew takes over operation from the foreign crew in what is known as a crew interchange. This occurs either on the border itself, or several miles inside the United States at a nearby rail yard. Crew exclusivity, to the extent it would require that all crew interchanges occur on the border, would significantly disrupt railroad operations, border communities, and network fluidity throughout North America. Rather than breaking down barriers to trade and easing the flow of goods among member nations, this proposal would do just the opposite, and has no place in a free trade agreement.

For more than 25 years, Canadian crews have been delivering U.S.-bound trains to rail yards several miles within the United States where they hand control of the train to a U.S. crew and return to Canada, often picking up a Canadian-bound train to operate back over the border. More recently, similar operations have begun along the southern border between certified Mexican and U.S. crews. To be clear, these international crews do not perform work in the United States beyond cross-border drop-off and pick-up operations.

These lawful cross-border operations, done in close proximity to the borders, are essential to maintain network fluidity and to minimize the impact of blocked railroad crossings in border communities. For example, prior to recent changes, while a train was stopped in the middle of the International Rail Bridge at Laredo, TX to conduct a crew interchange<sup>1</sup> and brake test, a bottleneck would develop that stopped rail traffic on both sides of the border and blocked street traffic along local roads at as many as 14 public at-grade crossings in Laredo. To improve this bottleneck and limit disruption to the surrounding community, the interchanging railroads moved the crew interchange from the bridge itself to a Laredo rail yard, nine miles into the United States. This initiative has improved crossing times by 30 percent and is expected to realize a 40%-90%

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<sup>1</sup> A 2016 GOA report noted union officials' statement that taxiing crews to the International Rail Bridge to switch crews on the bridge sometimes delays crew changes as much as 2 to 3 hours.

The Hon. Robert Lighthizer  
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increase in train capacity at the border crossing in the future, increasing export capacity and American job opportunities and helping reduce the U.S. trade deficit with Mexico.

International crews operating in the United States are subject to all Federal Railroad Administration (FRA) regulations, including Hours of Service Requirements and reasonable suspicion and post-accident drug and alcohol testing, and are subject to all U.S. travel and work regulations. The railroads work closely with FRA and the Department of Homeland Security to thoroughly vet and monitor international crews operating within the United States. At Laredo, the five Mexican crews that currently have the authority to operate nine miles into the United States have been trained and tested on U.S. operating rules and regulations, are fully qualified on the routes on which they operate and are certified under current FRA guidelines.

With these safeguards in place, an inflexible government mandate that the crew interchange occur on the physical border would ignore the operational challenges and realities of cross-border freight rail movements and would create significant new freight bottlenecks, disrupt local border communities and degrade the flow of commerce among the NAFTA nations. Avoiding the creation of such artificial, government-mandated barriers to business will allow railroads, their employees and local communities the freedom to work out the best solutions for all concerned.

The goal of any free trade agreement should be to break down artificial barriers to the free-flow of commerce. The principle of crew exclusivity is antithetical to that goal.

As you work to conclude negotiations on an updated and modernized NAFTA that reflects our 21<sup>st</sup> Century economy, I urge you in the strongest possible terms to reject misguided calls for crew exclusivity in the cross-border services chapter. Please do not hesitate to reach out if you would like to discuss this matter in further detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward R. Hamberger", with a long horizontal flourish extending to the right.

Edward R. Hamberger  
President and CEO