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December 22, 2006

*ADMITTED IN NY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

Re: Finance Docket No. 34939
North America Freight Car Association – Petition for Declaratory Order

Dear Secretary Williams:

On December 21, 2006, we filed with the Board a document in the captioned proceeding that, although addressed to counsel for Union Pacific Railroad Company, was intended to be both a supplement to the pending Petition for Declaratory Order and a letter to Union Pacific's counsel.

We apologize if any confusion was generated by the format of that filing. The document, as a tendered supplement to the Petition for Declaratory Order and as a communication to Union Pacific, was intended by Petitioners to be a part of the record in the captioned proceeding, and Petitioners request that it be so treated.

Sincerely,

Andrew P. Goldstein

cc: Gabriel S. Meyer, Esq.
Union Pacific Railroad

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December 21, 2006

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34939

Re: STB Finance Docket No. 34989
North America Freight Car Association – Petition for Declaratory Order

Dear Mr. Meyer:

As you know, North America Freight Car Association ("NAFCA") and its two members most actively involved in the events that led to the captioned petition – Bunge North America, Inc. ("Bunge") and The Andersons – made extensive efforts over the course of more than a year and a half to reach a voluntary resolution of differences with UP concerning the use of S-259 upgraded cars. During that period, several letters were exchanged between the parties and a meeting was held on January 17, 2006 in Omaha. Copies of all correspondence exchanged are attached to this letter for convenience as Attachments A through H. Petitioners sought STB intervention, in the form of a declaratory order request, only when it appeared that the controversies between the parties could not be resolved voluntarily. In that same vein, **this letter requests voluntary production of certain information from UP arising from the contents of the Reply it filed under date of November 14, 2006. By copy of this letter to the Board, Petitioners also re-**

quest the Board to treat this letter as a supplement to their Petition for Declaratory Order.

Petitioners' request for substantiating information largely is a result of certain serious inconsistencies between the claims contained in UP's Reply and the positions it took during the one and a half years of negotiations with Bunge and NAFCA, as well as apparent discrepancies between UP's claims and data published by the Federal Railroad Administration ("FRA"). These issues are related below and set in context, along with specific requests for substantiating data.

Initially, we should make two general observations regarding UP's Reply. First, UP does not challenge, and in fact agrees, that the cars from which the requested OT-5 authority was withheld by UP were in compliance with the Association of American Railroads ("AAR") mechanical specification S-259 for transportation at 286,000 pounds GWR.

Second, UP does not dispute the existence of a controversy between itself and Petitioners. Although UP asks the Board not to institute a declaratory order proceeding, it is because UP thinks its position is justified, and not for lack of a controversy.

Essentially, the petition addresses two fundamental areas of controversy: (1) whether UP's denial of OT-5 authority for Bunge to use the subject cars at the 286,000 GWR limit was a proper exercise of UP's prerogatives and (2) whether UP's refusal to be bound by AAR's mechanical specifications was reasonable and proper as a matter of car service and interchange. At the center of UP's position is its claim that the AAR's S-259 standards are deficient because they fail to require proof that cars have truck bolsters that were designed to carry 286,000 GWR.

OT-5. The subject 230 covered hopper cars originally were built to handle 263,000 GWR loads. They were purchased by The Andersons with a view to upgrading

them to 286,000 GWR pursuant to the AAR's S-259 mechanical specifications. Initially, UP granted OT-5 approval for 200 of the cars to originate 286,000 GWR loads. Subsequently, it rescinded that approval unless Bunge could meet certain conditions imposed by UP over and above the AAR's mechanical specifications or instead would agree to indemnify UP and purchase \$10 million per car worth of insurance in UP's favor. A second group of 30 cars was refused OT-5 approval at 286,000 GWR subject to the same conditions and limitations.

The controlling decision regarding OT-5 is *Shippers Committee, OT-5 v. Ann Arbor Railway Co., et al.*, 5 I.C.C. 2d 856 (1985) ("*OT-5 Decision*"), affirmed, *Shippers Committee, OT-5 v. ICC*, 968 F.2d 75 (D.C. Cir. 1992). There, the Interstate Commerce Commission ("ICC") held that it is unlawful for a railroad to deny OT-5 approval for reasons other than mechanical or safety.¹

Union Pacific asserts in its Reply that the restrictions it placed on the use of Bunge's cars were "neither a denial nor revocation of OT-5 authority" (Reply at 9). Instead, UP asserts, it "merely limited [the] maximum weight [at which the cars could be operated] because they failed to meet safety and mechanical standards." *Ibid.* Those claims, however, are contradicted by UP's earlier correspondence with Petitioners. In a letter of August 3, 2004 (Attachment A hereto), Diane Duren, then UP's Vice President and General Manager for Agricultural Products, stated: "the previously granted OT-5 authority to run the original 200 cars at 286,000 GWR is *rescinded*." In a letter of February 16, 2005 to Bunge, Dick Davidson, UP's Chairman, stated: "after careful review [UP] believes that OT-5 authority was properly *denied* based on safety concerns." See Attachment F hereto. (Italics ours in both instances.)

¹ A third ground for OT-5 denial – lack of storage space – is not involved here.

Allowing the cars to operate only at 263,000 GWR does not alter the fact that there was at least a partial denial of OT-5 authority, as recognized by UP's own Chairman. The decision in *Shippers Committee*, OT-5 does not say that only a *complete* denial of OT-5 is improper. To accept UP's view that a limitation on the use of private cars is permissible and in no respect a denial of OT-5 authority, so long as some manner of car use is permitted by the carrier, would leave the door open for any number of OT-5 abuses. Under UP's rationale, carriers might restrict private cars to, say, 100,000 pounds GWR or allow them to operate only in unit trains. Or, if a shipper sought OT-5 approval to load the cars at 20 origin points, UP could disapprove 19 of the origins and then claim that there had been no OT-5 denial because loading at the 20th point had been approved. Any such approach, including the one taken by UP in this instance, is in fact at least a partial denial of OT-5, deprives the cars of their full economic benefits.

Accepting at face value the statement of UP Chairman Davidson that UP's actions amounted to an OT-5 "denial," the real question is whether that denial was justified on safety or mechanical grounds. The UP response, evidently acknowledging the weakness in attempting to claim that UP did not at least partially deny OT-5 authority, is that UP's safety concerns provide a justification for refusing to recognize the AAR's S-259 specifications as adequate for operation of the cars at 286,000 GWR. The core of UP's current safety claim is that "UP suffered a spate of derailments attributable to the failure of truck bolsters on S-259 cars approved for operation at or near 286,000 pounds GWR." Reply at 4. The Reply describes this "spate" as follows:

From January 2000 through November 2002, UP experienced nine railcar truck bolster failures, six of which resulted in derailments. Five of the derailed rail cars were built to S-259 standards between 1995 and 1998. The four other rail cars – one of which caused a derailment – had been built during the 1970s, prior to adoption of S-259 standards. Laboratory analyses performed on four of

the S-259 cars involved in derailments confirmed that their truck bolsters were not designed to carry 286,000-pound loads.

UP adds that it "also experienced seven additional truck bolster failures occurring from March 2003 to February 2006, two of which caused derailments. Of the 16 total truck bolster failures, to UP's knowledge, none involved railcars equipped with truck bolsters that had been designed for 286,000-pound GWR loadings."

In presenting its alleged derailment data as a justification for concluding that the S-259 upgrade standards approved by AAR permit truck bolsters to be used that UP regards as potentially unsafe, UP is contradicting another of its Reply arguments, which is that UP had recognized a S-259 "safety" problem by June 1, 2002. In its Reply (p. 5), UP asserts that it issued a Mechanical Car Policy Bulletin (the "Bulletin") on June 1, 2002 "limiting newly built or modified S-259 railcars to a maximum weight of 263,000 pounds GWR" unless the "railcars truck bolsters were certified to carry 286,000 pound loads."² Union Pacific did not provide a copy of this alleged Bulletin with its Reply.

If UP indeed took the position on June 1, 2002 that S-259 standards were deficient because they failed to require proof of truck bolster capacity design, then it should follow that UP had gathered sufficient supporting evidence for that claim by that date. Oddly, UP relies on derailment data extending through February 2006 to support a conclusion that UP claims it reached by May 2002. As it turns out, according to FRA records, between January 2000 and May 2002, UP experienced only five reported broken truck bolsters, three of which resulted in derailments – hardly a "spate" of evidence.

UP, in any event, is changing its story. When UP first notified Bunge that UP was denying OT-5 authority for Bunge to operate its 230 cars at 286,000 GWR, UP's let-

² As discussed below, UP's Reply represents the first instance in which any mention of the Bulletin has been made by UP to Bunge, The Andersons, or NAFCA.

ter, dated August 3, 2004, stated: "Since 2001, there have been 13 broken side frame and bolster derailments costing the Railroad \$4.4 million." See Attachment A. In response, Bunge requested UP to provide particularized information concerning that claim, pointing out that FRA records indicated no reported derailments on UP in 2004 or 2003 attributable to broken bolsters and only five such derailments in 2001 and 2002. UP was requested by Bunge to furnish information to substantiate its claims, including disclosure of how many of the alleged 13 derailments involved failures of bolsters manufactured in Mexico (inasmuch as certain Mexican-manufactured bolsters were then under investigation by AAR for casting – not design – deficiencies). See Attachment B.

Bunge's request that UP substantiate its August 3 derailment claims was ignored by UP in all subsequent correspondence. See Attachments C (UP letter of August 30, 2004 responding to Bunge's August 13, 2004 letter) and F (Chairman Davidson's letter of February 16, 2005). Furthermore, on January 17, 2006, a meeting took place in Omaha between UP and NAFCA representatives. The undersigned participated in that meeting via a telephone conference connection as counsel for NAFCA. Among those present on behalf of UP was a representative of UP's law department. During the course of the meeting counsel for NAFCA expressly requested that UP provide the data sought by Bunge in its August 13 letter or other data to support its derailment claims made on August 3. UP's counsel unequivocally stated that UP would supply no such information, in part because it considered derailment data to be "confidential."

Union Pacific now has revised its story regarding the "derailment" basis for its OT-5 denials, raising serious questions regarding the reliability of its asserted safety concerns. Moreover, UP's current willingness to advance a new version of derailment "facts" seems to belie its earlier claim that further derailment disclosures would violate confidentiality.

In August 2004, UP asserted that its safety concerns resulted from "thirteen broken side frame and bolster derailments" that had occurred since 2001. According to its Reply, however, UP has now abandoned reliance on broken side frames as a basis for its OT-5 denials, and focuses only on truck bolsters. Its new claims, like its earlier ones, are inconsistent with FRA data and also do not square with UP's own earlier positions.

A. The majority of the alleged derailments that occurred between January 2000 and November 2002 appear to be irrelevant to UP's safety claims. UP states that five of the six cars said to have been derailed during that time span "were built to S-259 standards between 1995 and 1998." However, UP previously informed Petitioners that any truck bolster "manufactured after 1995 ... will satisfy Union Pacific's mechanical requirements" and be approved under OT-5 for loading at 286,000 GWR. See Attachment H, letter of April 18, 2006 from UP to NAFCA. Because five of the derailed cars were built between 1995 and 1998, those cars presumably would have been granted OT-5 approval at 286,000 GWR and thus present no discernable S-259 safety issue even under UP's own standards.

