



Memorandum

U.S. Department of
Transportation

Office of the Secretary
of Transportation

Office of Inspector General

Subject: **ACTION:** Review of allegations that FRA Deputy
Administrator attempted to relax safety enforcement
against Union Pacific

Date: December 10, 2004

From: Kenneth M. Mead
Inspector General

Reply to
Attn of:

To: The Secretary
Deputy Secretary

This responds to allegations made by [REDACTED] former Federal Railroad Administration (FRA) [REDACTED] that then-FRA Administrator Allan Rutter and Deputy, now-Acting Administrator Betty Monro pressured [REDACTED] to relax safety enforcement actions involving Union Pacific Railroad. [REDACTED] asserted that this pressure stemmed from Acting Administrator Monro's long-time friendship with [REDACTED] Union Pacific's [REDACTED] in particular, that they had vacationed together.

Union Pacific is the largest railroad in North America, operating over 53,000 miles of track in 23 states. As Deputy Administrator, Acting Administrator Monro exercises authority over FRA programs and enforcement actions that directly affect Union Pacific. Between Fiscal Year (FY) 2001 thru 2003, FRA's enforcement inventory included approximately \$13 million in proposed civil penalties against Union Pacific. During this same period, then-Deputy Administrator Monro took four vacations to Nantucket Island, MA, with [REDACTED]

It is important to note the context in which these charges arose. Earlier this year, after receipt of Hotline allegations, we conducted an investigation of [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Only after [REDACTED]

[redacted] did [redacted] raise these and other claims¹, including by way of a telephone call to the Secretary of Transportation's Chief of Staff², asserting that [redacted] for [redacted] resisting pressure to relax safety enforcement. The Chief of Staff told [redacted] to detail [redacted] specific concerns in writing to Deputy General Counsel Rosalind Knapp, which [redacted] did in a June 30, 2004, letter. The Secretary then asked us to investigate these allegations.

[redacted]

The results of our investigation of this matter are provided below and include a recommendation for Departmental coordination of ethics advice to Administrators and Deputy Administrators, and a recommendation for FRA to make greater use of safety and enforcement data in connection with its safety program.

We are in receipt of the Secretary's signed memorandum of November 30, 2004, responding to an advance copy of this report, which concurs with our foregoing recommendations. In particular, the memorandum states that the Department's Office of General Counsel will implement our first recommendation, and that FRA has begun designing a program responsive to our second recommendation and anticipates its implementation within the recommended time frame. We appreciate the Department's responsiveness in addressing these recommendations.

¹ In [redacted] complaint, [redacted] questioned: (1) payments to a missing (and presumed deceased) safety inspector, (2) payments on an FRA Information Technology (IT) contract, and (3) the efforts of Administrator Rutter to raise the classification level of a Defense Intelligence Agency (DIA) rail security report. We found nothing to suggest that FRA acted inappropriately in any of these instances. The payments to the missing rail inspector were in accordance with Federal law, the FRA disputed payments to the IT contractor and acted reasonably in reaching a settlement, and the DIA decision to reclassify the report was not made in response to Administrator Rutter.

[redacted]

Summary of Results

- [REDACTED]
- We confirmed that Ms. Monro has a long-standing friendship with [REDACTED] (over 25 years), and that they vacationed together during Ms. Monro's tenure as Deputy Administrator, specifically, four trips to Nantucket. However, we found no evidence of favoritism toward Union Pacific by Acting Administrator Monro and FRA, nor pressure to relax enforcement against any railroad. Nonetheless, these vacations posed an appearance issue that was not properly addressed by Ms. Monro and FRA's [REDACTED] leaving a backdrop which could cloud analysis of FRA's safety and enforcement data.

