



ASSOCIATION OF AMERICAN RAILROADS  
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August 23, 2013

Robert Lauby  
Acting Associate Administrator for Railroad Safety/  
Chief Safety Officer  
Federal Railroad Administration  
1200 New Jersey Ave., S.E.  
Washington, D.C. 20590

Re: Emergency Order No. 28

Dear Mr. Lauby:

On August 7, 2013, FRA issued Emergency Order No. 28 (EO 28) as a result of the terrible accident that occurred in Lac-Mégantic, Quebec on July 6, 2013. EO 28, *inter alia*, imposed requirements addressing unattended equipment and the securement of unattended equipment. AAR and ASLRRA are generally supportive of EO 28.

However, on August 21, FRA issued interpretive guidance on EO 28 that cannot be squared with the wording of EO 28 in one important respect. Insofar as EO 28 is directed at shipments of hazardous materials, it applies to tank car "loads," rail car "loads," and intermodal portable tank car "loads." Contrary to the wording of EO 28, the guidance extends EO 28 to residues. Since EO 28 does not support such an interpretation, FRA should immediately revise the guidance.

DOT regulations clearly provide that residues are not "loads." For example, DOT defines a residue at 49 C.F.R. section 171.8 as a "hazardous material remaining in a packaging, including a tank car, after its contents have been unloaded." If a residue is the material remaining after a car has been "unloaded," then clearly a car containing residue is not considered to be a "loaded" car. Another example is 49 C.F.R. section 174.85, which imposes different placement restrictions on loaded and residue cars. A third example is 49 C.F.R. subsection 174.86(b), which imposes a 50 mph speed limit on "trains transporting any loaded, placarded tank cars containing a material poisonous by inhalation." That subsection has never been interpreted as applying to residue shipments.

Nor do the circumstances underlying the issuance of EO 28 support applying the order to residues. Surely the Lac-Mégantic accident would not have had such devastating consequences if only residue shipments of crude oil had been involved.

From an operating perspective, applying EO 28 to residue shipments is problematic. Railroads will comply with EO 28 by using their existing systems for identifying key trains under Circular OT-55. Those systems track loads only. The computer systems are not set up to identify key trains on the basis of residue shipments. There simply is no way the railroads will be able to institute systems to ensure compliance with EO 28 were it to apply to residues by the September 1 implementation deadline.

The problem with identifying residue shipments that trigger EO 28, were residue shipments actually subject to EO 28, cannot be underestimated. The railroads have not had time to perform a detailed data analysis, but expect that applying EO 28 to residue shipments would at a minimum double the number of hazardous materials trains subject to EO 28 and likely more than double the number because of the way in which residue shipments are transported in merchandise trains.

Another consideration should be the industry's overall approach to hazardous materials transportation. AAR's and ASLRRA's members abide by voluntary operating practices embodied in Circular OT-55. Those practices include, *inter alia*, a speed limit on the hazardous materials covered by OT-55, meet and pass restrictions, and special restrictions when wayside detectors indicate possible defects. OT-55 applies to a broader set of hazardous materials than EO 28, to any train containing:

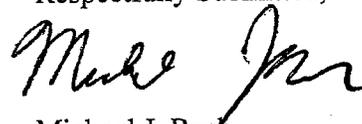
- one tank car load of toxic-by-inhalation hazardous materials (Hazard Zone A, B, C, or D), anhydrous ammonia (UN1005), or ammonia solutions (UN3318);
- 20 car loads or intermodal portable tank loads of any combination of hazardous materials; and
- one or more car loads of spent nuclear fuel or high-level radioactive waste.

This week, AAR's and ASLRRA's members agreed to apply the EO 28 restrictions to all commodities covered by OT-55 (thus facilitating compliance, as explained above). That agreement is in the context of the overall effect of OT-55 and EO 28 on the fluidity of the railroad network. Application of EO 28 to residue shipments could well lead to a reconsideration of that decision.

From a safety and operational perspective, application of EO 28's hazardous materials provisions to residues cannot be justified. From a legal perspective, the guidance conflicts with EO 28 because the wording of EO 28 excludes residue shipments from the hazardous materials provisions. Accordingly, AAR and ASLRRA urge FRA to revoke its guidance insofar as it wrongly states that the hazardous materials provisions in EO 28 apply to residue shipments. In the alternative, under the relief section of EO 28 FRA should grant AAR's and ASLRRA's members special approval to exclude residue shipments from the hazardous materials provisions of EO 28.

In view of the impending deadline for implementing EO 28, AAR and ASLRRA request expeditious approval of this request.