B. There appear to have been no more than four alleged truck bolster failures between January 2000 and November 2002 of the type that might be relevant to UP's asserted safety claims. This handful of derailments is difficult to place in context without an indication of the total number of S-259 qualified cars that moved over the UP system during those 22 months, a fact that UP has not supplied. Given that some 400,000 S-259 qualified cars were operating in the railroad system, each making multiple trips per year, bolster failure derailments on a mere four

cars over a multiple year period does not suggest an epidemic of such failures.

C. The UP reply asserts that seven truck bolster failures occurred from March 2003 to February 2006. That time frame is irrelevant to UP's claim that it had reached its safety conclusions regarding truck bolsters by June 1, 2002. See Reply, p. 5.

D. In any event, FRA data for the March 2003-February 2006 period fails to confirm the occurrence of seven additional truck bolster failures or two additional derailments. The FRA records, in fact, report only two incidents of broken truck bolsters and only one such derailment during those 36 months. See Attachment I, an FRA report of UP train accidents where the major cause was equipment. FRA accident report data does not indicate anything about the car on which the failure occurred, such as its load capacity or actual load.

E. Union Pacific concedes that, even where there was a truck bolster failure on a car upgraded or built to S-259 standards, UP has no way of knowing whether, or how often, the car actually had been loaded to 286,000 GWR. Reply at 4, fn. 3. There accordingly is no causal relationship shown between the S-259 standards and any truck bolster failures.

F. The Reply states that "[l]aboratory analyses performed on four of the S-259 cars involved in derailments confirmed that their truck bolsters were not designed to carry 286,000-pound loads." The four cars are not further identified, and the laboratory analyses are not furnished by UP. In any event, the implication of this claim is that either no laboratory analyses were performed on four of the eight cars allegedly involved in

derailments, or that up to all eight of the cars were analyzed and up to four cars had truck bolsters designed for 286,000 GWR, but derailed nevertheless.

G. The foundations of Union Pacific's safety claims are suspect for reasons in addition to those suggested above. For one thing, a bolster failure can well result from causes other than bolster design. For example, on October 7, 2002, the AAR issued Maintenance Advisory MA-81 (c-9524) indicating the existence of potentially widespread safety problems with bolster *castings* (i.e., the process of manufacturing, rather than designing, truck bolsters) made by a specific Mexican bolster manufacturer prior to 1995. AAR announced that it was proposing to adopt a program to identify, test, and, if necessary, require replacement of these potentially defective Mexican bolster castings. AAR in fact did so, and private car owners and railroads alike have been identifying and replacing the defective bolsters ever since. This action by AAR demonstrates, among other things, that AAR is perfectly capable of identifying and remedying a genuine car safety issue.

H. Similarly, the number of truck bolster failures on UP is greatly out of proportion to the rest of the railroad industry, suggesting the possibility that truck bolster design may not be the cause of UP's truck bolster failures as much as other factors, including the way in which UP handles cars on its lines. Union Pacific claims a total of 16 truck bolster failures between January 2000 and February 2006. As noted, that claim may well be an

overstatement, at least based on FRA records described above. In any event, Attachment J is a FRA summary of train accidents between January 2000 and February 2006 for all U.S. railroads. It shows an industry-wide total of 21 equipment-related events involving broken truck bolsters (event number E44C). If one accepts UP's claim that 16 truck bolster failures occurred on its lines during these six years and two months, then it would appear that 77 percent of all such truck bolster failures occurred on UP. Even using just the FRA numbers, and not UP's own claims, nine of the 21 events occurred on UP, or 43 percent of all those reported. Either way, UP, which operates approximately 30 percent of all railroad miles,³ appears to be incurring a disproportionately high degree of truck bolster failures.

I. Truck bolster failures, like many other car component failures, can be influenced by any number of conditions, including the condition of the track and roadbed over which the cars operate. Union Pacific track appears to present a relatively high degree of imperfection. Again using FRA data, between January 2000 and February 2006, UP, which operates 32,000 miles of railroad, reported 1,943 accidents where track conditions were listed as the major cause. During the same period, BNSF Railway, which likewise operates some 32,000 miles of road, reported 1,040 such incidents, or about half as many as UP. Train speeds are an-

³ Railroad Facts, 2006 (AAR), 2005 data.

other factor that can affect bolster performance. Higher speeds on poor track increase stress on car components.

J. Another data comparison between BNSF and UP tends to suggest that UP's tracks are in comparatively poor condition and may be contributing to truck bolster failures. Attachment K consists of 2005 Accident Overview Data for UP and BNSF published by FRA on its website. It shows that the two railroads are significantly comparable in various respects, including total train miles operated. The reported data for total accidents/incidents per carrier includes train accidents and other incidents. Each carrier's total accident/incident rate is the number of events reported x 1 million ÷ by total train miles. For BNSF, that rate is 10.69. For UP, it is 13.64, or about 30 percent higher than for BNSF.

Petitioners suggest that the issues discussed immediately above illustrate that an individual railroad's claim of "safety concerns" may well be hyperbole and is indeed problematic in this instance. Many factors may have been responsible for the truck bolster failures that UP attributes solely to lack of appropriate truck bolster design, casting great doubt on the wisdom of a carrier advancing its own, internal theories of unsafe car design as a substitute for those adopted by the AAR and followed by the remainder of the railroad industry. As discussed in further detail below, AAR has never revoked its S-259 standards and they form the basis for the operation of hundreds of thousands of cars currently running over the rail network, even though new carriers must meet different standards to handle 286,000 GWR. Although UP asserts that it "had no effective means of barring operation of such cars over its lines" (Reply, fn. 5), it makes the contradictory

claim (e.g., Reply at 3-4) that acceptance of such cars *in interchange* is not mandatory, which means that UP voluntarily allowed and continues to allow S-259 cars to operate freely over its system at 286,000 GWR when interchanged from other carriers.

At the very least, Petitioners believe that they deserve answers to a number of questions regarding UP's safety claims, particularly now that UP has decided to make new claims using information that UP previously asserted to be confidential, as follows:

1. Please provide the car marks (exclusive of identifying numbers) on all cars UP claims in its Reply to have had truck bolster failures; and, to the extent those cars do not have UP marks, identify those, if any, which were operated by UP under lease.
2. Please indicate the railroad on which the last loads originated prior to the bolster failure in such cars and the date when the bolster failure, and any related derailment, occurred.
3. Please indicate whether the cars were under load at the time of the truck bolster failure and, if so, the gross weight on rail of such cars.
4. Please indicate whether the truck bolster failure occurred on yard or switching track, or on other track, and the train speed at the time the derailment, if any, occurred.
5. Please provide copies of the laboratory analyses referred to in the Reply and any other laboratory analyses undertaken by UP between January 1, 2000 and February, 2006 to determine the cause of any truck bolster failure.
6. Please provide copies of all mechanical records in UP's possession that relate to the 16 cars that UP claims to have experienced a

bolster failure, including the truck bolster manufacturer, bolster pattern number, and date of bolster manufacture.

7. In footnote 4 of the Reply, UP states that, to its knowledge, none of the 16 truck bolster failures involved railcars equipped with truck bolsters that had been designed for 286,000 pound GWR loadings. Please describe the steps that UP took to attempt to determine whether such cars' truck bolsters had been designed for 286,000 GWR.

8. At page 4 of its Reply, UP concedes that "for a number of years prior to [2004], UP granted OT-5 authority to private car operators originating S-259 railcars on UP's rail network at weights of up to 286,000 pounds GWR, even when their truck bolsters were not certified for such weights." Please provide the number of cars on which such OT-5 approval was granted "for a number of years," the number of cars for which it was denied, and the specific year in which such grants were issued.

9. Union Pacific asserts that the six derailments that occurred between January of 2000 and November 2002 total more than \$2.3 million in costs. That equates to approximately \$385,000 per derailment. Please explain, then, why UP demanded \$10 million in insurance from Bunge as an alternative basis for operation of Bunge's cars at 286,000 GWR.

Mechanical Specifications. Petitioners have further data requests regarding UP's refusal to accept the AAR's mechanical specification S-259 to operate cars at 286,000 GWR. Essentially, UP argues that the S-259 specifications have been abandoned by AAR and discredited, and that UP itself put the world on notice in its June 2002 Bulletin

that, insofar as UP was concerned, AAR specification S-259 was unacceptable (Reply at 5, 6).

In a nutshell, there has been no evidence offered that the Bulletin UP says it issued on June 1, 2002 to place the world on notice that UP would require adherence to mechanical standards of its own making for operation of cars at 286,000 GWR was ever issued in the first place or actually served on the private car community responsible for insuring mechanical compliance of private cars with AAR standards. NAFCA members in fact have been unable to locate any such document in their files. Second, UP's effort to create the impression that S-259 was repudiated retroactively by AAR is highly misleading.

One of the most surprising aspects of UP's Reply is the claim that it issued a Mechanical Car Policy Bulletin Form on June 1, 2002 which should have informed The Andersons (and others) not to anticipate UP adherence to the AAR's S-259 mechanical standards. According to UP, "The Andersons and Bunge should have recognized that their railcars did not comply with UP standards. Bunge's cars entered service well after UP announced tightened S-259 standards in 2002, requiring truck bolster certification for OT-5 authorization for 286,000 GWR service." UP offers the companion argument that, pursuant to the AAR's own statements, Bunge and The Andersons should have recognized that "acceptance of" S-259 cars "in interchange is not mandatory." Reply at 13-14.

We turn first to the startling claim of UP that its June 1, 2002 Bulletin should have placed The Andersons and Bunge on notice that UP rejected the AAR's S-259 standards and intended to demand compliance with its own individual car requirements for the operation of S-259 cars at 286,000 GWR. One of the most glaringly dubious aspects of this claim is that it has never before been raised by UP and is not now supported by a copy of the mystery Bulletin. One would think that, since this Bulletin is advanced by

UP as evidence of its long-standing safety concerns with the S-259 standards, and also as proof that private car suppliers should have been on notice regarding those concerns, UP would have furnished a copy of the document.

One of the reasons why Petitioners have taken over a month to dispatch this letter to UP is that efforts were being made by NAFCA members to locate a copy of this Bulletin. None were successful. We did locate, on UP's *current* website, an announcement of UP's present "Mechanical and Engineering Requirements" for the use of cars at 286,000 GWR. However, it is obvious that the statement on UP's present website could not have been the "Bulletin" of June 1, 2002 from the fact that the current website makes reference to matters, such as the AAR's S-286 standards, which had not been adopted on June 1, 2002.

Perhaps the reason why UP has not produced a *hard copy* of the Bulletin is because none ever existed and the Bulletin was posted merely on UP's website. Even assuming that the Bulletin somehow could be construed as a substitute for AAR's S-259 regulations – which Petitioners dispute – passive notice by posting on a website is not adequate notice, particularly if UP expected private car suppliers to adhere to and be bound by the Bulletin. The STB does not recognize passive notice of tariff changes as being adequate in the absence of an agreement by a rail customer to receive notices in that manner (see 49 C.F.R. 1300.4(b)) and UP should not have relied on passive notice, if that is in fact what it did, to announce what it now asserts to have been a bellwether departure from AAR mechanical specifications that it expected private car suppliers to be bound by.

Nevertheless, Petitioners call upon UP to supply the following information regarding its Bulletin.

10. Please supply a copy of the Bulletin as it existed on June 1, 2002.

11. Please state whether the Bulletin was affirmatively sent to private car suppliers or merely posted on UP's website. If the former, please describe the method of issuance and provide a list of the companies to which the Bulletin was actually furnished.

