



Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference — International Brotherhood of Teamsters

NATIONAL LEGISLATIVE OFFICE

25 Louisiana Avenue, NW, Room 220 • Washington, DC 20001
Phone: (202) 624-8776 • Fax: (202) 624-3086 • tolman@ble-t.org

JOHN P. TOLMAN

Vice President and

National Legislative Representative

November 9, 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-2006-25764

Dear Docket Clerk:

On August 29, 2006, Union Pacific Railroad Company (“UP”) petitioned the Federal Railroad Administration (“FRA”) for a waiver from compliance with the requirements of 49 CFR Part 215 (Railroad Freight Car Safety Standards), and Section 323.205 (Class I brake test – initial terminal inspection). *See* DOT DMS FRA-2006-25764-1 (“Petition”). On September 26, 2006, FRA published notice of the filing of UP’s petition, soliciting comments thereon from interested parties. *See* FRA-2006-25764-3. On November 6, 2006, UP filed a supplement to its petition, in which it modified the relief being sought. *See* FRA-2006-25764-4 (“Supplement”).

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 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.

UP reports that it currently receives about 50 cars per day at the FXE Interchange at Calexico, California, a number that “has grown steadily in recent years.” Petition at p. 1. Although the petition and the supplement are silent in this regard, we presume that those cars have historically been — and are now being — tested pursuant to 49 CFR Section 232.205, which sets forth requirements for conducting a Class I brake test and initial terminal inspection. From Calexico, the cars then are moved approximately 5.5 miles to Heber, where they are inspected by U.S. Customs officials, and then to UP’s El Centro Yard, which is located 4.6 miles from Heber. Id.

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The relief requested by UP is as follows. First, that it be permitted to perform a Class III brake test and trainline continuity inspection pursuant to 49 CFR Section 232.211 at Calexico in lieu of compliance with Section 232.205. Id. UP proposes that this test be sufficient to move cars from Calexico to El Centro, unless the customs inspection at Heber causes cars to be off air for more than four hours, in which event a transfer train brake test would be performed pursuant to Section 232.215 prior to departure from Heber. Id.

Second, UP proposes to limit movement speed to 20 mph. Id. However, in this regard, UP's so-called "supplement" — filed a mere four days prior to the close of the comment period — dramatically reduces the safety standards proposed in its original petition. Until this week, UP proposed that

prior to departing Calexico ... cars would be inspected to ensure they could be moved safely at speed not to exceed 20 miles per hour. Cars with FRA defects would be permitted to move, if deemed safe to do so, to El Centro for repair. Cars that could not safely be moved would be set out for repairs at Calexico.

Petition at p. 1. However, UP now has removed its proposal any reference to an inspection at Calexico, and merely notes that "[a]ny bad orders would be switched out at Heber or El Centro, CA, for repair by mechanical forces." Supplement at pp. 1-2.

Our grounds for objecting to the proposed waiver are several. First, the petition implicates an overarching policy issue of vital interest to all BLET members; namely, who is performing brake tests and inspections on rail cars traveling in the United States and where those tests and inspections are being performed. UP concedes that the substantially increased cross-border traffic is the result of the NAFTA and GATT trade agreements. Petition at p. 1; Supplement at p. 1. Moreover, and as FRA knows, even higher traffic levels can be expected in the future.¹

The safety record of U.S.-qualified and U.S.-based mechanical forces speaks for itself. The representatives of those men and women provide counsel to FRA and have long participated in rule-makings of all variety — including power brake regulations — through the Railroad Safety Advisory Committee process. In our opinion, the industry's response to the certainty of increased traffic from Mexico should be to expand its infrastructure to meet its needs; not to seek permission for incursions — whether for 10 miles or 1000 miles — for cars that have not been tested and inspected pursuant to FRA regulations by U.S. mechanical forces.

