



U.S. Department  
of Transportation

**Federal Railroad  
Administration**

1120 Vermont Ave., N.W.  
Washington, D.C. 20590

DEC 17 2004

Mr. Dennis Duffy  
Executive Vice President Operations  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, NE 68179

Dear Mr. Duffy:

This is in reference to waiver petition FRA-2004-18746, submitted by Union Pacific Railroad Company (UP), requesting a waiver from certain Federal safety requirements so that trains may operate from Mexico into the United States without further inspections at the border. Specifically, UP sought a waiver of various Federal regulations to permit certain run-through trains that are pre-blocked and inspected by Transportacion Ferroviaria Mexicana (TFM) in Mexico and then interchanged to UP at Laredo, Texas, to proceed into the United States without further inspection.

The Federal Railroad Administration's (FRA) Railroad Safety Board has fully reviewed all of the information submitted by and on behalf of UP and TFM as well as any independent information developed by FRA and all comments and information provided by other interested parties. At this time, the Safety Board has determined that the requested waiver should be and is denied, without prejudice to the submission of a future request addressing the same subject matter.

Although the Board believes the intent and purpose of the petition serves a strong public interest by fostering fluid cross-border rail movements and reducing impacts on border communities, the Board has determined that UP failed to demonstrate that granting the petition would be consistent with safety at this time. The following findings support this conclusion:

1. **Documentation of employee training and qualifications.** UP and TFM have not been able to provide documentation that TFM personnel are trained in accordance with standards equivalent to those required by FRA. (See 49 CFR Part 232.) Testimony by the TFM witness at the public hearing, while helpful, was imprecise regarding the type of training provided. When FRA dispatched personnel to TFM's Nuevo Laredo facilities to inspect training records and with respect to employee qualifications, the records lacked sufficient detail to make determinations regarding employee qualifications and training, despite the evident competence of the small cadre of Progress Rail employees. It is important that TFM document employee training and qualifications, particularly in light of UP's request to have latitude in designating trains for handling under the waiver. It is

important to have accountability regarding who is inspecting trains and on what basis their qualification was determined.

2. **Translation of standards.** TFM documents represented as translations of U.S. standards were found to be incomplete and in some cases incorrect. When this was pointed out by a commenter (and confirmed by FRA review), TFM responded that the files appended to the waiver petition were “corrupted.” Subsequent to the initial close of the comment period, replacement translations were provided. Although FRA did extend the comment period in order to receive any further comments on this issue, FRA believes that the correct material should have been provided at least prior to the public hearing to afford full consideration of such materials by all interested parties. (The replacement translations were of good quality. FRA personnel provided a small number of suggested refinements related to consistency of nomenclature.) More importantly, the existence and initial submission of “corrupted” files renders the record unclear as to whether TFM employees were trained using the “corrupted” versions of the regulations or the version of the regulations submitted subsequent to the initial closing of the docket.
3. **Inspection findings.** The waiver investigation included a review of inspection findings at Laredo during the current year. In addition, in July inspections were conducted in support of the investigation of northbound trains delivered by TFM to UP. FRA found that “Z” trains (priority intermodal trains) were in good condition with respect to compliance with the U.S. regulatory requirements, as compared with similar consists inspected outbound after release by U.S. mechanical department personnel. However, UP requested that relief be extended to “AMX” (autorack unit trains) and potentially other trains as well. FRA’s inspections found the condition of AMX trains as delivered by TFM to be unsatisfactory when compared with trains inspected by UP personnel. General manifest trains were notably inferior in quality. It is the applicant’s responsibility to determine which categories of trains will be identified for requested relief and demonstrate that all such trains can be competently inspected with qualified personnel available to TFM.
4. **Management of principal/agent relationship.** TFM maintains its own active transportation business and delivers trains to Texas-Mexican Railway, as well as UP. The Mexican Government does not yet enforce equivalent or compatible standards. Accordingly, UP will need to actively oversee TFM’s performance of inspections for UP. In this regard, commenters called attention to safety problems recently evidenced on UP’s Southern Region, contending in effect that this calls into question UP’s ability to manage this relationship. Although FRA is well aware of the differences between challenges being addressed by the railroad with respect to operational testing and crew management, on the one hand, and mechanical inspections, on the other, we nevertheless do conclude that some time should be allowed for new managers of the region and service unit to address the former before being challenged to manage the latter. This point is particularly relevant given the difficulty experienced by UP with respect to compliance with another

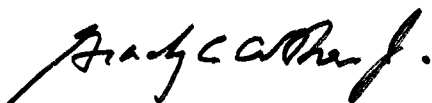
outstanding waiver in the mechanical area. FRA also notes that any future relief considered in this area would need to be predicated on UP's admission that TFM is acting as an agent for the railroad when conducting such inspections on its behalf and that UP would be accountable for any enforcement actions taken with regard to the performance and quality of such inspections.

With respect to the issue of hazardous materials inspections under 49 CFR § 174.9, an issue raised by commenters, FRA notes that no request has been made to the Research and Special Programs Administration for relief from that requirement. FRA enforces this requirement, and presently it is FRA's position that this inspection must be conducted by the receiving railroad with respect to any train originating in Mexico. Please feel free to contact our hazardous materials staff for further information.

We found no merit in the suggestion of some commenters that approval of the waiver would compromise security. The Department of Homeland Security maintains an active presence at the gateway and scans each train entering the U.S. UP mechanical personnel inspect trains for safety, rather than security purposes. Trains standing in Laredo during inspection cannot be secured and present an opportunity for vandalism that could affect railroad safety. Standing trains also create the potential for pedestrians, including children, to attempt to pass between cars under circumstances that could result in death or serious injury if the equipment moves. Accordingly, it is desirable to make alternative arrangements for inspection of trains traversing the border.

We appreciate the cooperation extended to FRA by UP and TFM during review of this waiver request.

Sincerely,

A handwritten signature in black ink, appearing to read "Grady C. Cothen, Jr.", written in a cursive style.

Grady C. Cothen, Jr.  
Acting Associate Administrator for Safety