We turn next to requests for data relating to UP's suggestion that UP's individual requirements for use of 286,000 GWR cars were actually "recommended" by AAR.⁴ Petitioners would not want there to be any confusion regarding the validity and applicability of the S-259 specifications at the time The Andersons upgraded their cars to 286,000 GWR in conformity with those specifications.

Until filing its Reply in this proceeding, UP had not previously suggested that the AAR regarded the S-259 standards as invalid in 2004, when UP denied the subject OT-5 applications of Bunge. Union Pacific's position was simply that "Union Pacific Railroad will not accept the S-259 standards as the sole basis for granting OT-5 authority for this equipment at 286,000 GWR." See Attachment A, UP letter to Bunge of August 3, 2004.⁵

In September 2002, AAR announced that it was considering adoption of a new set of mechanical standards for cars carrying 286,000 GWR, but had not yet adopted those standards. See Attachment L, AAR Circular Letter c-9515. Referring to the S-259 stan-

⁴ Specifically, we refer to UP's claim that its own safety standards "are based upon AAR standards and recommended practices." Reply at 9.

⁵ Union Pacific suggests in footnote 8 that The Andersons withdrew their initial OT-5 application for 200 cars to operate at 286,000 GWR after The Andersons failed to comply with UP's request for certain mechanical drawings, and resubmitted the application for 263,000 GWR approval. The Andersons do not agree with that claim. If it were true, there would have been no need for UP to assert, as it has throughout, that UP initially granted OT-5 approval for those cars to operate at 286,000 GWR and then rescinded such approval because UP was not satisfied with the S-259 standards that The Andersons met to upgrade the cars. UP simply would have said: "You asked for OT-5 approval at 263,000 GWR and that's what we gave you."

dards, Circular Letter c-9515 states that AAR rules "did not mandate free, unrestricted *interchange acceptance* of" S-259 cars (emphasis added) and reiterated the previously-stated AAR explanation that interchange acceptance of the heavy-loaded cars was not mandatory because of the "impact of heavy axle load cars on the track structure." Union Pacific has never asserted that its refusal to permit Bunge's cars to operate at 286,000 GWR was in any way related to concern over heavy loads moving on tracks inadequate for those loads. Nor was UP's denial of full OT-5 approval for the Bunge cars a refusal to accept the cars in *interchange*. As noted in the Petition, although UP refuses to allow Bunge to originate loads in the subject cars at 286,000 GWR, UP will in fact accept the very same cars in interchange at 286,000 GWR if destined to Bunge's facility, a policy and result that makes absolutely no sense if "safety" is UP's real concern.

In November 2002, the AAR adopted mechanical specification S-286 containing standards for newly built cars to operate at 286,000 GWR, but S-286 did not become effective immediately. Initially, it was intended to become effective December 31, 2003, but its provisions were revised and it finally took effect on September 1, 2005. See Attachment M, AAR Circular Letter c-10161. Meanwhile, the S-259 specifications continued to be available. On August 20, 2004, AAR announced that the S-259 standards would be "phased out" and that "it is planned that no request for rebuilding or modifying cars [pursuant to S-259] will be accepted past July 1, 2005," with a completion date no later than July 1, 2006. See Attachment N, AAR Circular Letter c-9906.

All upgrades on The Anderson's cars had been completed pursuant to S-259 by then. Indeed, The Andersons acquired some of the 230 upgraded cars prior to June 1, 2002, the date on which UP says it placed car suppliers on notice through its Bulletin that S-259 would not be acceptable to UP. Thus, contrary to any implication that may arise from UP's Reply, the reliance by The Andersons on the S-259 standards to upgrade cars

to 286,000 GWR in 2004 was totally and completely in accordance with permissible AAR procedures. Further, it is Petitioners' understanding that the AAR Arbitration and Rules Committee, on which UP has a representative, continued to approve use of S-259 standards to upgrade cars at various times in 2006, and even within the past few months. Petitioners believe that UP is fully aware that the AAR has continued until recently to approve use of S-259 standards, and call upon AAR to provide the following data:

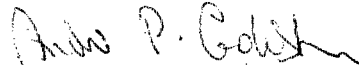
12. Please provide any records in the possession of UP of AAR Arbitration and Rules Committee deliberations or votes which resulted in AAR approval for use of S-259 standards in 2006 and state what UP's vote was with respect to such Committee decisions.

Union Pacific states that, because AAR rules do not make "acceptance in interchange" mandatory for S-259 cars to operate at 286,000 GWR, The Andersons and other private car owners should have been on notice that UP would not grant OT-5 authority for such cars. To the contrary, UP concedes that it granted OT-5 authority for untold numbers of S-259 cars to operate at 286,000 GWR, and UP does not point to a single instance in which it actually refused to accept an S-259 upgraded or newly built car in *interchange*, a prerogative which UP claims to have under AAR rules. Additionally, UP concedes that it continued to accept for use on its lines at 286,000 GWR the hundreds of thousands of cars rebuilt or built new to the S-259 specifications. Thus, if any signal was sent by UP, it was that UP did not regard the "not mandatory for interchange" provisions of the AAR rules as emblematic of a genuine safety issue with the upgraded cars.

Please note Attachment O, a signed statement by Rick Grossman, Vice President-Equipment of First Union Rail, attesting to the accuracy of the technical assertions set forth in this document.

Petitioners hope that UP will see fit to voluntarily furnish the information requested above and request the Board to accept this letter as a supplement to the Petition for Declaratory Order.

Sincerely,

A handwritten signature in dark ink, appearing to read "Andrew P. Goldstein", with a stylized flourish at the end.

Andrew P. Goldstein
Attorney for Petitioners

cc: Hon. Vernon A. Williams, STB

ATTACHMENT - A



August 3, 2004

Mr. D. R. Wallace
Vice President
Transportation Commodities Group
Bunge North America, Inc.
P. O. Box 28500
St. Louis, MO 63146-1000

Dear Darrell:

This will confirm our phone discussion regarding the use of your Anderson leased private covered hoppers on the Union Pacific Railroad. More specifically, the 230 cars of which 200 were previously granted OT-5 approval at 286,000 GWR and 30 more cars seeking the same approval.

As discussed, our company has experienced a number of failures directly related to truck bolsters, which were being utilized under loads for which they were not designed. Since 2001, there have been 13 broken side frame and bolster derailments costing the Railroad \$4.4 million.

In our view, the AAR S-259 standards specifically address the strength of the car body but are silent as to the truck bolsters. As a result, based on the history of accidents and our ongoing derailment prevention program, Union Pacific Railroad will not accept the S-259 standards as the sole basis for granting OT-5 authority for this equipment at 286,000 GWR. Therefore, the previously granted OT-5 authority to run the original 200 cars at 286,000 GWR is rescinded, effective September 1, 2004. Union Pacific will reconsider this action if one of the following requirements are submitted to Union Pacific Railroad and approved:

- 1) Satisfactory documentation that the truck castings are designed for 286,000 GWR loading.
- 2) An Indemnification Agreement that provides Union Pacific is to be held harmless from any and all costs associated with a failure of the above referenced equipment, together with a copy of an insurance policy binder naming Union Pacific Railroad as an additional insured providing minimum insurance in the amount of \$10,000,000 for all costs, risks and damages associated with operating these cars on Union Pacific Railroad.

Union Pacific Railroad's derailment prevention program is a critical component to the safe, successful operation of our Railroad and we must adhere to the standards we believe will minimize the risk to the public, our customers, our employees and our shareholders. Until the above requirements are satisfied, the above equipment will be limited to 263,000GWR.

Please let me know if you have any questions or require further clarification.

Sincerely,

A handwritten signature in cursive script that reads "Diane K Duren".

DIANE K. DUREN
VP & GM Agricultural Products

c: Robin Hunt, UPRR-Chicago

ATTACHMENT - B



Enhancing the Value of America's HarvestSM

August 13, 2004

Ms. Diane K. Duren
Vice President & General Manager
Agricultural Products
Union Pacific Railroad
1400 Douglas Street STOP 1310
Omaha, NE 68179

Dear Diane:

Thank you for spelling out in your August 3 letter UP's reasons for wanting to rescind, effective September 1, the OT-5 authority previously granted for 200 covered hopper cars operated by Bunge, and for denying OT-5 approval for 30 additional such cars, in all cases for loads in excess of 263,000 pounds GWR.

Your letter states that cars upgraded from 263,000 pounds to 286,000 pounds GWR in accordance with AAR Circular S-259 are unacceptable to UP because of truck bolsters "being utilized under loads for which they are not designed." You also say that bolsters are not addressed in AAR S-259 and that, "since 2001, there have been 13 broken side frame and bolster derailments costing the Railroad \$4.4 million."

Bunge requests that you reconsider the conclusions reached in your August 3 letter.

Initially, we note that you stop short of claiming that cars upgraded to 286,000 pounds GWR on the basis of AAR S-259 are unsafe. Perhaps you are aware that, according to the UMLER file, there appear to be nearly 400,000 railroad and private cars that have been upgraded to handle 286,000 pounds pursuant to S-259. No doubt thousands upon thousands of car-trips annually have been and are made on UP and other carriers by precisely such cars without prior challenge by UP and without any challenge by other railroads.

If we are not mistaken, UP has never embargoed the use of S-259 upgraded cars. So far as we are aware, UP continues to operate cars with UP marks that have the S-259 upgrade and accepts in interchange similar cars without imposing on the owners of those cars requirements of the type demanded from Bunge as a condition to allowing our S-259 cars to operate (i.e., "satisfactory documentation that the truck castings are designed for 286,000 GWR loading" or a \$10 million indemnification agreement). If cars that have S-259 weight upgrades are operated by another railroad and interchanged to UP, they are not refused; indeed, if another railroad grants OT-5 on such cars as they are shipped over UP, they are not denied interchange. The position taken by UP with respect to Bunge's upgraded cars appears totally

Darrell R. Wallace
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Ms. Diane K. Duren
August 13, 2004

inconsistent with the position that UP takes regarding the overwhelming number of such cars that operate over the UP system.

Further, although your letter claims that there have been "13 broken side frames and bolster derailments costing the Railroad \$4.4 million" since 2001, FRA data examined by Bunge fails to support that claim. It indicates no reported derailments on UP in 2004 or 2003 attributable to broken bolsters, and only 5 such derailments in 2001 and 2002. If there were a total of 13 derailments attributable to both broken side frame and bolster problems, it is clear that most such derailments had to do with broken side frames and not bolsters. It is also clear that while derailments possibly due to bolster problems were occasionally occurring two to three years ago (for reasons that may have been unrelated to weight upgrades), UP nevertheless continued to make extensive and unrestricted use of S-259 cars, and that it has acted against Bunge's cars when there have been no FRA-posted bolster-related derailments in nearly two years. These factors raise questions regarding the validity of UP's efforts to base its rescission and denial of Bunge's OT-5 authority on concerns regarding bolster failures.

If UP wishes to continue to insist that derailments caused by bolster problems are the basis of the OT-5 action taken by UP against Bunge's cars, then we request that UP inform us, with respect to the "13 broken side frame and bolster derailments" mentioned in your letter, how many were (1) due to side frame failure, (2) failure of bolster manufactured in Mexico, (3) failure of bolsters on mill gondolas, (4) failure of bolsters on plastic cars (5) failure of bolster on chemical cars, or (6) failure of bolsters on flatcars. Similarly, we believe that it would be relevant to know how many private cars currently operating on UP that have bolsters upgraded under AAR S-259 are carrying (1) coal, (2) plastics, (3) steel, (4) grain, or (5) chemicals.