¹ As one example, for more than a year the Mexican government has been planning a multi-billion dollar project to construct a container port at Punta Colonet that would rival the ports of Los Angeles and Long Beach. San Diego Union-Tribune, "Mexico plans an alternative to the jammed docks in L.A., Long Beach," accessed 09 November 2006; available from <http://www.signonsandiego.com/news/mexico/20050814-9999-1n14port.html>.

Furthermore, the last-minute revisions proposed by UP establish that no serious test or inspection of these cars will be performed prior to their arrival at El Centro. As previously noted, UP initially proposed an inspection at Calexico to identify cars with FRA defects and to remove those unsafe for movement at 20 mph from train consists. However, UP now proposes that these cars just rumble on through, and it appears that no train that passes customs inspection in less than four hours in Heber will undergo an inspection.

UP's proposal to limit testing at Calexico to that set forth in Section 232.211 is wholly unsatisfactory. The Class III brake test set forth in Section 232.211 requires a positive determination that the brakes on the rear car apply and release in response to adjustment in brake pipe pressure from the locomotive. 49 CFR § 232.211(b)(2)–(b)(3). However, this positive determination is not required if, “[a]s an alternative to the rear car brake application and release portion of the test, it shall be determined that the brake pipe pressure of the train is being reduced, as indicated by a rear car gauge or end-of-train telemetry device, and then that the brake pipe pressure of the train is being restored, as indicated by a rear car gauge or end-of-train telemetry device.” 49 CFR § 232.211(c).

This alternative Class III test cannot disclose whether any brake is operative on any car, nor is it intended to produce information as to such key indicators of functionality as piston travel or leakage. All the test indicates is whether the rear end gauge or telemetry indicator corresponds with manipulations of the automatic brake valve in the controlling locomotive. UP advises that, on all trains, “the lead locomotive will be equipped with a head end device and will have communication with the EOT.” Supplement at p. 1. Therefore, UP specifically seeks permission to operate trains between Calexico and El Centro without anyone making a positive determination that a single car brake was applied and released prior to departing Calexico.

Finally, to the extent that some form of relief may be appropriate, given the specific facts and circumstances unique to this petition and supplement, BLET strongly urges that the following conditions apply, in addition to the standard procedural conditions FRA imposes:

- The waiver should continue only as long as is necessary for UP to adjust its infrastructure to accommodate anticipated traffic.
- In line with UP's original petition, an inspection should be performed at Calexico to ensure that cars can be moved safely at a speed not to exceed 20 miles per hour. Cars with FRA defects will be permitted to move, if deemed safe to do so, to El Centro for repair. Cars that cannot safely be moved will be set out for repairs at Calexico.
- All trains from Calexico to El Centro will be considered transfer trains, as that term is defined in 49 CFR Section 232.5, and each must receive a transfer train brake test, pursuant

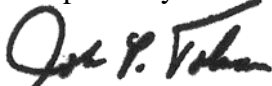
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to Section 232.215 prior to departing Calexico. Upon arrival at El Centro, each car must be tested and inspected pursuant to Section 232.205 prior to any further movement.

- In light of the requirement that all trains be tested and inspected pursuant to Section 232.215 prior to departing Calexico, any train that is “off air” at Heber for more than four hours will require only a Class III brake test — as set forth in Section 232.211 — in order to be advanced to El Centro.

We, frankly, have grave concerns that seemingly innocuous waivers, such as that proposed by the instant petition, could place the industry on a slippery slope leading to the eventual outsourcing of testing and inspection work currently being performed by U.S.-qualified and U.S.-based mechanical forces. Accordingly, and notwithstanding the additional conditions we propose above, we strongly urge FRA to either take no action on or deny the instant petition, as supplemented, until the policy implications of cross-border testing and inspection can be considered in a public forum, and respectfully request a public hearing for that purpose.

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
All UP General Chairmen
All UP State Legislative Board Chairmen
Thomas A. Pontolillo, Director of Regulatory Affairs