

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

TEAMSTERS RAIL CONFERENCE

25 Louisiana Ave. N.W.
Washington, D.C. 20001

VINCENT G. VERNA

Vice President &
National Legislative Representative



Phone: 202.624.8776
Fax: 202.624.3086
verna@ble-t.org

December 27, 2022

Docket Clerk
Docket Operations Facility
U.S. Department of Transportation
1200 New Jersey Avenue, SE, W12-140
Washington, DC 20590

Re: Docket Number FRA-2007-28339

Dear Docket Clerk:

The Brotherhood of Locomotive Engineers and Trainmen, a division of the Rail Conference of the International Brotherhood of Teamsters ("BLET"), is the duly recognized collective bargaining representative under the Railway Labor Act, as amended, for the class or craft of locomotive engineers employed by the Union Pacific Railroad Company (UPRR) which class or craft is directly affected by the petition. For the reasons set forth below, BLET respectfully requests that FRA deny the petition for waiver extension as filed in this matter.

According to the Federal Register, UPRR seeks the following petition of waiver extension:

Reference the above waiver, which the FRA granted to Union Pacific Company on January 18, 2008, and renewed on September 12, 2017, of temporary compliance from certain provisions of 49 C.F.R. §233.205 Class I brake test – initial terminal inspection, and §215 – Freight Car Standards, for freight cars received in interchange at Laredo, TX (International Bridge), from the Kansas City Southern De Mexico (KCSM). Cars received at KCSM interchange point at Laredo, TX are moved to Union Pacific's yard at Port Laredo, TX, 11.6 miles, where the Class I brake test – initial terminal inspection is performed.

See FRA-2007-28339-0014.

This petition for waiver was granted and previously extended based on 2007 operating practices and issued with a respective list of conditions required of Union Pacific. However, the BLET would like to point out a misstatement contained in Union Pacific's most recent request for waiver extension. In their letter dated October 26, 2022, UPRR claimed:

Foreign crews divest the train to UPRR crews at the border; UPRR crews operate the rear of the train into the US continuing to Port Laredo.

While this may have been true in both 2008 and 2017, this is not the case in 2022. In July of 2018, KCSM and UPRR initiated a new practice of using Mexican-based KCSM crews to operate the train between International Bridge, and the Port Laredo, TX yard located 11.6 miles away. In fact, an October 2022 Association of American Railroads fact sheet highlights this strategy of using Mexican crews and urges its members to oppose legislative attempts to restore the previous practice of recrewed the trains at International

Bridge.¹ While the BLET can only speculate as to whether the assertion in UPRR's letter dated October 26, 2022, is simply an error, or a deliberate attempt to misstate the facts. The conditions under which the previous waiver extension was issued has clearly changed. This alteration in operating practice then calls the remaining elements into question, and whether any other factors or conditions that the previous decisions were predicated on have also been modified or simply disregarded.

We are concerned about the way §219.3 (d)(2)(i) will be adhered to. It states (our bold and italics for emphasis):

Foreign Railroad.

(1) This part does not apply to the operations of a foreign railroad that take place outside the United States. A foreign railroad is required to conduct post-accident toxicological testing or reasonable suspicion testing only for operations that occur within the United States.

(2) Subparts F, G and K of this part do not apply to an employee of a foreign railroad whose primary reporting point is outside the United States if that employee is:

(i) Performing train or dispatching service on that portion of a rail line in the United States extending up to 10 route miles from the point that the line crosses into the United States from Canada or Mexico; or

Based on the factual inaccuracy contained in Union Pacific's renewal request, and the changes in operating conditions at the KCSM/UPRR interchange point that have taken place since the previous extension, the BLET respectfully requests that the Petition for Waiver Extension be denied. UPRR should be compelled to submit a new petition for waiver based on current conditions, and FRA allow the respective periods for comment and review of all mitigating factors that would affect the approval or denial of said waiver. KCSM has been taking trains to Nuevo Laredo abutting the 10-mile route limitation in §219.3 (d)(2)(i).

As pointed out earlier, Port Laredo is 11.6 miles from the U.S./Mexico Border and would represent another de facto extension of U. S's border with Mexico. This would potentially erode regulatory protections provided for in the United States that have no analog in Mexico or with train crews staffed with Mexican Nationals. The current waiver conditions state plainly about what duties "UP Employees are required to perform." If non-UP employees from Mexico start performing these duties, this would nullify the conditions set forth in the waiver and therefore the waiver as it currently exists, should be voided—and not extended.

Thank you for the opportunity to comment.

Respectfully submitted,

A handwritten signature in black ink, appearing to be a stylized 'V' followed by a horizontal line.

¹ <https://www.aar.org/wp-content/uploads/2019/10/AAR-Crew-Interchange-Fact-Sheet.pdf>