We would also appreciate hearing from you whether UP has provided written notice to all car "owners" whose cars have *bolsters upgraded under the S-259 criteria and which have been granted OT-5 authority* by UP that such authority has been rescinded unless they meet the same additional conditions set forth in your letter to me of August 3, i.e., "satisfactory documentation that the truck castings are designed for 286,000 GWR loading" or an indemnification agreement in the amount of \$10 million.

We wish it to be clear that the cars that have been denied OT-5 authority by UP expressly were approved by the AAR, on June 10, 2004, for 286,000 pound GWR pursuant to S-259 standards. We recognize that AAR Rule 70(K) provides that "acceptance of such equipment is not mandatory." Bunge could more easily appreciate UP's position, as applied against Bunge, had UP uniformly interpreted Rule 70(K) to exclude all S-259 upgrades from use on UP under all circumstances. In that case, even though Bunge might disagree with UP's position, UP would appear to be according a consistent mechanical interpretation to the phrase "not mandatory" in Rule 70(K). Instead, UP seems to be interpreting Rule 70(K) to mean that decisions regarding use of upgraded cars can be made on grounds other than mechanical fitness, since it appears obvious that UP's position is not driven by mechanical considerations while UP allows so many cars with S-259 upgrades to operate over its lines.

Ms. Diane K. Duren
August 13, 2004

Bunge objects strenuously to having its upgraded cars treated differently from hundreds of thousands of other cars of similar mechanical status that appear acceptable to UP for operation over its lines. Not only because such cars operate under UP marks, but also because they operate widely throughout the railroad system after having been upgraded in compliance with standards promulgated by the AAR, Bunge believes that no valid claim by UP can be made or sustained that such cars are unsafe or fail to meet mechanical standards acceptable to the railroad industry. Under all of these circumstances we believe that UP's rescission of or refusal to grant OT-5 approval is unwarranted, and Bunge requests UP to reconsider or postpone pending further evaluation its refusal to provide OT-5 authority for Bunge's S-259 cars.

Thank you for your consideration.

Sincerely,

Darrell R. Wallace
Vice President
Transportation Commodities Group

cc: Mr. Paul Hammes
Assistant Vice President
Union Pacific Railroad
1400 Douglas Street STOP 1310
Omaha, NE 68179

Mr. Robin Hunt
Business Director
Union Pacific Railroad
130 Quail Ridge Drive
Westmont, IL 60559-6148

ATTACHMENT - C



August 30, 2004

Mr. Darrell R. Wallace
VP, Transportation Commodities Group
Bunge North America, Inc.
P. O. Box 28500
St. Louis, MO 63146-1000

Dear Darrell:

Your August 13, 2004, letter implies that Union Pacific did not carefully consider the weight restrictions placed on your cars as set forth in my letter to Bunge dated August 3, 2004. The decision to restrict the cars to 263,000 lbs. was made after much consultation, deliberation and reflection. For Union Pacific, its employees, and the communities that we operate in, Union Pacific stands by the decision outlined in my prior letter. While we are sensitive to the fact that a reduction of 23,000 lbs. in capacity will reduce the efficiency and profitability of your railcars, we believe that these efficiencies are not worth the risk to Union Pacific.

Union Pacific provided you with two alternatives that would allow the continued use of your railcars at the 286,000 lb. level. The first alternative was for Bunge to provide Union Pacific with evidence that the truck castings were designed for 286,000 lb. service. If this documentation is provided, Union Pacific will lift the restriction. The second alternative would be for Bunge to provide an insurance policy that would pay any and all damages arising out of the failure of these truck bolsters. Again, upon the presentation of a valid policy of insurance, Union Pacific would allow the use of these cars at the higher weight limit. If there is no risk associated with these truck bolsters, as your letter implies, then it should not be difficult to obtain insurance that would protect Union Pacific from the risk associated with Bunge's railcars.

After reviewing this issue and discussing it at length within our organization, I am not willing to change my earlier decision.

Sincerely,

A handwritten signature in cursive script that reads "Diane K Duren".

Diane K. Duren
Vice President & General Manager
Agricultural Products

ATTACHMENT - D



Enhancing the Value of America's HarvestSM

September 15, 2004

Ms. Diane K. Duren
Vice President & General Manager
Agricultural Products
Union Pacific Railroad
1400 Douglas Street, Stop 1310
Omaha, NE 68179

Dear Diane:

I very much regret that my August 13, 2004 letter was unclear to you and that it is necessary for me to again address the subject of the revoked and refused unrestricted OT-5 authority for Bunge's covered hoppers. Your August 30 response to that letter is disappointing and a mischaracterization of our position. Our concern is not, as you assert, whether UP carefully considered the weight restrictions placed on Bunge's cars, but, instead, the absence of any factual underpinnings for those restrictions and, most importantly, the blatant discrimination being practiced against Bunge by UP in light of the fact that hundreds of thousands of cars identical to Bunge's cars are allowed to operate over the UP system as unrestricted interchange cars merely by meeting the same mechanical standards that UP claims are unsatisfactory when met by Bunge's covered hopper cars.

One thing that your August 30 letter does accomplish is the removal of any possible dispute regarding the facts. My letter to you contained a series of relevant factual observations and conclusions, not one of which is challenged by UP. We proceed, accordingly, based on the following facts.

1. UP notified Bunge that UP was revoking unrestricted OT-5 authority previously granted for 200 covered hopper cars operated by Bunge, and UP denied OT-5 approval for 30 additional such cars, restricting the use of all 230 cars to 263,000 lbs. GWR unless Bunge can provide either "satisfactory documentation that the truck castings [on such cars] are designed for 286,000 lbs. GWR loading" or a \$10 million indemnification agreement in favor of UP.
2. All 230 of Bunge's cars have been satisfactorily up-graded to handle 286,000 lbs. GWR in accordance with AAR circular S-259.
3. Nearly 400,000 cars with S-259 upgrades to 286,000 lbs. GWR operate throughout the U.S. railroad system, some of which are controlled or operated by UP itself. These cars make thousands of trips annually over UP, accumulating millions upon millions of miles throughout the course of a year. UP does not require the owners of these cars to provide "satisfactory documentation that the truck castings are designed for 286,000 lbs. GWR loading" or a \$10 million indemnification agreement.
4. UP has never embargoed the movement over its lines of cars upgraded pursuant to S-259 when carrying 286,000 lbs. GWR, even though the use of an embargo is available to UP to suspend unsafe operating conditions.

Darrell R. Wallace
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P.O. Box 28500
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5. There have been no reported derailments on UP in 2003 or 2004 that are attributable to broken bolsters; only five such derailments were reported in 2001 and 2002 (and those derailments may not, in fact, have been attributable to the truck castings designed for 286,000 lbs. GWR loading).

6. If a car identical to Bunge's cars on which UP refuses to grant unrestricted OT-5 authority for use at 286,000 lbs. GWR is owned by a shipper, loaded on a railroad other than UP, and shipped across UP at 286,000 lbs. GWR, UP neither refused the car, demands "satisfactory documentation" of the type demanded of Bunge, nor demands a \$10 million indemnity; the car is permitted to operate with 286,000 lbs. GWR merely on the basis of an S-259 upgrade. The same is true of similar cars if owned by and originated on a railroad connecting with UP.

UP has ignored the request contained in my August 13 letter that we be advised whether UP has provided written notice to all car owners whose cars have been upgraded to 286,000 lbs. GWR under the S-259 criteria, and which have been granted OT-5 authority by UP, that such authority has been or will be rescinded unless they meet the same additional conditions set forth for the use of Bunge's S-259 cars at 286,000 lbs. GWR; namely, "satisfactory documentation that the truck castings are designed for 286,000 lbs. GWR loading" or an indemnification agreement in the amount of \$10 million. Your failure to respond to this request clearly warrants the inference that UP has no such program under way, and is continuing to allow the 400,000 cars similar to Bunge's to operate over UP with 286,000 lbs. GWR. Bunge sees no justification whatsoever for UP imposing one bolster policy against Bunge when that policy is not applicable to all UP customers and all similar cars operating over UP. It is Bunge's view that UP is improperly withholding unrestricted OT-5 authority from Bunge and is applying unfair, unreasonable and discriminatory practices against Bunge.

As indicated above, we disagree that Bunge's railcars pose any demonstrated risk, and certainly none that warrants the "special" conditions imposed on our railcars and not to the 400,000 similar cars that UP accepts in unrestricted interchange. Nevertheless, we wonder whether UP has given thorough consideration to where its proposal might lead.

At a time when UP service is less than ideal and UP openly is discouraging additional traffic from moving over its lines, UP's outlook toward cars with S-259 upgrades actually will increase car volume by requiring more car trips to handle an identical volume of traffic. A covered hopper car at 286,000 lbs. GWR handles approximately 8% more load than at 263,000 lbs. GWR. Thus, it takes approximately 13 cars loaded at 263,000 lbs. GWR to handle the lading that would have been accommodated by 12 cars loaded at 286,000 lbs. GWR.

Further, UP's S-259 policy as applied to Bunge has negative service and rate implications. UP's rates, at least for grain and grain products (which are the commodities for which Bunge wished to use its private cars) apply on a per car basis. A comparison of UP rates for 286,000 lb. and 263,000 lb. loads shows that the shipper pays less per unit of commodity when using the 286,000 lb. rate. UP is unable to supply sufficient cars of its own to meet demand for 286,000 lb. loadings. The result is that its S-259 policy, when applied to Bunge, causes this company to pay more in freight charges if its loadings are restricted to 263,000 lbs than if the same car can be used at 286,000 lbs. GWR.

Ms. Diane K. Duran
September 15, 2004
Page 3 of 3

Your letter concludes by claiming that Bunge has two alternatives that would allow the continued use of our cars at the 286,000 lb. level: (1) provide UP with evidence that the truck castings were designed for 286,000 lbs. GWR or (2) provide an insurance policy containing the \$10 million indemnity. You assert that, "[I]f there is no risk associated with these truck bolsters ... then it should not be difficult to obtain insurance that would protect Union Pacific from the risk associated with Bunge's railcars." Diane, your letter simply begs the question. It fails to make any case for why it should be necessary for Bunge to either establish the design history of its cars' truck castings or post an indemnity policy, when similar conditions are not demanded of others as a prerequisite to the use of identical cars at 286,000 lbs. GWR. Bunge hopes that this difference of views can be resolved in a reasonable manner, but please understand that Bunge is committed to seeking a just, nondiscriminatory resolution of this dispute that will treat all S-259 cars alike on UP, should that course of action prove necessary.

Sincerely,

Darrell R. Wallace
Vice President
Transportation Commodities Group

cc: Mr. Paul Hammes
Assistant Vice President Grain and Grain Products
Union Pacific Railroad
1400 Douglas Street, STOP 1310
Omaha, NE 68179

Mr. Robin Hunt
Business Director
Union Pacific Railroad
130 Quail Ridge Drive
Westmont, IL 60599-6148

ATTACHMENT - E



Soybean Processing Division

Enhancing the Value of America's HarvestSM

January 25, 2005

Mr. Dick Davidson
Chairman and Chief Executive Officer
Union Pacific Railroad
1400 Douglas Street
Omaha, NE 68179

Dear Dick:

As you are well aware, Bunge and the Union Pacific have been working very closely together for many years. Our two companies have developed a very close bond and have been able to work through some very tough issues and find a resolution to all of our problems.

