



*A bold voice for transportation workers*

February 6, 2023

John Karl Alexy  
Associate Administrator  
Federal Railroad Administration  
1200 New Jersey Avenue SE  
Washington, DC 20590

**RE: UP Petition for Extension of Waiver of Compliance  
Docket No. FRA-2010-0145**

Dear Associate Administrator Alexy:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Federal Railroad Administration's (FRA) notice regarding Union Pacific's (UP) recent petition to extend an expired waiver of compliance regarding brake procedures for its Roseville, California yard. TTD consists of 37 affiliated unions representing the totality of rail labor, including both passenger and freight rail workers.

In its petition, UP seeks to use track speed retarders, known as Continuous Speed Control, instead of securing cars with handbrakes, which is required under 49 CFR 232.103(n)(1). This waiver was originally requested in 2010 and granted in November 2011 following a public hearing in which the United Transportation Union (now SMART-TD) raised concerns about the potential for rollouts to injure workers or cause the release of hazardous materials.<sup>1</sup> When it was time for the waiver to be renewed, UP filed its renewal request six months late. When FRA granted the extension in December 2017, FRA noted this tardiness and noted that it "reserves the right to take enforcement action under 49 U.S.C § 20111 for noncompliance with any condition of this waiver or applicable Federal regulations."<sup>2</sup> Additionally, that 2017 decision letter noted that UP had failed to comply with all of the conditions required as part of the original waiver, including providing copies of elevation validation reports. When FRA surveyed the yard at that time, it found multiple tracks were out of compliance.

Tellingly, to remain in compliance with the terms of the waiver, UP should have requested an extension of the waiver by no later than June 2022, six months prior to the expiration of its 2017

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<sup>1</sup> <https://www.regulations.gov/document/FRA-2010-0145-0014>

<sup>2</sup> <https://www.regulations.gov/document/FRA-2010-0145-0016>

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waiver. However, UP failed to do so and did not submit an extension request until November 2022. This did not allow FRA enough time to provide public notice in the Federal Register and request comments prior to the expiration of the waiver in December 2022.

TTD is extremely concerned about UP's flagrant disregard for even the simplest waiver conditions: a) the timely filing of required reports and b) when to apply for an extension of the waiver period – particularly when this waiver was also late during the last renewal cycle. We remind FRA that UP is not a small business suffering under burdensome paperwork requirements. In the fourth quarter of 2022 alone, UP accrued \$1.64 billion in net income.<sup>3</sup> If they chose to do so, UP has more than enough resources to hire staff to ensure that it remains compliant with the terms of this waiver.

It would be irresponsible for FRA to allow multiple, flagrant violations of these simple requirements. Therefore, we ask that FRA deny this waiver extension. Denying this waiver would not have any negative impact on safety, contrary to UP's claims. Climbing on and off of equipment to tie handbrakes is no more dangerous an activity than any other task that railroaders complete multiple times per day. This waiver was designed to increase expediency for UP and allow it to operate with fewer workers. Judging from its profit and its lack of prioritization of filing this waiver extension on time, UP has plenty of resources to hire additional workers to secure cars with handbrakes.

Beyond our concerns with UP's failure to submit required reports and apply for extension in a timely fashion, TTD is concerned by the number of overspeed incidents that UP has reported in its filing.<sup>4</sup> On a weekly basis, these incidents where cars pass switches above allowable speeds have too often exceeded 1,000 occurrences. Even a quick glance through the data can identify tracks that are especially prone to overspeed incidents. Cars moving uncontrolled at above allowed speeds pose a threat to the safety of workers. Many weeks, the only corrective action taken to address the extreme number of overspeed incidents was an inspection that did not have any effect to subsequently reduce the number of overspeed incidents.<sup>5</sup> Other weeks, such as June 24, 2022, it appears that no corrective action was taken at all for many of the tracks with hundreds of overspeed incidents.

TTD did not find copies of UP's elevation validation reports in the materials it submitted when requesting this waiver extension. Given the extreme number of overspeed incidents, this is information that must be made public to allow for a thorough examination to determine if track settlement is contributing to the safety concerns.

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<sup>3</sup> <https://www.railway-technology.com/news/union-pacific-net-income-rises/#:~:text=Union%20Pacific's%20operating%20revenue%20was%20%2424.9bn%20in%202022.>

<sup>4</sup> <https://www.regulations.gov/document/FRA-2010-0145-0017>

<sup>5</sup> For an example, see page 228 regarding June 17, 2022, <https://www.regulations.gov/document/FRA-2010-0145-0017>

All of these concerns are in the context of a railroad system that is getting progressively less safe because of decisions and practices by the Class I railroads. The FRA's own safety data shows that since 2009, the number of railroad accidents and incidents reported to FRA has not meaningfully declined. Derailments, fatalities, and collisions all increased in the years leading up to the pandemic, with fatalities rising from 640 to 732 between 2017 and 2019 alone.<sup>6</sup> Total accidents/incidents rose from 9,215 in 2012 to 9,744 in 2019, reversing a decades-long decline.<sup>7</sup> Trespasser deaths not on highway-rail crossings rose from 335 in 2012 to 477 in 2019.<sup>8</sup> Now is the time for FRA to scrutinize very carefully requests for safety waivers. Existing safety regulations exist precisely to protect the safety of our rail system, rail workers, and the public.

We call on FRA to deny this extension request due to the repeated tardiness in filing and the safety concerns with extending this waiver, especially given UP's history of not following the required conditions under the 2017 waiver. It is not FRA's place as the railroad safety regulator to enable UP's misplaced belief that it does not need to follow the rules. Additionally, when UP inevitably files a new petition, we ask that FRA thoroughly ensure that UP has submitted and made validation reports publicly available and investigated the number of overspeed incidents. Its failure to do so should be disqualifying if not sufficiently remedied.

As FRA stated in 2017, "The Board cautions UP that any future request to extend this waiver must be made at least 6 months before the expiration date, or UP risks rescission of the waiver and/or civil penalties." UP must be held accountable to the requirements of the 2017 waiver and FRA should deny their request to extend it.

Sincerely,



Greg Regan  
President

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<sup>6</sup><https://railroads.dot.gov/safety-data/accident-and-incident-reporting/accidentincident-dashboards-data-downloads>

<sup>7</sup> Id.

<sup>8</sup> Id.