

Statement of the  
Brotherhood of Locomotive Engineers and Trainmen  
FRA Public Hearing  
Union Pacific Waiver Petition  
Docket No. FRA 2004 -18746  
October 1, 2004

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Brotherhood of Locomotive Engineers and Trainmen  
Texas State Legislative Board

Good morning, my name is Terry Briggs. I am Chairman of the Brotherhood of Locomotive Engineers and Trainmen (BLET), Texas State Legislative Board. I am authorized by our National President, Don Hahs, to speak on behalf of the BLET today. Thank you for giving us this opportunity.

The BLET has numerous concerns and questions regarding the Union Pacific request to eliminate train and locomotive air brake and mechanical inspections on trains entering the United States in Laredo, Texas and substitute that inspection with one done in Mexico. Our concerns are driven by the need for safety of our members, who will be operating the trains and locomotives affected by the proposed changes, as well as the safety and security of the citizens of the communities through which these trains will be operating.

#### **Language and technical/regulatory barriers**

The Union Pacific has provided numerous documents in support of their request for waiver. Upon studying those documents, the Spanish translation of 49CFR parts 232, 215, 229, and 231, causes us concern. They are not a direct translation of U.S. regulations. These documents are provided to show how the Transportacion Ferroviaria Mexicana (TFM) railroad employees are trained in FRA regulations and what training material is used. A comparison of the provided documents to the English version of the same CFR parts reveals substantial differences exist between the English and Spanish versions. For example, in the Spanish version of 49CFR there are numerous instances where text is omitted or deleted ranging from single words or phrases to paragraphs and even entire sections numbering twenty or thirty pages. In addition, the Spanish translation is

from an outdated version of 49CFR, one that lacks any mention of locomotive sanitation regulations that have been in effect since 2002. The translation from English to Spanish is, in itself, not properly done. For example, the original translator used the American system of writing dates rather than the Latin American system and that sounds awkward to the Spanish reader. Additionally, many accent marks were omitted, which is the equivalent of a misspelling. These examples are offered as an illustration of the questionable overall quality of the material that is used to train the personnel who will be charged with conducting the inspections in accordance with current FRA regulations. If the regulatory language is incorrect, we can fully expect the quality of the training material to be questionable. It is therefore doubtful that the training TFM employees receive is fully compliant with 49CFR.

BLET is also concerned about the differences in language used by U.S. and Mexico and the problems that will undoubtedly arise if joint operations are undertaken. In April 2004, Kansas City Southern (KCS) and Grupo TMM, a Mexican transportation company, released separate statements regarding the decision of an arbitrator the two companies had used to settle a dispute over a contract that Grupo TMM had attempted to cancel. The KCS press release said in pertinent part "...that both parties agreed to discharge in good faith all of the obligations of the acquisition agreement..." while the Spanish version Grupo TMM released said "...the two companies have agreed to free themselves from all obligations of the contract of sale." A Spanish translator misinterpreted the meaning of the simple word "discharge" and that lead to two press releases that

had exactly the opposite meaning from one another. This misunderstanding caused little more than friction between the two companies, however, a misunderstanding of the meaning of instructions on how to perform an air test or inspection could lead to a catastrophic accident. If such a misunderstanding can happen between KCS and Grupo TMM, it is not a stretch to imagine it can happen between the Union Pacific and TFM.

Additionally, Union Pacific proposes the tests and inspections performed by TFM be documented by dual language documents. These documents are integral to safe railroad operations and are vital in accident investigations. BLET is not convinced that all applicable Spanish documents, which have been provided with this request for waiver, have been checked to ensure they maintain the same meaning as their English counterpart.

The United States and Mexico also use different units of measure. FRA has expressed concern in the past regarding these differences, and how the difference may affect rail safety in joint operations between the United States and Mexico. BLET shares those concerns. Documents, provided with this request for waiver, do not reassure the BLET that the units of measure used to conduct tests and inspections in Mexico will be consistent with those prescribed in FRA regulations and that proper training has been given those employees who will be using them.

### **Accountability**

Neither Union Pacific nor FRA has addressed the issue of accountability for those persons responsible for conducting inspections and tests in Mexico. 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 lax inspections and the use of non-compliant or unsafe equipment. Clearly, FRA has no jurisdiction in Mexico and therefore no method of ensuring compliance other than TFM railroad's voluntary cooperation. Regulations governing railroads in the United States have been developed over many years and are in place, along with applicable penalties, to force compliance precisely because railroads in the U.S. have demonstrated, time and again, an unwillingness to voluntarily provide adequate safe guards for their employees and the public. BLET has great difficulty understanding how allowing the TFM railroad, which is based in Mexico, to voluntarily comply with FRA regulations, as would be the case if this waiver is granted, is consistent with FRA's mission to continue to improve rail safety. Additionally, BLET seeks an explanation as to which railroad will be held accountable should an inspection by TFM fail to detect defective equipment, and that subsequently leads to an accident, injury or release of hazardous material.

Union Pacific proposes that all applicable records be kept by the Texas Mexican (Tex Mex) Railroad's Chief Mechanical Officer as well as at TFM's offices in Nuevo Laredo, Mexico. FRA states, however, in the public notice of Petition for Waiver of Compliance, that the records will be maintained solely by Tex Mex. Just where will records be kept and to what degree will FRA and others have access to them? This ambiguity is yet another example of an absence of forethought with regard to the regulations and their relevance to safety. No

consideration should be given to allowing any waiver so long as there is a question of FRA's access to recordkeeping.

### **There is no need for this drastic action**

Union Pacific proposes that locomotive daily inspections on northbound trains be done in Mexico by TFM employees. However, Union Pacific goes on to say that locomotives used to deliver trains to TFM generally return to the United States in less than 24 hours. Given this fact, BLET sees no good reason why the locomotive daily inspections cannot continue to be done by Union Pacific employees in the U.S. where an enforceable standard is already in practice.

BLET understands the City of Laredo's wish to reduce the problems of rail congestion within the city, and their desire to eliminate, as much as possible, the problems of blocked crossings as trains are inspected and prepared for departure. We do, however, believe that elimination of the train air brake and mechanical inspections is too drastic a step in seeking a solution to the congestion there. Rather, we urge the Union Pacific Railroad to look to other options, such as infrastructure improvement, and more employees to conduct inspections. In fact, FRA, Union Pacific, Tex Mex and several Rail Unions have already cooperated in providing one option to alleviate the congestion in Laredo. That option includes the use of the Tex Mex Port Laredo facility. The Union Pacific, however, has chosen not to utilize this option.

### **The preeminent issue of our time—security**

The Department of Homeland Security and Transportation Security Administration, as well as BLET are currently raising awareness of security

vulnerabilities that exist in the freight rail system in the United States. With respect to this operation, the inspections that are currently done on trains in Laredo provide an added layer of security. Because approval of this proposal would remove that redundancy, and lessen security on those trains, BLET urges the Department of Homeland Security and the Transportation Security Administration to study this proposal and make their finding a part of this record.

### **Conclusion**

In summary, BLET believes this request for waiver of compliance is directly contradictory to ongoing efforts FRA has made to conduct more thorough and more effective inspections of railroad freight equipment and to further enhance safe rail operations. If increasing the Laredo gateway capacity is to be achieved, it should be achieved using other options short of exporting regulatory oversight of safety critical locomotives and equipment to a country that has not demonstrated the same safety culture as in the United States. The impact this waiver may have on matters of security must be addressed. Based upon that request, and to allow ample time for additional comments on this complex proposal, BLET requests that the public record of these proceedings be held open an additional sixty days.

Thank You.