For example, analysis of FRA civil penalties does not suggest that FRA relaxed enforcement under Administrator Rutter and Deputy Administrator Monro. Fines increased significantly for the four major railroads, with Union Pacific experiencing the greatest increase in settled amounts—91 percent. Union Pacific also had the highest civil penalty settlement rate among the four majors—68 percent. Other metrics, however, show that systemic safety issues still exist with the four major railroads, which raise questions about the adequacy of FRA's regulatory oversight. Additionally, we interviewed each of FRA's eight Regional Administrators (who reported to [REDACTED] and several field inspectors. They each told us that they did not share [REDACTED] perception that Acting Administrator Monro wanted to relax enforcement.

- As we found no evidence that [REDACTED] paid any of Acting Administrator Monro's expenses on vacation, our investigation disclosed no violation of Federal ethics laws or any actual conflict of interest.
- [REDACTED] FRA's [REDACTED] and [REDACTED], looked at whether there was an actual conflict of interest but did not properly address the issue of whether then-Deputy Administrator Monro's vacations with [REDACTED] could create an appearance that Ms. Monro had less than an appropriate arm's length relationship with Union Pacific. Federal ethics rules are designed, in part, to ensure that official acts are free from actual or apparent bias⁴.

⁴ See "Standards of Ethical Conduct for Employees of the Executive Branch," 5 C.F.R. § 2635.

- While Federal law does not require Administrators and Deputy Administrators to abandon friendships upon taking office, they must maintain an appropriate arm's length relationship, both in fact and appearance, with representatives of regulated entities. We believe that [REDACTED] did not give proper attention to this issue. We note that [REDACTED] did not consult with the Department's General Counsel and did not memorialize [REDACTED] discussion with Deputy Administrator Monroe [REDACTED] analysis, or [REDACTED] advice.
- Acting Administrator Monroe told us that she and [REDACTED] did not discuss any FRA actions regarding Union Pacific during their vacations, and [REDACTED] confirmed this to be the case. Nonetheless, in our view, then-Deputy Administrator Monroe did not exercise sound judgment in vacationing with [REDACTED]. FRA makes countless decisions affecting both public safety and the railroads' financial interests, including levels of inspection, issuance of rules and regulations, compliance orders, and enforcement judgments (e.g., which safety violations should result in fines, and settlement amounts of proposed fines). FRA decisions could also affect [REDACTED] personal financial interests since [REDACTED] holds [REDACTED] worth of Union Pacific stock⁵ and is the [REDACTED] of its political action committee.
- In light of the broad discretion exercised by a Deputy Administrator over railroad safety matters, particularly under FRA's partnership approach, it is critical that FRA officials maintain, in both fact and appearance, an arm's length distance in dealing with railroad industry officials. We did not find any actual conflict of interest on the part of Acting Administrator Monroe. Notwithstanding, we considered all of the circumstances in assessing whether this regulator's vacations with a key representative of FRA's largest regulated entity could create the appearance of a less than arm's length relationship. We concluded that Acting Administrator Monroe's actions in vacationing with a [REDACTED] of FRA's largest regulated entity were ill-advised and could give rise to such an appearance.
- However, our review of FRA fines does not suggest that FRA has relaxed enforcement, overall, nor does it suggest any favoritism toward Union Pacific. FRA enforcement data we reviewed for the periods FY 1998-2000 and FY 2001-2003 show that the dollar amount of both proposed and final civil penalties against each of the four major railroads increased significantly under Administrator Rutter and Deputy

⁵ According to Securities and Exchange Commission public filings, as of January 31, 2004, [REDACTED] held [REDACTED] shares of Union Pacific common stock, which, as of that date, was valued at [REDACTED].

