U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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October 8, 2004

The Honorable Betty Monro
Acting Administrator
Federal Railroad Administration
U.S. Department of Transportation
1120 Vermont Avenue, NW
Washington, DC 20590

Dear Administrator Monro:

We are writing to express our opposition to the Union Pacific Railroad's request for a waiver from certain Federal safety and inspection requirements.

Union Pacific Railroad is seeking a waiver of compliance from Title 49 Code of Federal Regulations Section 232.205 – Class I brake test-initial terminal inspection; Section 232.409 – Inspection and testing of end-of-train devices; Section 215.13 – Pre-departure inspection; and Section 229.21 – Locomotive daily inspections.

The proposed waiver would allow the Union Pacific Railroad to run trains from Mexico through Laredo, Texas, and onto their designated inspection stations 1,000 miles into the interior of the United States, without first having to be inspected on the U.S. side of the border. Instead, Union Pacific proposes to have the Transportacion Ferroviaria Mexicana (TFM) Railroad perform the necessary tests and inspections in Nuevo Laredo, Mexico.

We urge that this waiver petition be denied until the Government of Mexico has adopted inspection and testing regulations that are compatible with North American standards; an agreement has been reached between the FRA and the Government of Mexico on enforcement of such standards; concerns relating to FRA and TFM inspections, maintenance of records, and worker training are resolved; and, the security of trains entering the United States are assured.

Until these changes are made, we do not believe that TFM would be equipped to conduct train inspections, in accordance with FRA standards. The Union Pacific proposal points to the Canadian train inspection regime as an adequate model for TFM inspections at the Laredo railroad crossing. Unlike Canada, however, Mexico has not adopted inspection and testing regulations that are compatible with North American standards. The Canadian inspection regime was the result of

cooperative negotiations between Transport Canada and the FRA. No such relationship exists between the FRA and the Secretaria de Communicaciones y Transportes (SCT), the regulatory agency in Mexico.

Union Pacific asserts that the FRA will be able to monitor the inspections and that TFM will provide written consent for inspection of their facilities and personnel involved with performing the tests. Yet in the absence of a government agreement and a similar regulatory framework in Mexico, we question how the FRA will be able to assure the adequacy of TFM inspections. In the United States, the 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 an effective 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 domiciled in Mexico. It is also unclear which railroad would be accountable should an inspection by TFM fail to detect defective equipment, which subsequently leads to an accident, injury, or release of hazardous materials.

Union Pacific claims that it will help minimize such failures and monitor TFM's compliance with FRA standards by inspecting two trains that originate in Mexico per week. We have serious concerns with this proposal. Periodic inspections should be conducted by the FRA – not Union Pacific or TFM – as is done at the U.S.-Canadian border.

We do not agree with Union Pacific's assertion that all TFM employees are properly trained to perform inspections. TFM claims that all of their transportation supervisors and instructors receive refresher training at the National Academy of Railroad Sciences every year, and that all of TFM's mechanical department personnel involved with border operations have received refresher training on applicable parts of Title 49 of the Code of Federal Regulations. While some U.S. railroads rely on the Academy to provide the same training to its apprentice inspectors, there are significant differences between how the TFM and U.S. railroads use the Academy courses. The U.S. railroads use the courses as an introduction to extensive training. Burlington Northern Santa Fe Carmen, for example, take these courses and then work as apprentices for 732 days with a journeyman, and pass period tests to demonstrate their proficiency in FRA regulations. However, TFM, by its own admission, relies on these introductory courses as a means of certifying TFM's employees. We urge that TFM follow the same training requirements as U.S. railroads before a waiver is granted.

In conclusion, we do not believe that inspections by TFM would be adequate to assure railroad safety and security, and we therefore urge the FRA to deny the waiver request. Thank you for your consideration of these views.

Sincerely,

James L. Oberstar

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Signers:

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