It pains me to have to bring this issue up to you as I know that you have more difficult matters before you. However, we have a current situation that we have not been able to resolve which we believe involves blatant discrimination against Bunge.

Bunge operates approximately 8,000 private cars with many of those cars operating on the UP and many others loaded on other carriers and routed over the UP. In our fleet of private cars we have a significant number of cars that have been upgraded to 286,000# capacity under AAR S-259 standards. We have requested OT-5 approval for some of this equipment from the UP and OT-5 approval was granted. The OT-5 approval on 200 of our cars was recently revoked for 286,000# loading and approval for 286,000# GWR loading on an additional 30 cars was denied unless Bunge (1) provides UP with evidence that the truck castings were designed for 286,000# GWR or (2) provides an Indemnification Agreement to the UP holding you harmless along with an insurance policy binder in the amount of \$10,000,000.

As I am sure you are well aware, there have been literally hundreds of thousands of cars upgraded under AAR S-259 standards. Many of those cars are loaded daily on the UP and many more are received on a daily basis by the UP in interchange. The UP continues to allow other shippers to load their S-259 upgraded cars to 286,000# GWR and the UP accepts in interchange thousands of S-259 upgraded cars at 286,000# GWR daily without making the same demands on those shippers or car owners as are being made on Bunge.

Bunge has followed the very rule set out by the AAR, of which Union Pacific is a leading member. All of the cars operated by Bunge meet all FRA and AAR safety standards and under Shippers Committee OT-5 v. The Ann Arbor Railroad Company, et al., 5 I.C.C. 2d 856, 864 (1989), later upheld by a federal appellate court, the ICC held that denial of OT-5 approvals for covered hopper cars "for reasons other than safety, mechanical factors, or inadequate storage space" is unlawful. Whether or not the UP would prefer that these cars not operate at 286,000# GWR we do not believe UP can raise a valid claim that these cars are mechanically unfit because Bunge's cars meet AAR specifications and because UP accepts scores of thousands of S-259 upgrades at 286,000# GWR.

Darrell R. Wallace
Vice President Transportation Commodities Group
Bunge North America, Inc.
P.O. Box 28500
11720 Borman Drive - St. Louis, MO 63146-1000, USA
Phone: 1 314 292 2276 Fax: 1 314 292 2186
www.bungenorthamerica.com

Mr. Dick Davidson
January 25, 2005
Page 2 of 2

Dick, we continue to believe that for some reason the UP is discriminating against Bunge and possibly other shippers. You are making demands of some that you are not making of all. We also feel that the position that the UP has taken is not in the best interest of your customers nor the UP. All other carriers in North America accept AAR S-259 upgraded cars without question. If S-259 cars are unsafe at 286,000# GWR then all such cars should be banned; if they are not unsafe, then none should be banned. If you continue with your current position we run the risk of underutilizing literally hundreds of thousands of cars at a time when maximizing weights in equipment is more important than ever.

What is interesting to note is that we recently submitted another OT-5 request for some S-259 upgraded cars and the UP approved that request while you continue to deny our request on the 230 cars mentioned earlier.

We would ask that you review this issue and allow Bunge's S-259 upgraded equipment to operate at 286,000# GWR on the UP as is the case with other shippers and other S-259 upgraded equipment.

Sincerely,

Darrell R. Wallace
Vice President Transportation Commodities Group

Cc: Mr. Jim Young
President and Chief Operating Officer
Union Pacific Railroad
1400 Douglas Street
Omaha, NE 68179

Mr. Jack Koraleski
Executive Vice President Marketing and Sales
Union Pacific Railroad
1400 Douglas Railroad
Omaha, NE 38179

Ms. Diane Duren
Vice President & General Manager Agricultural Products
Union Pacific Railroad
1400 Douglas Street
Omaha, NE 68179

ATTACHMENT - F

Dick Davidson
Chairman



February 16, 2005

Mr. Darrell R. Wallace
Vice President Transportation Commodities Group
Bunge North America, Inc.
P.O. Box 28500, 11720 Borman Drive
St. Louis, MO 63146-1000

Dear Darrell:

Thank you for your letter dated January 25, 2005. Please be assured that Union Pacific does value the working relationship our two companies have enjoyed for many years. As Diane Duren has set forth in previous correspondence, safety is the first priority of Union Pacific. We are committed to the safety of the public we serve, the safety of our employees, and the safe handling of the cargo entrusted to our care. The issues you raise directly impact that commitment.

It is my understanding that Bunge wishes to increase the maximum amount of the cargo shipped in its AAR S-259 modified railcars to 286,000 lbs. As you know, the AAR S-259 modification does not address truck component capacity. Union Pacific is willing to allow this increase with the condition that Bunge must prove that the truck components on these railcars are capable of handling 286,000 lbs. To date, Bunge has been unable to provide this information to Union Pacific. At its very heart, this is a safety issue.

If Bunge could show that the truck components in question were manufactured after 1995, the OT-5 authority for 286,000 lbs. would be granted. Our Mechanical staff would be happy to recommend consultants with expertise in this area if you need assistance in determining if the castings are 286,000 lbs. capable. Union Pacific would be willing to offer Bunge a six-month grace period to allow you to take appropriate actions and to soften any impact that might be experienced as a result of this problem.

It is not our belief that Bunge has been subjected to "blatant discrimination." At no time has Union Pacific restricted the movement of these AAR S-259 modified railcars at their original design capacity of 263,000 lbs. Union Pacific is in the process of reviewing the OT-5 authority of all AAR S-259 modified railcars. The reason for this review is to assure that the truck components are sufficient to withstand the increased weight of 23,000 lbs. We have experienced incidents in which the truck components of AAR S-259 modified railcars have been identified as a potential cause.

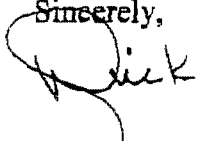
Our review of the OT-5 authority with other car owners is ongoing and has successfully identified many railcars whose truck components could not safely handle the increase to 286,000 lbs. Some car owners are unable to document the weight capability of the truck components

because of the age of these components. Your company's situation is not unique, nor has your company been singled out for any form of discrimination. Car owners (including Union Pacific) are faced with the decision to upgrade the truck components to 286,000 lbs. or alternatively to operate the car at its original design specification of 263,000 lbs.

Additionally, we are unaware of a grant of OT-5 authority for Bunge on a different set of cars. However, we will verify if you can provide specific car numbers.

Union Pacific has given consideration to your request and, after careful review, believes that OT-5 authority was properly denied based on safety concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack", written over the word "Sincerely,".

CC: Jack Koraleski
Diane Duren

ATTACHMENT - G



**North America
Freight Car
Association**

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Vice President, Transportation
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E-mail: drwallace@designna.com

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February 22, 2006

Ms. Diane Duren
Vice President & Gen. Mgr. Agricultural Products
Union Pacific Railroad Company
1400 Douglas Street STOP 1310
Omaha, NE 68179-1310

Re: UP Restrictions on Private Car Originations for Cars
With AAR S-259 Upgrades

Dear Diane:

First, we want to thank you and you colleagues for meeting with NAFCA's delegation on January 17 to discuss OT-5 authority on UP for private cars that have been upgraded pursuant to AAR S-259 specifications.

During the course of the meeting, I believe that Steve Lauver indicated that he was unable at the time to set forth the precise mechanical standards for bolsters that UP desires private cars to meet in addition to S-259 specifications (or, perhaps, as part of S-259 specifications – that was unclear to us) in order to operate at 286,000 GWR. We are writing to see if that information now is available.

We would also like to take this opportunity to attempt to clarify the history of the particular cars for which a NAFCA member unsuccessfully sought OT-5 approval from UP. You may recall that Progress Rail, which performed S-259 upgrades on a number of cars, was advised by Charles S. Powell of AAR's Transportation Technology Center in September 2001 by letter as follows:

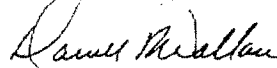
Section 4.8 of [Specification S-259-94] applies to trucks. It clearly states the following. "Castings shall meet the requirements of AAR standards M-202, M-203, and M-210. The present test loads providing for axle loadings of 6½" X 12" journals shall be used for castings in the 286,000 service". Therefore truck castings designed for 6½" X 12" journals and 263,000 lbs. service can be used in 286,000 lbs. service. (Emphasis in original letter.)

We have since made telephone inquiries of Mr. Powell to obtain his understanding of the applicable M-202, M-203, and M-210 standards. The NAFCA member making the inquiry was advised by Mr. Powell that all

approved bolster castings are required to have an AAR Identification Number stamped in the truck casting itself to certify that the casting meets the requirements of M-202, M-203, and M-210 as they existed at the time of the casting. Bolster castings without such stamps apparently should not be and are not used by reliable car manufacturers, such as ACF/ARI, the company that built the cars for which UP denied OT-5 authority. According to Mr. Powell, it is to be expected that all cars operating in interchange meet AAR requirements, including M-202, M-203, and M-210. That being the case, the cars for which the NAFCA shippers sought OT-5 approval from UP at least presumptively met the M-202, M-203, or M-210 standards or they could not have been in service. That interpretation appears to be entirely consistent with the above-quoted language contained in Mr. Powell's September 2001 letter, which concluded that truck castings, such as M-202, M-203 and M-210, "can be used in 286,000 lbs. service," and would indicate that the subject cars met the S-259 standards.

We would appreciate it if you would advise us where Mr. Lauver and UP presently stand on the issues discussed above.

Sincerely,



Darrell R. Wallace
Vice President, Transportation
Bunge North America, Inc.

and President
North America Freight Car Association

ATTACHMENT - H



April 18, 2006

Mr. Darrell R. Wallace
President
North America Freight Car Association
P.O. Box 28500
St. Louis, MO 63146-1000

Re: OT-5 issues

Dear Darrell:

In our previous correspondence, I explained that Union Pacific would not accept AAR S-259 standards as the sole criteria for increasing to 286,000 GWR (cars that were originally designed to carry 263,000 GWR). I also indicated public safety, employee safety, and the integrity of the rail system were the reasons Union Pacific was unwilling to grant OT-5 authority for these restricted cars.

Your most recent correspondence asks if Union Pacific can provide you with the "precise mechanical standards for bolsters that UP desires to meet . . ." My response is that if the bolster was manufactured for use at 286,000 GWR, then it meets Union Pacific's requirements. Any bolster manufactured after 1995, any bolster that the manufacturer certifies is rated to 286,000 GWR, or, in the absence of the above, any bolster that is certified by an independent engineering firm that it is capable of carrying 286,000 GWR will satisfy Union Pacific's mechanical requirements. I believe that this criterion has been previously communicated.

Regarding the AAR casting standards, the AAR identification number should be included in the request for OT-5 authority. If that is included in an application for OT-5 authority, it will be given due consideration.

I hope this addresses your questions, Union Pacific has not altered its previous position on this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diane".

