



# Brotherhood of Locomotive Engineers and Trainmen

*A Division of the Rail Conference — International Brotherhood of Teamsters*

## NATIONAL LEGISLATIVE OFFICE

25 Louisiana Avenue, NW, 7<sup>th</sup> Floor Annex • Washington, DC 20001  
Phone: (202) 624-8776 • Fax: (202) 624-3086 • [tolman@ble-t.org](mailto:tolman@ble-t.org)

### JOHN P. TOLMAN

*Vice President and*

*National Legislative Representative*

August 4, 2006

Docket Clerk  
DOT Central Docket Management Facility  
Room PL-401  
400 7th Street, SW (Plaza Level)  
Washington, DC 20590-0001

Re: Docket No. FRA-2006-24646

Dear Docket Clerk:

On April 11, 2006, Union Pacific Railroad Company (“UP”) petitioned the Federal Railroad Administration (“FRA”) for a waiver from compliance with the requirements of 49 CFR Section 236.586(a). *See* DOT DMS FRA-2006-24646-1 (“Petition”). On June 23, 2006, FRA published notice of the filing of UP’s petition, soliciting comments thereon from interested parties. *See* FRA-2006-24646-3.

These comments are submitted by the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference of the International Brotherhood of Teamsters (“BLET”), which is the duly designated and recognized collective bargaining representative for the craft or class of Locomotive Engineer employed on UP. Consequently, UP’s Petition would have a significant impact upon our members. For the reasons set forth below, BLET opposes granting the requested relief.

The subject regulation provides as follows:

### **§236.586 Daily or after trip test.**

(a) Except where tests prescribed by § 236.588 are performed at intervals of not more than 2 months, each locomotive equipped with an automatic cab signal or train stop or train control device operating in equipped territory shall be inspected for damage to the equipment and tested at least once each calendar day or within 24 hours before departure upon each trip.

**DOT Docket Clerk**

**August 4, 2006**

**Re: Docket No. FRA-2006-24646**

**Page 2**

(b) Each equipped locomotive shall be tested to determine the locomotive equipment is responsive to the wayside equipment and shall be cycled to determine the device functions as intended.

(c) Each locomotive equipped with intermittent inductive automatic train stop or non-coded continuous inductive automatic train stop or non-coded continuous inductive automatic train control device shall be tested to determine that the pickup of the device is within specified limits.

49 CFR § 236.586. The methodology for testing required by Section 236.586 is set forth in Section 236.587.

UP's single-page petition proposes that the phrase "2 months" be changed to "92 days" for locomotives subject to Section 236.586. Petition. UP's rationale is that "maximiz[ing] overall safety by performing maintenance in the best working environment with the highest skilled and best trained personnel ... can best be achieved by performing maintenance in conjunction with the 92-day periodic inspection." Id.

Section 236.588 establishes a requirement that the apparatus undergo a periodic test every 92 days that parallels the periodic inspection of the locomotive mandated by Section 229.23. Section 236.586(a) functions to waive the daily or after trip test requirement when the Section 236.588 periodic test is made on a less than 60-day cycle. Thus, UP's petition, if granted, actually would result in the elimination of all daily testing, because the exception trigger for the test in Section 236.586 would equal the 92-day period specified in Section 236.588.

UP concedes as much in proposed Waiver Condition #4, which proposes to limit departure tests to "a visual inspection of the receiver bars for damage." Id. If granted, the petition ensures there would no longer be a test "to determine the locomotive equipment is responsive to the wayside equipment and shall be cycled to determine the device functions as intended." 49 CFR § 236.586(b). Likewise, locomotives equipped with intermittent inductive automatic train stop or non-coded continuous inductive automatic train stop or non-coded continuous inductive automatic train control device will no longer "be tested to determine that the pickup of the device is within specified limits." 49 CFR § 236.586(c).

Given that much of the industry — including UP — is operating at or near capacity, the additional margin of safety provided by automatic train stop, train control, and cab signal systems is of greater value today than in the recent past. Indeed, we would argue that Section 236.586 testing should be mandatory on a daily basis, irrespective of whether the system is on a 59-day cycle, a 92-day cycle, or any other cycle. Instead, it appears to us that UP is attempting to insinuate

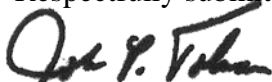
**DOT Docket Clerk**  
**August 4, 2006**  
**Re: Docket No. FRA-2006-24646**  
**Page 3**

FRA into a manpower issue that it is unable to resolve to its satisfaction at the collective bargaining table.

Moreover, UP has failed to provide any data support for its petition. To be certain, UP has the technological capability to amass five years of retrospective data to establish that no diminution of safety would have occurred had the proposed conditions been operational during that period. This would be a far more prudent course than to urge FRA to permit testing of UP's theory on the blind. It also is unclear to us whether proposed Waiver Condition #3 deems every failure as having a potential safety implication, *per se*, or if UP is proposing that it be permitted to report only those failures that it unilaterally determines to be potentially unsafe.

We are convinced that granting UP's petition would trigger a significant operational change in those portions of the UP system where these apparatuses are employed, and would result in a serious degradation of safety. For the reasons previously stated, we strongly urge FRA to deny UP's petition. In the alternative, we concur with the request of the United Transportation Union that a public hearing be held at one or more locations on UP where testimony from those who would be directly impacted can be presented.

Respectfully submitted,



Vice President and National Legislative Representative

cc: Grady C. Cothen, Jr., FRA Deputy Associate Administrator for Safety Standards and Program Development  
Don M. Hahs, National President  
D. L. McPherson, Vice President  
E. L. Pruitt, Vice President  
All UP General Chairmen  
State Legislative Board Chairmen for AR, AZ, CA, CO, IA, ID, IL, KS, LA, MN, MO, NE, NV, OK, OR, TX, UT, WA, WI, WY  
James M. Brunkenhoefer, UTU National Legislative Director  
Thomas A. Pontolillo, Director of Regulatory Affairs