



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

MAR 08 2019

Mr. Ryan J. Miller
Assistant Vice President Car Operations
The Kansas City Southern Railway Company
427 West 12th Street
Kansas City, MO 64105

Re: Docket Number FRA-2007-28700

Dear Mr. Miller:

This letter is in reply to the Kansas City Southern Railway Company's (KCSR) May 31, 2018, petition to the Federal Railroad Administration (FRA) seeking to modify the relief FRA previously granted in the above-referenced docket. For the reasons explained below, after consideration of KCSR's May 31, 2018, petition and all comments submitted to the docket, FRA's Railroad Safety Board (Board) finds that granting KCSR's request is not in the public interest or consistent with railroad safety.

In general, the Board may waive compliance with a railroad safety regulation or order, if the waiver is "in the public interest and consistent with railroad safety." See 49 U.S.C. § 20103(d); 49 C.F.R. § 1.89. FRA's administrative procedures for submitting and processing waiver petitions require applicants to set forth the specific regulation they seek waived, explain the nature and extent of the relief sought, and the petition must contain "sufficient information to support the action sought including an evaluation of anticipated impacts of the action sought" and "relevant safety data." See 49 C.F.R. § 211.9.

In 2008, in response to KCSR's request for a waiver from the Federal mechanical inspection requirements found at 49 C.F.R. § 232.205(a)(1) and 49 C.F.R. Part 215 for freight cars received in interchange at the U.S./Mexico border at Laredo, Texas, FRA provided limited conditional regulatory relief. Specifically, in lieu of conducting the required inspections at the International Bridge interchange, FRA allowed KCSR to move freight cars received in interchange from the Kansas City Southern de México Railway (KCSM) across the U.S./Mexico border to KCSR's yard in Laredo without performing a full Class I brake test at the border. In a letter dated January 18, 2008, FRA granted this relief subject to KCSR's compliance with twelve specific conditions designed to ensure the safety of the operation, including a condition requiring that KCSR perform a Class III brake test (set and release) before departing the International Bridge. This relief was most recently renewed in December 2017.

KCSR's May 31, 2018, petition asks FRA to allow KCSM to conduct the Class III brake test, required by the existing waiver, to be performed at the International Bridge at KCSM's Nuevo Laredo or Sanchez Yards in Tamaulipas, Mexico, both of which are within 9 miles of the International Bridge. Both the Nuevo Laredo and Sanchez Yards are also within 19 miles of KCSR's Laredo, Texas, yard where northbound trains coming from Mexico receive full Class I brake tests and mechanical inspections.

KCSR notes that out of over 8,000 northbound trains traveling from Mexico over the International Bridge in 2016 and 2017, there was a "0.2% failure rate with the Class III test on the bridge" and that "[m]ost of these failures were due to trespasser vandalism while the train was stopped for the Class III test." In support of its request, KCSR notes a variety of actions it and KCSM have taken to enhance the safety of trains operating northbound into the U.S., including the installation and use of a variety of advanced "condition-based monitoring technologies" at strategic locations, KCSM's efforts to align its mechanical operations to "better reflect the train inspection and testing requirements that are followed in the U.S.," the development of a Spanish Language Qualified Mechanical Inspector Training curriculum, and a bi-lingual Electronic Air Slip. KCSR notes that these improvements have made "significant positive impacts on the number of defects found on Northbound Trains receiving Class I Air Brake Tests and Pre-Departure inspections in 2017, cutting the FRA defect ratio almost in half between February 2017 and March 2018."

In response to the public notice of KCSR's request, FRA received comments from various rail labor organizations,¹ several members of Congress, the Association of American Railroads (AAR), KCSR, and members of the public. The labor organizations requested that FRA hold a public hearing on KCSR's request, generally asserting that the docket and KCSR's waiver request itself do not contain sufficient information for interested parties to fully evaluate the waiver request.² In a letter signed by several members of Congress, including then House Committee on Transportation and Infrastructure Ranking Member Peter Defazio and Subcommittee on Railroads, Pipelines, and Hazardous Materials Ranking Member Michael Capuano, those members expressed their opposition to KCSR's waiver request. AAR's and KCSR's comments responded to opposing comments received and were in support of the waiver modification request. All six comments from members of the public opposed the waiver request.

After careful review and consideration of KCSR's May 31, 2018, waiver modification request and all comments submitted to the docket of this proceeding, the Board concluded that granting the requested relief is not justified based on the information KCSR has provided. The Board agrees with the comments received noting a general lack of supporting information in KCSR's May 31, 2018, request.

¹ The Transportation Trades Department, AFL-CIO filed comments; the Brotherhood of Locomotive Engineers and Trainmen and the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers filed joint comments; and the Brotherhood of Railway Carmen Division, Transportation Communications Union and the Transport Workers Union of America filed joint comments.

² Because, as discussed below, the Board is denying KCSR's May 31, 2018, request to modify the existing relief in this docket due to insufficient supporting information, the Board does not believe holding a public hearing is necessary.

In its request, KCSR generally asserts that performing the Class III brake test at the International Bridge causes a “significant amount of safety risk” and that “[h]aving to stop on the International Bridge to perform the Class III Air Brake test . . . increases the risk of equipment damage due to vandalism/theft and increases the risk to the community due to blocked crossings and heavy pedestrian traffic south of the border in Nuevo Laredo.” KCSR also notes that the U.S. Department of Homeland Security and U.S. Customs and Border Protection (CBP) have said that “trains coming to a complete stop at the International Border present the greatest opportunity for theft, contraband, and/or trespassers to gain access to trains entering the United States.” KCSR, however, provided no specific data or evidence supporting these general statements. FRA notes that a Class III brake test is an abbreviated form of brake test, requiring only a set and release of the air brakes on a train. Upon confirmation that the brakes are working properly, the test is concluded and the train can continue to operate. FRA also notes that KCSR’s northbound operations over the International Bridge at Laredo are limited to a maximum authorized speed of five miles-per-hour over the bridge given the need for every northbound train operating into the U.S. to be examined by CBP’s x-ray machine at the border. Accordingly, without evidence demonstrating the safety and security risks of performing the Class III brake test at the border (particularly given the slow speed at which northbound trains are required to operate), FRA cannot approve KCSR’s request to move the test to its affiliate KCSM’s yards 9 miles across the border within Mexico. Similarly, KCSR has presented no evidence that the performance of Class III brake tests at the border lead to blocked crossings in nearby communities. Therefore, the Board is denying KCSR’s May 31, 2018, request to modify the existing relief in this docket because KCSR has not demonstrated that a modification is in the public interest or consistent with railroad safety.

In any future correspondence regarding this request for relief, please refer to Docket Number FRA-2007-28700. If you have any questions, please contact Mr. Steven Zuiderveen, FRA Motive Power & Equipment Specialist, at (202) 493-6337 or Steven.Zuiderveen@dot.gov; or Mr. Gary Fairbanks, Staff Director, FRA Motive Power and Equipment Division, at (202) 493-6322 or Gary.Fairbanks@dot.gov.

Sincerely,



Robert C. Lauby
Associate Administrator for Railroad Safety
Chief Safety Officer