Respectfully Submitted,



Michael J. Rush

cc: Tom Herman  
Keith T. Borman



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Mr. Robert Lauby  
Acting Associate Administrator  
for Railroad Safety/Chief Safety Officer  
Federal Railroad Administration  
1200 New Jersey Ave., S.E.  
Washington, D.C. 20590

Re: Emergency Order No. 28 Special Approval

Dear Mr. Lauby:

Enclosed is a request by the Association of American Railroads and the American Short Line and Regional Railroad Association for special approval pursuant to Emergency Order No. 28.

Thank you for considering this request.

Respectfully Submitted,

Michael J. Rush

BEFORE THE  
FEDERAL RAILROAD ADMINISTRATION

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FRA EMERGENCY ORDER No. 28:

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REQUEST FOR SPECIAL APPROVAL:  
NOTIFYING THE DISPATCHER

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SUBMITTED BY  
THE ASSOCIATION OF AMERICAN RAILROADS  
AND THE  
AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

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The Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association,<sup>1</sup> on behalf of themselves and their member railroads, submit the following request for special approval. On August 7, 2013, FRA published Emergency Order 28, requiring the railroads to take certain actions with respect to specified hazardous materials.<sup>2</sup> EO 28 provided that railroads may seek special approval for actions departing from the emergency order.

AAR and ASLRRA, on behalf of their members, seek relief from paragraph 2.b. of the emergency order. Paragraph 2.b. provides:

Employees who are responsible for securing trains and vehicles transporting Appendix A Materials must communicate to the train dispatcher the number of hand brakes applied, the tonnage and length of the train or vehicle, the grade and terrain features of the track, any relevant weather conditions, and the type of equipment being secured; train dispatchers must record the information provided; and train

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<sup>1</sup> AAR is a trade association whose membership includes freight railroads that operate 82 percent of the line-haul mileage, employ 95 percent of the workers, and account for 97 percent of the freight revenues of all railroads in the United States; and passenger railroads that operate intercity passenger trains and provide commuter rail service. ASLRRA is a non-profit trade association that represents the interests of over 500 short line and regional railroad members in legislative and regulatory matters.

<sup>2</sup> 78 Fed. Reg. 48,218 (Aug. 7, 2013).

dispatchers or other qualified railroad employees must verify and confirm with the train crew that the securement meets the railroad's requirements.<sup>3</sup>

AAR and ASLRRA seek relief from paragraph 2.b. for the following types of railroad operations:

- picking up, setting off, or repositioning cars at an industry;
- assembling cars from several tracks adjacent to the main track;
- adding, removing, or swapping locomotives; and
- moving part of the train when doubling a hill or cutting crossings.

It would be counterproductive from a safety perspective and extremely burdensome to notify dispatchers in these instances. One railroad studied the potential impact of requiring notification of the dispatcher for switching operations. On the subdivision studied, an average of four trains could be performing switching operations in an eight-hour shift. There are ten potential switching locations. Each switching event could be expected to have a minimum of four moves. If all four trains had ten switching events involving four moves, that would mean the dispatcher would have 160 radio conversations for the switching events (4 trains x 10 locations x four moves). Furthermore, each radio conversation could be expected to take two minutes. That means during an eight hour shift, the dispatcher would spend 320 minutes, or five hours, talking to train crews about securing hand brakes for switching operations.

The adverse safety ramifications are clear. All these calls would distract dispatchers from their safety-sensitive functions, e.g., coordinating and directing train meets and granting/protecting maintenance windows. In addition, these calls could result in radio congestion, resulting in employees unable to use their radios to communicate.

Notification of the dispatcher in these circumstances would serve no useful purpose. When cars are left unattended in these circumstances, there is an emergency application of the air brakes for all the cars. Since there is no attached locomotive, there can be no unintended or intentional release of the air brakes by someone in the locomotive cab. Thus, as compared to unattended trains, there is a level of safety for cars in these circumstances in addition to securement practices

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<sup>3</sup> 78 Fed. Reg. 48, 218, 48,223 (Aug. 7, 2013).

common to all trains. Those common practices include the requirements for the securement of unattended equipment (49 C.F.R. subsection 232.103(n)) and training programs required by 49 C.F.R. Parts 240 and 242 that ensure train and engine crews are familiar with securement requirements.

AAR and ASLRRA request expedited treatment of this request. EO 28 states that implementation must be complete by September 1. Full compliance with EO 28 is already problematic given the scant notice provided by EO 28 – only 24 days between the publication date and the implementation deadline. Every additional day of uncertainty as to what is required makes compliance more difficult.

Thank you for considering this request.

Respectfully submitted,



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