Diane K. Duren
Vice President & General Manager
Agricultural Products

UNION PACIFIC RAILROAD
1400 Douglas St., Stop 1300, Omaha, NE 68102-1300

ATTACHMENT - I

TRAIN ACCIDENTS BY CAUSE FROM FORM FRA F 6180.54

Selections: Railroad - Union Pacific RR Co. [UP]

State - ALL, County - ALL

ALL ACCIDENT TYPES / ALL TRACK TYPES / ALL CAUSES

Time Frame: Mar 2003 To Feb 2006

MAJOR CAUSE= Equipment

Specific causes:	Total		Type of Accident			Reportable Damage		Casualty	
	Cnt	%	Coll	Der	Othr	Amount	%	Kld	Nonf
E00C- Air hose uncoupled or burst	4	0.1	-	4	-	619,796	0.2	0	0
E03C- Obstructed brake pipe	1	0.0	-	1	-	9,685	0.0	0	0
E04C- Oth brk component dmg,worn,broke,etc.	3	0.1	-	3	-	238,846	0.1	0	0
E06C- Brake valve malf. (stuck brake, etc.)	5	0.2	-	4	1	161,896	0.1	0	0
E06L- Brk valve malf.(stuck brk, etc.)-loco	1	0.0	-	1	-	914,750	0.3	0	0
E07C- Rigging down or dragging	13	0.4	1	8	4	817,916	0.3	0	0
E08C- Hand brk broken or defective	2	0.1	-	1	1	22,292	0.0	0	0
E09C- Other brake defects, cars	1	0.0	-	1	-	18,879	0.0	0	0
E20C- Body bolster broken or defective	1	0.0	-	1	-	513,582	0.2	0	0
E21C- Center sill broken or bent	11	0.4	1	6	4	325,371	0.1	0	0
E22C- Draft sill broken or bent	5	0.2	-	4	1	225,589	0.1	0	0
E23C- Center plate broken or defective	1	0.0	-	1	-	268,631	0.1	0	0
E24C- Ctr plate disengaged from truck	2	0.1	-	2	-	77,966	0.0	0	0
E25L- Center pin broken or missing (LOCO)	1	0.0	-	-	1	9,200	0.0	0	0
E26C- Center plate attachment defective	1	0.0	-	1	-	246,851	0.1	0	0
E29C- Other body defects, (CAR)	6	0.2	1	1	4	247,307	0.1	0	0
E29L- Other body defects, (LOCO)	1	0.0	-	-	1	0	0.0	0	0
E30C- Knuckle broken or defective	3	0.1	1	1	1	103,700	0.0	0	0
E31C- Coupler mismatch, high/low	4	0.1	-	2	2	289,604	0.1	0	0
E32C- Coupler drawhead broken or defective	2	0.1	-	1	1	163,090	0.1	0	0
E33C- Coupler retainer pin/cross key missing	11	0.4	-	7	4	2,086,692	0.7	0	0
E34C- Draft gear/mechanism broke/defective	7	0.2	1	5	1	351,450	0.1	0	0
E35C- Coupler carrier broken or defective	3	0.1	1	2	-	183,097	0.1	0	0
E36C- Coupler shank broken/defective	2	0.1	1	1	-	44,336	0.0	0	0
E39C- Oth coupler/draft system defects-car	6	0.2	-	3	3	577,471	0.2	0	0
E39L- Oth coupler/draft sys defects-loco	1	0.0	-	1	-	9,291	0.0	0	0
E40C- Side bearing clearance insufficient	16	0.5	-	16	-	4,860,513	1.5	0	0
E41C- Side bearing clearance excessive	6	0.2	-	6	-	369,178	0.1	0	0
E42C- Side bearing(s) broken	1	0.0	-	1	-	105,302	0.0	0	0
E43C- Side bearing(s) missing	1	0.0	-	1	-	38,915	0.0	0	0
E44C- Truck bolster broken	2	0.1	-	1	1	162,698	0.1	0	0
E45C- Side frame broken	4	0.1	-	4	-	3,692,318	1.2	0	0
E46C- Truck bolster stiff	16	0.5	-	16	-	1,764,718	0.6	0	0
E46L- Truck bolster stiff (LOCO)	1	0.0	-	1	-	7,000	0.0	0	0
E47C- Defective snubbing	3	0.1	-	3	-	165,410	0.1	0	0
E49L- Other truck component defects, (LOCO)	1	0.0	-	1	-	35,236	0.0	0	0
E4BC- Truck bolster stiff (failure to slew)	1	0.0	-	1	-	8,585	0.0	0	0
E4TC- Truck hunting	6	0.2	-	6	-	671,697	0.2	0	0
E51C- Broken/bent axle between wheel seats	9	0.3	-	9	-	3,847,817	1.2	0	0
E51L- Broke/bent axle btwn wheel seats-loco	8	0.3	-	8	-	242,365	0.1	0	0
E52C- Journal (plain) failure from overheat	2	0.1	-	1	1	42,728	0.0	0	0
E53C- Journal (roller bearing) overheating	25	0.8	-	23	2	5,631,830	1.8	0	0
E54C- Journal fractured, new cold break	11	0.4	-	11	-	2,551,723	0.8	0	0
E59C- Oth axle/journal bearing defect-car	1	0.0	-	1	-	147,699	0.0	0	0
E60C- Broken flange	4	0.1	-	3	1	704,307	0.2	0	0
E60L- Broken flange (LOCO)	2	0.1	-	2	-	31,763	0.0	0	0
E61C- Broken rim	14	0.5	-	13	1	4,199,251	1.3	0	1
E62C- Broken plate	5	0.2	-	5	-	1,917,793	0.6	0	0
E64C- Worn Flange	10	0.3	-	10	-	463,036	0.1	0	0

E64L- Worn flange (LOCO)	6 0.2	-	6	-	512,752	0.2	0	0
E66C- Damaged flange or tread (flat)	2 0.1	-	2	-	46,942	0.0	0	0
E67C- Damaged flange or tread (build up)	14 0.5	-	14	-	502,638	0.2	0	0
E67L- Damaged flange/tread(build up) (LOCO)	2 0.1	-	2	-	20,526	0.0	0	0
E69C- Other wheel defects (CAR)	3 0.1	-	2	1	236,213	0.1	0	0
E71L- Traction motor failure (LOCO)	2 0.1	-	2	-	67,827	0.0	0	0
E74L- Electrically caused fire (LOCO)	1 0.0	-	-	1	62,400	0.0	0	0
E79L- Other LOCO defects	3 0.1	-	3	-	66,337	0.0	0	0
E85C- Bottom outlet car door open	3 0.1	-	3	-	293,544	0.1	0	0
E86C- Bottom outlet door attachment defect	2 0.1	-	2	-	103,668	0.0	0	0
E89C- Other car door defects	1 0.0	1	-	-	52,400	0.0	0	0
E99C- Other mechanical/electrical failures	1 0.0	-	1	-	8,000	0.0	0	0
-- Total	287 9.7	8	242	37	42,162,417	13.4	0	1

ATTACHMENT - J

Attachment J

TRAIN ACCIDENTS BY CAUSE FROM FORM FRA F 6180.54

Selections: Railroad - ALL

State - ALL, County - ALL

ALL ACCIDENT TYPES / ALL TRACK TYPES / ALL CAUSES

Time Frame: Jan 2000 To Feb 2006

MAJOR CAUSE= Equipment

Specific causes:	Total		Type of Accident			Reportable Damage		Casualty	
	Cnt	%	Coll	Der	Othr	Amount	%	Kid	Nonf
E00C- Air hose uncoupled or burst	18	0.1	-	18	-	2,186,325	0.1	0	0
E00L- Air hose uncoupled or burst (LOCO)	1	0.0	-	1	-	6,756	0.0	0	0
E01C- Hydraulic hose uncoupled or burst	1	0.0	-	-	1	35,000	0.0	0	0
E02C- Broken brake pipe or connections	8	0.0	-	7	1	213,979	0.0	0	0
E02L- Broken brake pipe/connections (LOCO)	1	0.0	-	1	-	8,520	0.0	0	0
E03C- Obstructed brake pipe	2	0.0	-	2	-	68,305	0.0	0	0
E03L- Obstructed brake pipe (LOCO)	1	0.0	1	-	-	256,000	0.0	0	1
E04C- Oth brk component dmg,worn,broke,etc.	22	0.1	-	19	3	1,184,844	0.1	0	1
E04L- Oth brk parts dmg,worn,broke,etc.(LOCO)	1	0.0	-	-	1	13,714	0.0	0	0
E05C- Brk valve malf. (undesired emergency)	8	0.0	2	5	1	1,133,779	0.1	0	4
E05L- Brk valve malf.(undesire emerg)-Loco	1	0.0	-	1	-	44,166	0.0	0	0
E06C- Brake valve malf. (stuck brake, etc.)	26	0.1	-	18	8	989,333	0.1	0	3
E06L- Brk valve malf.(stuck brk, etc.)-loco	2	0.0	1	1	-	1,208,551	0.1	0	0
E07C- Rigging down or dragging	69	0.3	1	61	7	5,658,184	0.3	0	0
E08C- Hand brk broken or defective	24	0.1	3	7	14	670,488	0.0	0	1
E08L- Hand brake broken or defective (LOCO)	4	0.0	2	2	-	218,619	0.0	0	0
E09C- Other brake defects, cars	23	0.1	2	11	10	587,027	0.0	0	2
E09L- Other brake defects, (LOCO)	1	0.0	-	1	-	23,095	0.0	0	0
E0HC- Hnd brk link and/or connect defect	8	0.0	-	5	3	193,451	0.0	0	0
E0HL- Hnd brk linkage/connect defect-loco	1	0.0	-	1	-	18,000	0.0	0	0
E11C- Broken or defective tiedown equipment	1	0.0	-	-	1	10,000	0.0	0	0
E12C- Broken or defective container	2	0.0	-	2	-	94,569	0.0	0	0
E19C- Oth trailer/container on flt car def	3	0.0	-	-	3	196,261	0.0	0	0
E20C- Body bolster broken or defective	4	0.0	-	3	1	914,584	0.0	0	0
E21C- Center sill broken or bent	48	0.2	2	33	13	4,351,409	0.2	0	0
E22C- Draft sill broken or bent	19	0.1	-	17	2	1,071,068	0.1	0	0
E23C- Center plate broken or defective	12	0.1	-	12	-	1,974,827	0.1	0	0
E24C- Ctr plate disengaged from truck	25	0.1	-	24	1	2,016,510	0.1	0	0
E24L- Center plate disengaged from truck unit/o	1	0.0	-	1	-	14,647	0.0	0	0
E25C- Center pin broken or missing	2	0.0	-	1	1	43,286	0.0	0	0
E25L- Center pin broken or missing (LOCO)	1	0.0	-	-	1	9,200	0.0	0	0
E26C- Center plate attachment defective	4	0.0	-	4	-	414,509	0.0	0	1
E27C- Side sill broken	18	0.1	-	14	4	361,074	0.0	0	0
E29C- Other body defects, (CAR)	41	0.2	8	20	13	2,364,009	0.1	0	2
E29L- Other body defects, (LOCO)	2	0.0	-	-	2	42,143	0.0	0	0
E30C- Knuckle broken or defective	26	0.1	6	12	8	1,126,508	0.1	0	0
E31C- Coupler mismatch, high/low	12	0.1	-	7	5	408,346	0.0	0	0
E32C- Coupler drawhead broken or defective	8	0.0	2	3	3	465,448	0.0	0	0
E32L- Coupler drawhead broke/defect-loco	3	0.0	-	3	-	168,294	0.0	0	0
E33C- Coupler retainer pin/cross key missing	67	0.3	2	56	9	6,983,772	0.4	0	1
E34C- Draft gear/mechanism broke/defective	24	0.1	1	20	3	1,522,987	0.1	0	0
E34L- Draft gear/mechanism broke/defect-loco	3	0.0	-	2	1	75,261	0.0	0	0
E35C- Coupler carrier broken or defective	9	0.0	1	7	1	649,448	0.0	0	0
E36C- Coupler shank broken/defective	11	0.1	1	7	3	351,376	0.0	0	0
E36L- Coupler shank broken/defectivel -LOCO	3	0.0	-	3	-	828,824	0.0	0	0
E37C- Failure of articulated connectors	1	0.0	-	1	-	34,421	0.0	0	0
E39C- Oth coupler/draft system defects-car	95	0.5	7	59	29	6,315,116	0.3	0	0
E39L- Oth coupler/draft sys defects-loco	4	0.0	1	3	-	1,243,506	0.1	0	1
E40C- Side bearing clearance insufficient	101	0.5	2	98	1	13,961,309	0.7	0	3