Administrator Monro over that of the preceding period. The most significant of these increases occurred with Union Pacific. Specifically, its final settlement amounts increased from approximately \$4.4 million for the period FY 1998-2000 to approximately \$8.9 million for the period FY 2001-2003, the largest relative increase among the top four railroads. Likewise, the data show that average FRA civil penalty settlement amounts increased significantly for this period over that of the preceding period, with Union Pacific having the greatest increase—91 percent. We also note that for the four major railroads, between the same periods, the average fine settlement rate (settlement amounts as a percentage of proposed fines) increased from 59.9 percent to 64.4 percent. Union Pacific's settlement rate was the highest in both periods, increasing from 63.8 percent to 68.3 percent. In addition, when we interviewed FRA's Regional Administrators and several field inspectors, they each related that Acting Administrator Monro had not acted to relax enforcement.

- Notwithstanding the above data, other metrics suggest that substantial safety and inspection issues exist for the four major freight railroads, including Union Pacific. Union Pacific had the highest average number of train accidents (weighted—per million train miles) of the four major railroads during both of the above-referenced periods. Yet, Union Pacific has been inspected proportionally less, ranking third in FRA inspections per million train miles between those periods. These data, compounded by Union Pacific's recent spate of accidents⁶, raise questions as to the adequacy of the extent of FRA inspections and whether FRA's regulatory oversight process is sufficient.
- Our audit results since 1998 have repeatedly shown, and the above-referenced safety and enforcement data reinforces, that FRA would benefit from an inspection program that places substantially greater emphasis on data and metrics to target use of inspection resources. As noted in our audit work, FRA needs to establish a data-driven approach placing greater reliance on targeting its inspection and enforcement activities based on objective analysis of empirical data. We note that in 2002, FRA hired two full-time research analysts to perform analysis of safety, inspection, and enforcement data. [REDACTED], FRA's [REDACTED], expressed that FRA is committed to instituting a national

⁶ Following multiple Union Pacific accidents and incidents over the past year, some of which involved fatalities, FRA conducted a series of on-site inspections to determine the extent of Union Pacific compliance with FRA safety regulations. Based on the results of these inspections, and in order to improve Union Pacific's level of compliance, on November 12, 2004, FRA and Union Pacific entered into a Safety Compliance Agreement to address the concerns FRA has raised.

inspection program that is data-driven and is actively working to increase its data analysis capacity.

Regarding Union Pacific, [REDACTED] advised that the level of inspections seems low in light of its accident rate and defect ratio⁷. [REDACTED] did not have an explanation as to why its inspection rate was at that level, advising that FRA's analysts are presently examining the data to identify factors that may account for this (e.g., inherent differences between western and eastern railroads), in furtherance of determining whether the current level of FRA inspections is adequate.

We make two recommendations:

1. Given the breakdown in the ethics consultation process in this matter, the Department should consider a requirement that ethics advice to Administrators and Deputy Administrators be coordinated with the Department's General Counsel and appropriately memorialized in writing. The General Counsel should also consider what steps need to be taken with respect to Acting Administrator Monro's participation in decisions affecting Union Pacific.
2. As evidenced by the data we reviewed in this case, significant safety problems persist despite a significant increase in FRA enforcement. With fewer than 450 inspectors responsible for overseeing the nation's vast network of 230,000 miles of rail, it is critical that FRA's inspection and enforcement efforts be carefully targeted to address those safety problems that are most likely to result in accidents and injuries. We recommend that this be done through systematic use of trend analysis, along with other data analysis tools, to examine key indicators of a railroad's safety condition (e.g., its accident rate, defect ratio, and employee injury statistics).

Accordingly, we recommend that FRA submit to the Secretary—within 90 days—a comprehensive plan for implementing, in no more than 6 months, a fully functioning program that makes meaningful use of analysis of available safety, inspection, and enforcement data to (a) focus field inspection activities; (b) assess when a partnership approach is no longer effective and more traditional enforcement (i.e., fines) is warranted; and (c) determine appropriate numbers and amounts of fines, by factoring-in prior safety/enforcement history and trends. FRA's plan should include specific milestones for measuring progress.

