

**Congress of the United States**  
**Washington, DC 20515**

September 17, 2018

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

Dear Secretary Chao:

We are writing to express our strong opposition to the May 31, 2018 petition for waiver of compliance (*see* 83 Fed. Reg. 35052 (July 24, 2018)), in which the Kansas City Southern Railway (KCSR) seeks relief from critical Federal safety and inspection requirements.

This petition is the latest in a series of actions taken by KCSR to allow Mexican workers, who are not subject to Federal Railroad Administration (FRA) regulations regarding pre-employment screening and random drug and alcohol testing, to operate trains in the United States—moving U.S. rail jobs to Mexico.

This effort began in 2008 when the FRA granted KCSR a waiver from safety regulations to move class I brake test inspections from the U.S.-Mexico border crossing in Laredo, Texas, to KCSR's Laredo Yard, about nine miles north of the point where U.S. and Mexican crews interchanged. That waiver was extended on December 11, 2017. Both waivers listed conditions for relief, including the requirement that KCSR perform the class III air brake test at the U.S.-Mexico border before a train proceeds to the Laredo Yard for the class I brake test.

In June 2018, FRA – with no public notice or comment – granted KCSR further relief at the border crossing by eliminating a previous requirement for a crew change at the International Bridge on the U.S.-Mexico border. Previously, U.S. crews took control of northbound trains from Mexican crews at the International Bridge and brought those trains nine miles to the Laredo Yard and handed off the southbound trains back to Mexican crews at the International Bridge. That no longer occurs— a fifty-year history has changed. The Mexican crews are employed by Servicio, a subcontractor to Kansas City Southern de Mexico (KCSM), a subsidiary of KCSR. It is worth noting that FRA regulations exempt these Mexican crews from pre-employment and random drug and alcohol testing.

We suspect, and FRA staff acknowledged the possibility that, the goal of these efforts is to eventually allow Mexican train crews to operate trains from KCSR's Laredo Yard to Union Pacific's Port Laredo Yard, 12 miles into the United States. Freight railroads have long sought the ability to allow Mexican crews to operate trains in the United States. We oppose any groundwork that the FRA might be laying toward that effort.

In the May 31 petition, KCSR now seeks to move the class III air brake tests that are currently conducted on the U.S. side of the border to KCSM's Nuevo Laredo or Sanchez Yards in Mexico.

We strongly oppose the petition. Section 416 of the Rail Safety Improvement Act of 2008 (P.L. 110-432) states:

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; (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.

As you have not made the requisite certifications under section 416 with respect to mechanical and brake inspections in Mexico, including a certification that the FRA is permitted to perform onsite inspections at KCSR's Nuevo Laredo or Sanchez Yards in Mexico for the purpose of ensuring compliance with FRA safety regulations, it would be improper to grant the petition.

It is our understanding that FRA might try to satisfy the onsite inspection requirement under section 416 by evaluating a train when it is in the U.S. We want to be clear: That will not satisfy the law. The requirement is for onsite inspections. To our knowledge, FRA does not have the authority to conduct such inspections in Mexico, and in the absence of a government agreement and a similar regulatory framework in Mexico, we question how FRA will be able to ensure the adequacy of KCSR/KCSM class III air brake inspections. Similarly, in the United States, FRA has the authority to impose civil penalties against railroads and their employees for failure to comply with safety-related regulations. These penalties are in place to act as a deterrent against inadequate inspections and the use of non-compliant or unsafe equipment. The FRA does not have comparable authority to impose sanctions on railroads or railroad workers domiciled in Mexico.

We strongly urge you to deny the May 31 petition and to rescind the process of allowing Mexican rail crews to operate within the United States.

Sincerely,



PETER A. DeFAZIO  
Ranking Member  
Committee on Transportation and  
Infrastructure



MICHAEL E. CAPUANO  
Ranking Member  
Subcommittee on Railroads,  
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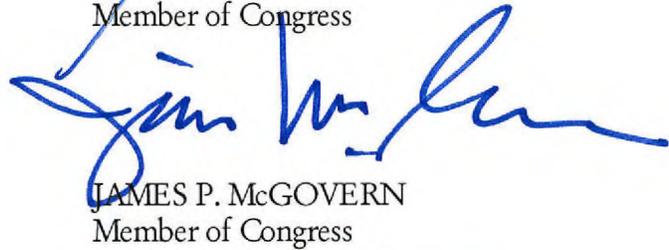
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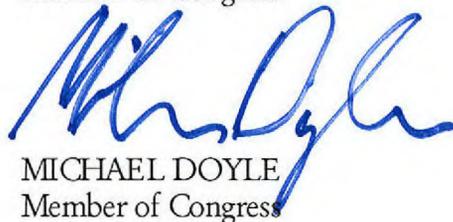
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