E40L- Side bearing clearance insuff. (LOCO)	1	0.0	-	1	-	55,500	0.0	0	0
E41C- Side bearing clearance excessive	39	0.2	-	39	-	3,769,349	0.2	0	0
E42C- Side bearing(s) broken	4	0.0	-	4	-	139,460	0.0	0	0
E43C- Side bearing(s) missing	4	0.0	-	4	-	203,521	0.0	0	0
E44C- Truck bolster broken	21	0.1	-	17	4	3,949,979	0.2	0	0
E45C- Side frame broken	18	0.1	-	17	1	8,487,022	0.4	0	0
E46C- Truck bolster stiff	128	0.6	-	127	1	14,635,670	0.8	0	3
E46L- Truck bolster stiff (LOCO)	13	0.1	-	13	-	392,702	0.0	0	0
E47C- Defective snubbing	21	0.1	-	21	-	6,777,243	0.4	0	0
E48C- Broken, missing, or defective springs	7	0.0	-	7	-	777,452	0.0	0	0
E48L- Broken/missing/defective springs (LOCO)	2	0.0	-	1	1	30,739	0.0	0	0
E49C- Other truck component defects, (CAR)	28	0.1	-	27	1	5,554,279	0.3	0	0
E49L- Other truck component defects, (LOCO)	3	0.0	-	3	-	907,147	0.0	0	0
E4AC- Gib Clearance (lateral motion excessive)	2	0.0	-	2	-	539,978	0.0	0	0
E4BC- Truck bolster stiff (failure to slew)	16	0.1	-	16	-	917,613	0.0	0	2
E4TC- Truck hunting	41	0.2	-	41	-	13,220,807	0.7	0	0
E51C- Broken/bent axle between wheel seats	52	0.3	-	50	2	18,798,857	1.0	0	0
E51L- Broke/bent axle btwn wheel seats-loco	21	0.1	-	19	2	1,520,293	0.1	0	0
E52C- Journal (plain) failure from overheat	19	0.1	-	16	3	2,386,802	0.1	0	0
E53C- Journal (roller bearing) overheating	253	1.3	1	228	24	68,331,791	3.6	0	1
E53L- Journal(roller bearing)overheat-LOCO	1	0.0	-	1	-	193,857	0.0	0	13
E54C- Journal fractured, new cold break	24	0.1	-	24	-	6,368,647	0.3	0	0
E55C- Journal-cold brk, previously overheated	1	0.0	-	1	-	210,715	0.0	0	0
E59C- Oth axle/journal bearing defect-car	16	0.1	-	16	-	6,438,814	0.3	0	0
E59L- Oth axle/journal bearing defect-loco	4	0.0	-	2	2	116,234	0.0	0	0
E60C- Broken flange	34	0.2	-	32	2	7,404,070	0.4	0	0
E60L- Broken flange (LOCO)	3	0.0	-	3	-	39,525	0.0	0	0
E61C- Broken rim	90	0.4	-	82	8	32,395,439	1.7	0	4
E61L- Broken rim (LOCO)	1	0.0	-	1	-	14,504	0.0	0	0
E62C- Broken plate	46	0.2	-	41	5	11,554,510	0.6	0	1
E62L- Broken plate (LOCO)	2	0.0	-	2	-	123,726	0.0	0	0
E63C- Broken hub	9	0.0	-	9	-	2,309,744	0.1	0	0
E63L- Broken hub (LOCO)	1	0.0	-	1	-	528,438	0.0	0	0
E64C- Worn Flange	65	0.3	-	65	-	2,921,948	0.2	0	1
E64L- Worn flange (LOCO)	29	0.1	-	29	-	3,128,875	0.2	0	2
E65C- Worn tread	9	0.0	1	8	-	2,505,989	0.1	0	1
E65L- Worn tread (LOCO)	1	0.0	-	1	-	8,198	0.0	0	0
E66C- Damaged flange or tread (flat)	10	0.0	-	9	1	1,251,341	0.1	0	0
E67C- Damaged flange or tread (build up)	74	0.4	-	74	-	6,510,448	0.3	0	0
E67L- Damaged flange/tread(build up) (LOCO)	2	0.0	-	2	-	22,826	0.0	0	0
E68C- Loose wheel	22	0.1	-	21	1	6,420,055	0.3	0	0
E69C- Other wheel defects (CAR)	32	0.2	-	31	1	5,711,210	0.3	0	1
E69L- Other wheel defects (LOCO)	10	0.0	-	8	2	1,622,216	0.1	0	2
E6AC- Thermal crack, flange or tread	6	0.0	-	6	-	578,488	0.0	0	0
E6AL- Thermal crack, flange or tread (LOCO)	1	0.0	-	1	-	276,338	0.0	0	0
E70L- Running gear failure (LOCO)	1	0.0	-	-	1	198,224	0.0	0	0
E71L- Traction motor failure (LOCO)	25	0.1	-	8	17	1,327,737	0.1	0	3
E72L- Crank case or air box explosion (LOCO)	5	0.0	-	-	5	623,000	0.0	0	0
E73L- Oil or fuel fire (LOCO)	12	0.1	-	-	12	1,222,786	0.1	0	0
E74L- Electrically caused fire (LOCO)	73	0.4	-	-	73	6,865,650	0.4	0	5
E75L- Current collector system (LOCO)	38	0.2	-	-	38	1,669,975	0.1	0	3
E76L- Remote control equip inoperative (LOCO)	4	0.0	-	4	-	245,674	0.0	0	0
E78L- Pantograph defect (LOCO)	63	0.3	-	-	63	1,352,032	0.1	0	0
E79L- Other LOCO defects	61	0.3	2	14	45	5,486,879	0.3	0	0
E7BL- Third rail shoe or shoe beam (LOCO)	1	0.0	-	-	1	7,219	0.0	0	0
E80C- Box car plug door open	2	0.0	-	-	2	42,213	0.0	0	0
E81C- Box car plug door,attachment defective	2	0.0	-	-	2	386,745	0.0	0	0
E83C- Box car door, other than plug, open	1	0.0	-	1	-	7,032	0.0	0	0
E85C- Bottom outlet car door open	21	0.1	-	20	1	1,524,527	0.1	0	0

E86C- Bottom outlet door attachment defect	21	0.1	-	19	2	1,524,771	0.1	0	0
E89C- Other car door defects	8	0.0	1	5	2	476,508	0.0	0	0
E99C- Other mechanical/electrical failures	47	0.2	1	7	39	1,665,634	0.1	0	11
E99L- Other mechanical/electrical fail(LOCO)	23	0.1	2	4	17	644,728	0.0	0	0
-- Total	2,366	11.8	53	1,778	535	338,054,541	17.6	0	73

ATTACHMENT - K

Attachment K

ACCIDENT/INCIDENT OVERVIEW

SELECTION: RAILROAD - BNSF Rwy Co. [BNSF] / January TO December, 2005

TOTAL ACCIDENTS/INCIDENTS:	2,069	Number of fatal accidents/incidents	147	7.10%
Overall frequency rate:	10.69	Total train miles:	193,486,771	
Total fatalities:	153	Switching miles:	14,562,362	
Total nonfatal conditions:	1,166	Employee hours:	82,010,039	

Total accidents/incidents is the sum of train accidents, highway-rail incidents, and other incidents.
Total accident/incident rate is the number of events times 1,000,000 divided by total train miles.

TOTAL TRAIN ACCIDENTS:	660	Number of fatal train accidents	3	0.45%
Number per million train miles:	3.41	Collisions:	36	5.45%
Total fatalities:	2	Derailements:	452	68.48%
Total nonfatal conditions:	24	Other accidents:	172	26.06%

-----Primary causes-----				
Human factors:	44.85%	296	Track defects:	161 24.39%
Equipment defects:	13.79%	91	Signal defects:	9 1.36%
Miscellaneous causes:	15.61%	103		

Number of accidents on yard track:	374	56.67% of all train accidents.
Nbr per million yard train miles:	25.68	For other tracks: 1.60

Train accidents represent 31.90% of all reported events.

Number of train accidents involving passenger trains . . . %

Number of train accidents that resulted in a release of hazardous material	10	1.52% of total
Number of persons evacuated	6	Number of rail cars releasing hazmat 17

A train accident is an event involving ontrack rail equipment that results in monetary damage to the equipment and track above a certain threshold. Lading, clearing costs, environmental damage is not included.

HIGHWAY-RAIL		TRESPASSING INCIDENTS(not at crossings)	
Incidents:	456	Frequency per million train miles:	0.73
Number per million train miles:	2.36	Total fatalities:	77
Total fatalities:	70	Total nonfatal conditions:	64
Total nonfatal conditions:	231		
Number of fatal crossing incidents	63	13.82%	

Highway-rail and trespassing incidents account for 96.08% of all fatalities.
Highway-rail incidents represent 22.04% of all reported events.

A highway-rail incident is any impact between a rail and a highway user at a crossing site, regardless of severity. Includes motor vehicles and other highway/roadway/sidewalk users at both public and private crossings.

OTHER INCIDENTS:	953	Number of fatal other incidents	81	8.50% of other incidents
Other incidents account for:	46.06%	of all accidents/incidents		
Total fatalities:	81	4 Number to employees on duty. Trespassers	75	
Total nonfatal conditions:	911	577 Number to employees on duty		

Other incidents include any event where that caused a death, an injury, or an occupational illness to a railroad employee. Most fatalities in this category are to trespassers.

EMPLOYEES ON DUTY CASES:	626	Frequency per 200,000 hours worked:	1.53
Total fatalities:	4	2.61% of all fatalities	
Total nonfatal conditions:	622	53.34% of all nonfatal cases	

ACCIDENT/INCIDENT OVERVIEW

SELECTION: RAILROAD - Union Pacific RR Co. [UP] / January TO December, 2005

TOTAL ACCIDENTS/INCIDENTS:	2,715	Number of fatal accidents/incidents	156	5.75%
Overall frequency rate:	13.64	Total train miles:	199,103,551	
Total fatalities:	167	Switching miles:	15,902,358	
Total nonfatal conditions:	1,453	Employee hours:	97,540,553	

Total accidents/incidents is the sum of train accidents, highway-rail incidents, and other incidents.
Total accident/incident rate is the number of events times 1,000,000 divided by total train miles.