⁷ Defect Ratio is defined as instances of non-compliance with FRA standards per units inspected.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. We found no actual conflict of interest; however, FRA's [REDACTED] did not sufficiently address the potential appearance issue

As [REDACTED] asserted, Deputy Administrator Monroe and [REDACTED] the Union Pacific [REDACTED] have been personal and professional friends for over 25 years. Since June 2001, when Ms. Monroe became Deputy Administrator, they have taken four vacations, along with a small number of friends and family members, to Nantucket⁸.

[REDACTED] alleged that this friendship caused Acting Administrator Monroe to pressure [REDACTED] to relax safety enforcement against Union Pacific. The issues raised by this allegation are complicated because, in our view, FRA's [REDACTED] [REDACTED] [REDACTED] did not sufficiently address the appearance issue.

[REDACTED] recalls that because [REDACTED] was aware of Acting Administrator Monroe's friendships with people in the railroad industry, including [REDACTED] [REDACTED] made it a point to speak with Acting Administrator Monroe soon after her appointment about paying her own way at social events. In addition to the initial discussion, [REDACTED] remembers at least two other conversations where vacations and gifts were discussed. However, [REDACTED] never memorialized any of these discussions in writing and neither [REDACTED] nor Acting Administrator Monroe could recall specific details of their conversations. [REDACTED] also did not consult with the Department's Office of General Counsel's ethics officials.

⁸ Acting Administrator Monroe and [REDACTED] also sometimes attended, both before and during Acting Administrator Monroe's tenure, an annual ski trip which was widely attended. In our view, these ski trips do not present the same appearance issues as Acting Administrator Monroe's vacations to Nantucket with [REDACTED]

As it appears that Acting Administrator Monroe followed [REDACTED] advice to pay her own way on vacations and at social events, we found no violation of Federal ethics laws or any actual conflict of interest. However, while [REDACTED] addressed the issue of an actual conflict of interest, [REDACTED] did not properly consider the *appearance* issue surrounding Acting Administrator Monroe's vacations with a Union Pacific [REDACTED] and the importance of an Administrator or Deputy Administrator maintaining an appropriate arm's length relationship with a representative of a regulated entity.

As provided in the Federal ethics regulations, an employee who handles any matter that might affect a friend's financial interests should consult with the appropriate ethics official (in this case, [REDACTED]). The ethics official then determines whether a "reasonable person with knowledge of the relevant facts" would be likely to question the employee's impartiality and, if so, what actions (if any) should be taken to reduce the risk of an appearance of impropriety.

When we interviewed [REDACTED] [REDACTED] acknowledged that Acting Administrator Monroe's friendship with [REDACTED] raised the possibility of an appearance problem, but felt that she should not be forced to give up a long-time friend. [REDACTED] also concluded that no reasonable person would question Acting Administrator Monroe's vacationing with [REDACTED] in light of their long-standing friendship.

While Federal law does not require Administrators and Deputy Administrators to abandon friendships upon taking office, they must maintain an appropriate arm's length relationship, both in fact and in appearance, with representatives of regulated entities. We do not agree with [REDACTED] analysis. In our view, sharing a house in Nantucket with a senior official of the nation's largest railroad, at the same time the agency you represent is, among other things, proposing and settling millions of dollars in fines against that railroad, could give rise to the appearance of a less than arm's-length relationship. Then-Deputy Administrator Monroe, along with [REDACTED] [REDACTED] should have considered whether taking these vacations was in the best interest of the Department and FRA and asked not only "Is it legal", but "How would it appear to the public?"

Acting Administrator Monroe told us that she and [REDACTED] did not discuss any FRA actions regarding Union Pacific during their trips to Nantucket, and [REDACTED] confirmed this to be the case. As both Acting Administrator Monroe and FRA staff told us that Union Pacific, including [REDACTED] frequently disagreed with FRA enforcement actions, these vacations clearly presented an opportunity for discussion that was not available to other railroads or the public.

Thus, we and the public must rely solely on their assurances that FRA enforcement matters were not discussed.

3. **Evidence does not support the allegation of pressure to “relax enforcement” against Union Pacific and other railroads, but the backdrop of the appearance issue could cloud analysis of FRA’s regulatory oversight of Union Pacific**

In [REDACTED] complaint, [REDACTED] alleged Administrator Rutter and Acting Administrator Monro pressured [REDACTED] to relax railroad safety enforcement, specifically, in favor of Union Pacific. These allegations were also raised in *The New York Times* article, which included discussion of several FRA inspection-related memoranda, reports, and meetings concerning Union Pacific.

The documents referenced in *The New York Times* article appear to us to be regular reports, memoranda, meetings, and agency interactions with a railroad that occur in the normal course of the regulatory process. However, *The New York Times* cast these documents in a different light based on the backdrop of Acting Administrator Monro’s vacations with [REDACTED].

For example, a July 2002 memorandum from Administrator Rutter and Deputy Administrator Monro, captioned “Safety Improvement Strategies,” asked [REDACTED] to explain why [REDACTED] decided to use a multi-regional enforcement action against Union Pacific rather than apply the Administrator’s new “Responsibility-Based Enforcement” program. Administrator Rutter told us that he had been unaware of [REDACTED] decision and wanted to be sure that [REDACTED] was giving appropriate consideration to use of the new policy. We note that after [REDACTED] explained [REDACTED] reasoning for the multi-regional inspection, Mr. Rutter and Ms. Monro supported it and it went forward. In our view, absent the backdrop, this memorandum would be viewed as little more than a communication from the senior leadership of an organization seeking to have a new policy implemented, as is their prerogative.

Similarly, an email from [REDACTED] to Acting Administrator Monro complaining about excessive FRA enforcement against Union Pacific would not be seen as an unusual communication, particularly in light of Administrator Rutter’s and Acting Administrator Monro’s “Responsibility-Based Enforcement” policy—a partnering-based approach based on the direct involvement of senior management of FRA and the railroads. Nor would it be unusual to share such a communication with the

[REDACTED] which in fact occurred. As it is, however, [REDACTED] cited this email as evidence that Acting Administrator Monro was pressuring [REDACTED] to relax enforcement against Union Pacific.

To address whether Administrator Rutter and Acting Administrator Monro exerted pressure on [REDACTED] and FRA in an effort to relax enforcement of Union Pacific, we analyzed FRA safety and enforcement data/statistics, interviewed FRA field inspectors and Regional Administrators responsible for inspecting Union Pacific, examined FRA inspection reports citing Union Pacific for safety infractions, and reviewed Administrator Rutter's and Acting Administrator Monro's "Responsibility-Based Enforcement" policy.

Analysis of Safety and Enforcement Data

In short, our analysis of safety and enforcement data points to the compelling need for FRA to take a more data-driven approach to enforcement—something we have recommended to FRA since 1998 through our audit work. As presented in the charts on the following page, we looked at five key metrics concerning railroad safety performance and FRA enforcement efforts⁹.

The enforcement data we reviewed for the periods FY 1998-2000 and FY 2001-2003 show that the dollar amount of both proposed and final civil penalties against each of the four major railroads increased significantly under Administrator Rutter and Deputy Administrator Monro over that of the preceding period. The most significant of these increases occurred with Union Pacific.

Specifically, as depicted in the charts below, Union Pacific's final settlement amounts increased from approximately \$4.4 million for the period FY 1998-2000 to approximately \$8.9 million for the period FY 2001-2003, the largest relative increase among the top four railroads. Likewise, the data show that average FRA civil penalty settlement amounts (weighted-per million train miles) also increased significantly for this period over that of the preceding period. Union Pacific experienced the greatest relative increase—91 percent. This analysis does not suggest that FRA has relaxed enforcement, overall, nor does it suggest any favoritism toward Union Pacific.