TOTAL TRAIN ACCIDENTS:	950	Number of fatal train accidents	4	0.42%
Number per million train miles:	4.77	Collisions:	71	7.47%
Total fatalities:	3	Deraillments:	728	76.63%
Total nonfatal conditions:	36	Other accidents:	151	15.89%

-----Primary causes-----					
Human factors:	36.95%	351	Track defects:	341	35.89%
Equipment defects:	9.79%	93	Signal defects:	22	2.32%
Miscellaneous causes:	15.05%	143			

Number of accidents on yard track:	554	58.32% of all train accidents.
Nbr per million yard train miles:	34.84	For other tracks: 2.16

Train accidents represent 34.99% of all reported events.

Number of train accidents involving passenger trains . . . %

Number of train accidents that resulted in a release of hazardous material	12	1.26% of total
Number of persons evacuated	1,932	Number of rail cars releasing hazmat 17

A train accident is an event involving ontrack rail equipment that results in monetary damage to the equipment and track above a certain threshold. Lading, clearing costs, environmental damage is not included.

HIGHWAY-RAIL		TRESPASSING INCIDENTS(not at crossings)	
Incidents:	559	Frequency per million train miles:	1.09
Number per million train miles:	2.81	Total fatalities:	95
Total fatalities:	63	Total nonfatal conditions:	123
Total nonfatal conditions:	234		
Number of fatal crossing incidents	54	9.66%	

Highway-rail and trespassing incidents account for 94.61% of all fatalities.
Highway-rail incidents represent 20.59% of all reported events.

A highway-rail incident is any impact between a rail and a highway user at a crossing site, regardless of sever. Includes motor vehicles and other highway/roadway/sidewalk users at both public and private crossings.

OTHER INCIDENTS:	1,206	Number of fatal other incidents	98	8.13% of other incidents
Other incidents account for:	44.42%	of all accidents/incidents		
Total fatalities:	101	5 Number to employees on duty. Trespassers	94	
Total nonfatal conditions:	1,183	952 Number to employees on duty		

Other incidents include any event where that caused a death, an injury, or an occupational illness to a railroad employee. Most fatalities in this category are to trespassers.

EMPLOYEES ON DUTY CASES:	1,022	Frequency per 200,000 hours worked:	2.10
Total fatalities:	8	4.79% of all fatalities	
Total nonfatal conditions:	1,014	69.79% of all nonfatal cases	

ATTACHMENT - L

Patrick T. Ameen
Assistant Vice President - Technical Services



Friday, September 20, 2002

c-9515

Circular Letter

Subject: Proposed AAR Standard S-286: Specification for 286,000# GRL Cars for Unrestricted Interchange Service Solicitation of

To: MEMBERS AND PRIVATE CAR OWNERS

File Number: CC-170.7.1

AAR Standard S-259, SPECIFICATION FOR 286,000 LB. GROSS WEIGHT RAIL CARS, was implemented January 1, 1995. S-259 was designed to adjust design loads for car body and trucks and braking force for cars having gross rail loads from 268,000 lbs. to 286,000 lbs. Former AAR Interchange Rule 91 and current Rule 70 did not mandate free, unrestricted interchange acceptance of such cars. Additional administrative requirements were defined in Office Manual Rule 88 to ensure proper technical review by the Equipment Engineering Committee (EEC) and registration in the AAR UMLER file.

There are many cars in the North American railcar fleet which fall into this category. We now have a much better understanding of the performance of railcars in this category and the impact of heavy axle load cars on the track structure. Some railroads have established their own requirements for HAL cars since interchange acceptance was not mandatory. The Equipment Engineering Committee had a Technical Advisory Group develop a standard to enhance the Mechanical performance of such cars and reduce the forces at the vehicle/rail interface. Thus the "Stress State" of the railroad will be reduced.

A proposed new Standard S-286, SPECIFICATION FOR 286,000 LBS. GROSS RAIL LOAD CARS FOR FREE/UNRESTRICTED INTERCHANGE SERVICE, is appended to this circular.

Highlights:

Applicable to 4-axle cars designed & designated to carry GRL's >268,000 lbs. & up to 286,000 lbs.
Applies to cars built after December 31, 2002
Cars meeting specification would be qualified for free, unrestricted interchange service
A higher design draft load is included (500,000 lbs.) for cars not equipped with through center sills
Tank car stub sills & their attachments to tank must have minimum computed fatigue life of 1,000,000 miles
Requires 6 1/2" x 9" bearings & axles on 36" wheels; 7" x 9" or 7" x 12" bearings & axles on 38" wheels
Minimum 3 1/4" travel AAR M-901E, M-901G, or M-901H high capacity draft gears required
Trucks must meet new Truck Performance Specification M-976

Editorial revisions will be made to AAR Standard S-259 and by the Arbitration & Rules Committee to Interchange Rules 70 and 88. Comments from interested parties are herewith solicited under the provisions of AAR Standard S-050 and Office Manual Rule 123. All comments received by October 21, 2002 will be considered by the Equipment Engineering Committee prior to final action on this proposal.

Comments should be directed to the undersigned via letter, telefax or e-mail (pameen at aar.org).



Sincerely,
Patrick T. Ameen
Assistant Vice President - Technical Services

Safety & Operations

202-639-2140 202-639-2179 <mailto:pameen@aar.org>
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Attachments

Proposed S-286.doc

Proposed S-286.pdf

ATTACHMENT - M

Thomas J. Stahura
Executive Director, Rules and
Standards



ASSOCIATION OF
AMERICAN RAILROADS

Attachment M

Friday, September 09, 2005

C-10161

Circular Letter

Subject: Implementation of Revision to S-286, Specification for 286,000# GRL Cars for Unrestricted Interchange Service

To: MEMBERS AND PRIVATE CAR OWNERS

File Number: CC-170.7.2

The original AAR Specification for 286,000 lbs. gross weight railcars was S-259 that was adopted in 1994. Acceptance of this equipment in interchange was not mandatory. In November of 2002 the Equipment Engineering Committee (EEC) adopted S-286 (Specification for 286,000 lbs. Gross Rail Load Cars for Free/Unrestricted Interchange Service). This was announced by Circular C-9551 on November 21, 2002. A number of the S-259 requirements were carried over into the new specification one of which was the following statement:

Axles with machined grooves at the inboard seal wear ring/journal contact area shall not be used.

This statement was listed as paragraph 4.4 of S-259 and as the last sentence of paragraph 2.4 of S-286. Questions have been raised as to the validity of this issue as some had interpreted the statement to mean the normal wear grooves found in this area on secondhand axles. Investigation found that this was a reference to a wheel shop practice that was being tested during the time of writing of S-259 and is no longer used. Since this practice was applied to a limited population of axles, and on 6 ½ X 12 axles which cannot be used under S-286 cars; the EEC decided that it was a redundant requirement and voted to remove it from S-286.

A copy of the revised S-286 is attached. Please insert a copy into your Section C of the Manual of Standards and Recommended Practices and be governed accordingly.

For additional information contact Charles Powell, Committee Manager for the EEC at

719-585-1883 or charles.powell@aar.com.

NOTE FOR INTERNET SUBSCRIBERS: The proposed specification changes are attached to this circular as a Word file and as a PDF file which can be viewed by use of Adobe Acrobat Reader. If you do not have this feature, Acrobat Reader software can be downloaded for free from the following Adobe web site.

<http://www.adobe.com/prodindex/acrobat/readstep.html#reader>

Sincerely,
Thomas J. Stahura
Executive Director, Rules and Standards

Safety and Operations

202-639-2139 202-639-2930 Email: tstahura@aar.org

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Attachments

s-286 2005.doc

s-286 2005.pdf

ATTACHMENT - N

Thomas J. Stahura
Executive Director, Rules and Standards



Friday, August 20, 2004

c-9906

Circular Letter

Subject: Upcoming Rule Changes for S-286 Compliant Freight Cars

To: MEMBERS AND PRIVATE CAR OWNERS

File Number: CC-170.7.1

Several Circular Letters have been written over the last year and a half addressing the subject of S-286 compliant freight cars as well as the M-976 truck suspension requirements. Interchange Rule 70 states that cars built after June 30, 2004 must meet the requirements of S-286. Circular Letter c-9776, dated 12/19/03, provides a breakdown of the suspension system into components, each of which was further defined as to the extent of variation that will be considered as equivalent to the as-tested condition. This letter is intended to provide early notification of upcoming required changes to Rules 70 and 88 in both the Field and Office Manuals. The highlights as well as planned effectivity dates as being developed jointly by members of the Arbitration and Rules and the Equipment Engineering Committees are as follows.

The first area of interest is the required changes to Office Manual Rule 88 with respect current Star Code L and M equipment. S-259, the referenced standard for Star Code M, or equipment designed for 286,000 pounds gross rail load will be "phased out" with respect to newly rebuilt or modified equipment. It is planned that no request for rebuilding or modifying cars will be accepted past July 1, 2005. Further it will be required that such work be completed no later than July 1, 2006. Please recall that as of July 1, 2004, acceptance of cars not meeting the requirements of S-286 is no longer mandatory. Corresponding text changes to the rule are being advanced and once completed will be published for industry review and comment.

In addition, rule changes are contemplated to "protect" fully compliant S-286 cars and M-976 suspension systems. This equipment can be identified by the date built on the car or by the Star Code Q, T or U designation in UMLER. Until those changes are developed and circulated it is the expectation of the car owner as well as the handling carriers to maintain the equipment as approved under the two standards. Reference is first made to c-9776 issued on December 19, 2003 for guidance in maintaining this new equipment. Additionally, on March 8, 2004, c-9804 was published that provided the list of non-metallic center bowl liners approved for use in M-976 trucks. These Circulars will be the basis for crafting the necessary rule changes. Thus, should there be cause to repair such equipment (S-286), in particular the suspension system (M-976), it is recommended that the car owner be contacted for disposition.

In the interim should there be any questions concerning the requirements for 286,000 GRL service or the planned implementing rule changes, feel free to contact the undersigned.

Sincerely,
Thomas J. Stahura
Executive Director, Rules and Standards

Safety and Operations

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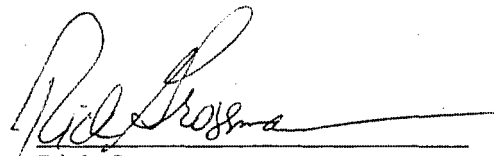


ATTACHMENT - O

STATEMENT
OF
RICK GROSSMAN

1. My name is Rick Grossman. I am employed by First Union Rail ("FUR"), a member of North America Freight Car Association, as Vice President-Equipment. I have held that position for eleven years. Previously, I was employed by Chicago and North Western Transportation Company for fifteen years, concluding my service as AVP-Car Distribution. Throughout my career, I have specialized in supervision of freight car compliance with government and rail industry operating regulations, including mechanical condition of cars. I am familiar with the regulations of the Association of American Railroads ("AAR"), known as S-259 and S-286.

2. I have read the letter to Gabriel S. Meyer, Esq. to which this statement is appended. To the best of my knowledge, the statements in that letter are correct, including specifically the statements (a) describing the history and applicability of the AAR S-259 and S-286 mechanical specifications, (b) the remedial steps taken by AAR with respect to certain Mexican truck bolster castings, and (c) conditions other than truck bolster design that could have contributed or led to truck bolster failures claimed by UP with respect to certain S-259 cars.


Rick Grossman

December 15, 2006