⁹ These metrics were derived from FRA databases, which presented the safety data by calendar year (CY) and the enforcement data by fiscal year (FY).

Chart 1: FRA Civil Penalties - Proposed and Settled

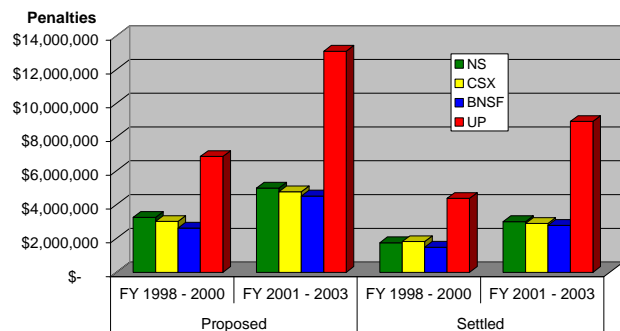
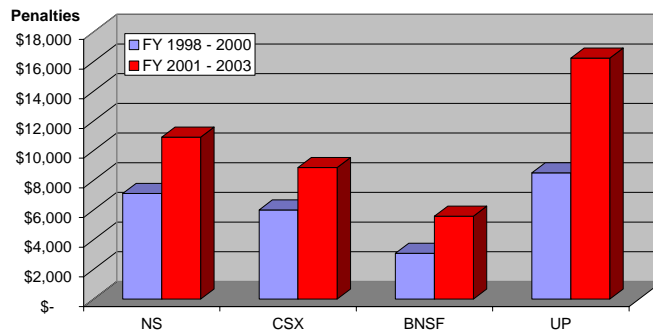


Chart 2: Average FRA Civil Penalty Settlement Amounts (Weighted-Per Million Train Miles)



Other metrics, however, suggest that substantial safety and inspection issues exist for the four major freight railroads, including Union Pacific. Specifically, Union Pacific’s “Average Train Accidents” (weighted-per million train miles) was highest during both of the above-referenced periods, and increased 7 percent between those periods, compared to a 1 percent increase industry-wide.

Chart 3: Average Train Accidents (Weighted-Per Million Train Miles)

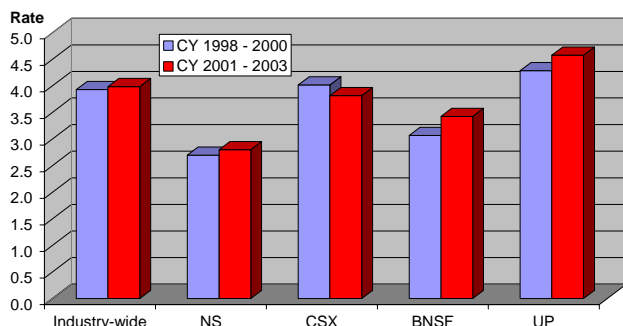


Chart 4: Average Defect Ratios (Instances of Non-Compliance with FRA Standards Per Units Inspected)

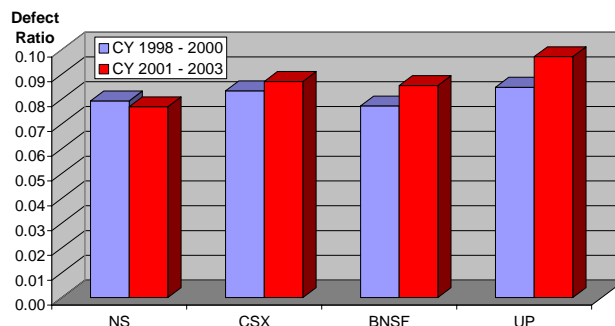
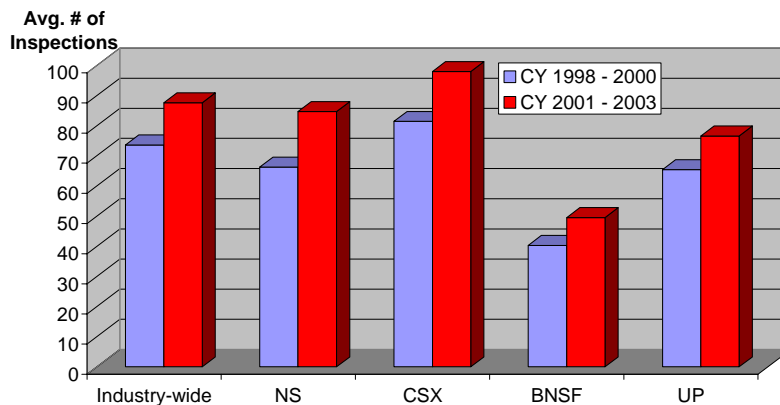


Chart 5: Average Inspections (Per Million Train Miles)



Another indicator of a railroad's safety condition is its defect ratio (instances of non-compliance with FRA standards per units inspected). Three of the four top railroads experienced defect ratio increases between those periods. Union Pacific's was highest and increased the most, by 15 percent over the preceding period. Further, Union Pacific has been inspected proportionally less; in fact, it ranked third in FRA inspections per million train miles between the periods Calendar Year (CY) 1998-2000 and CY 2001-2003. These data, compounded by Union Pacific's recent spate of accidents, raise questions as to the adequacy of the extent of FRA inspections and whether FRA's regulatory oversight process is sufficient.

Notwithstanding the appearance issue that predicated our investigation, the safety data reflect that FRA would benefit from an inspection program that makes substantially greater use of data and metrics to target use of inspection resources. Such an approach would enable FRA to articulate its rationale for how it allocates its inspection resources and decides civil penalty amounts. We found that FRA's inspection program can function in a manner that is (a) discretionary to individual inspectors with respect to routine inspections; and (b) reactive in terms of how it conducts focused inspections. As we have noted in our audit work since 1998, FRA needs to establish a data-driven approach placing greater reliance on targeting its inspection and enforcement activities based on objective analysis of empirical data.

Interviews of FRA Regional Administrators and Field Inspectors & Review of Inspection Reports/Memoranda

We interviewed each of FRA's eight Regional Administrators (who reported to [REDACTED]) and several inspectors in FRA's Texas region. They each told us that they did not share [REDACTED] perception that Acting Administrator Monro wanted to relax safety enforcement. Several individuals were aware that Acting Administrator Monro had a friend who was an executive with Union Pacific, but none of them felt that this friendship resulted in any favoritism toward Union Pacific.

In addition, we examined a series of internal documents provided to us by [REDACTED] including inspection reports and memoranda specifically referenced in *The New York Times* article. These memoranda, which date back to 1999, document systemic Union Pacific track problems in Chicago, IL; Shreveport, LA; and North Little Rock, AR.

A May 2002 memorandum concerning FRA inspection of track problems near Chicago related an inspector's concern that Union Pacific personnel were "either

ignoring the conditions at this facility or were not conducting thorough inspections.” We also reviewed two memoranda dated November 2002 and July 2003 detailing systemic track and improper train speed increases around North Little Rock and Shreveport. The July 2003 memorandum states, in part, that “conditions were so egregious that [Union Pacific] railroad inspectors were not identifying defects in the track and were doing so with their manager’s tacit approval.” These three memoranda were specifically quoted in the November 7, 2004, *New York Times* article.

We reviewed each of these memoranda and other FRA documents, and conducted interviews, to determine FRA actions in response to the issues identified in the above-cited memoranda. In each case, we found FRA efforts to follow-up with Union Pacific. For instance, in the Chicago case, an FRA inspector walked the track with a Union Pacific manager, who then, according to the FRA reports, ordered material and equipment to remedy the problems. With respect to the North Little Rock and Shreveport track and train speed problems, Deputy Administrator Monro told us she sent a communication to Union Pacific’s Vice President for Operations in late 2003 warning that Union Pacific employees would be held individually liable if the problems were not corrected.

While a complete reading of these and other memoranda and reports do not suggest, as alleged by ██████████ that Administrator Rutter or Deputy Administrator Monro applied pressure to relax safety enforcement, Union Pacific safety problems persist. As discussed above, particularly in FRA’s Texas region, whether under the Safety Assurance and Compliance program or its new Responsibility-Based Enforcement policy, FRA efforts do not appear to have been effective in addressing long-standing, systemic problems. In fact, we note that on November 12, 2004, following multiple Union Pacific accidents over the past year, some involving fatalities, FRA reacted by conducting a series of inspections, resulting in FRA and Union Pacific entering into a Safety Compliance Agreement. This Agreement sets forth several specific steps that the railroad must take in order to better monitor its employees’ compliance with operating and safety rules and Federal regulations.

Review of “Responsibility-Based Enforcement” Policy

Early in their administration, Administrator Rutter and Acting Administrator Monro instituted the “Responsibility-Based Enforcement” policy as a supplement to the existing “Safety Assurance and Compliance Program” (SACP). SACP, implemented during the prior administration, was built upon a partnership approach to resolving systemic safety problems, involving the participation of railroad managers and union

officials at the regional level. According to Acting Administrator Monroe, the SACP program suffered from the fact that issues were discussed at length but resulted in little meaningful change. Ms. Monroe told us that in contrast to the SACP program, the Responsibility-Based Enforcement policy involves directly addressing safety matters through involvement of the highest levels of FRA and railroad management.

While we are not in a position at this time to reach conclusions on the efficacy of the Responsibility-Based Enforcement policy, we concluded that the policy was not established as a "subterfuge" to relax enforcement, as alleged by [REDACTED]

In a 1998 audit and follow-up review in 2002, we identified weaknesses in the SACP program. We recommended that it be more data-driven and performance-based. As we have noted in our audit work, partnership approaches to compliance and enforcement, such as SACP and the Responsibility-Based Enforcement policy, need to be sensitive to the point in time when partnership has gone far enough and traditional enforcement is most appropriate.

Recommendations

1. Given the breakdown in the ethics consultation process in this matter, the Department should consider a requirement that ethics advice to Administrators and Deputy Administrators be coordinated with the Department's General Counsel and appropriately memorialized in writing. The General Counsel should also consider what steps need to be taken with respect to Acting Administrator Monroe's participation in decisions affecting Union Pacific.
2. As evidenced by the data we reviewed in this case, significant safety problems persist despite a significant increase in FRA enforcement. With fewer than 450 inspectors responsible for overseeing the nation's vast network of 230,000 miles of rail, it is critical that FRA's inspection and enforcement efforts be carefully targeted to address those safety problems that are most likely to result in accidents and injuries. We recommend that this be done through systematic use of trend analysis, along with other data analysis tools, to examine key indicators of a railroad's safety condition (e.g., its accident rate, defect ratio, and employee injury statistics.)

Accordingly, we recommend that FRA submit to the Secretary—within 90 days—a comprehensive plan for implementing, in no more than six months, a fully functioning program that makes meaningful use of analysis of available safety, inspection, and

enforcement data to (a) focus field inspection activities; (b) assess when a partnership approach is no longer effective and more traditional enforcement (i.e., fines) is warranted; and (c) determine appropriate numbers and amounts of fines, by factoring-in prior safety/enforcement history and trends. FRA's plan should include specific milestones for measuring progress.

The Secretary's signed memorandum of November 30, 2004, responding to an advance copy of this report, relates Departmental concurrence with our recommendations in this matter. Specifically, the Secretary's memorandum states that the Department's Office of General Counsel will implement Recommendation 1, and that FRA has begun designing a program responsive to Recommendation 2 and anticipates its implementation within the above-recommended time frame.