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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 23, Notice No. 2]

Clarifying Amendment to the Emergency Order To Prohibit the Continued Use of Certain Railroad Tank Cars Equipped With a Truck Bolster Bearing Either (1) Association of American Railroads (AAR) Identification Number B-2410 and National Castings of Mexico (NCM) Pattern Number 52122 or (2) AAR Identification Number B-2409 and NCM Pattern Number 52202.

On April 30, 2004, FRA published Emergency Order No. 23, Notice No. 1, directing all persons, including, but not limited to owners, shippers, consignees, and railroads, to discontinue the loading and transportation of certain railroad tank cars equipped with a truck bolster bearing either (1) AAR identification Number B-2410 and NCM Pattern Number 52122 or (2) AAR Identification Number B-2409 and NCM Pattern Number 52202, until each of the described bolsters is removed from the car and replaced with a bolster of suitable design and manufacture. See 69 FR 23850. Information received by FRA subsequent to the issuance of the Emergency order compels FRA to issue this amendment to the Order (Notice No. 2) to clarify the identification of the tank cars covered by Emergency Order No. 23.

FOR FURTHER INFORMATION CONTACT: Ronald Newman, Staff Director, Motive Power & Equipment Division, FRA, 1120 Vermont Ave, NW., stop 25, Washington, DC 20590, (202) 493-6241, or Thomas Herrmann, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Ave., NW., stop 10, Washington, DC 20590, (202) 493-6036.

Authority

The authority for issuance of this amendment to Emergency Order No. 23 is the same as that cited for the issuance of the original Emergency Order. See 69 FR23850.

Background

FRA outlined the scope and severity of the problems associated with two above-noted bolster patterns in Notice No. 1 to Emergency Order No. 23. See 69 FR 23850-51. FRA is working with the AAR, tank car builders and users, and the nation's railroads to resolve the problem. Previous efforts are memorialized in FRA Safety Advisory 2002-03 (69 FR 79686, December 30, 2002); FRA Safety Advisory 2003-03 (68 FR 65982, November 24, 2003); AAR Maintenance Advisory MA-81; and a series of AAR Early Warning letters including EW-5191, EW-5194, EW-5195, EW-5196, and EW-5197, and supplements to them.

Although all parties to this effort agree that the involved bolsters must be replaced, the castings industry simply cannot produce a sufficient number of replacement truck bolsters fast enough. Therefore, priorities had to be established to schedule the necessary change-outs in a timely fashion. As discussed in Notice No. 1 to this Emergency Order, the AAR developed a unique risk assessment matrix to establish these priorities. The risk matrix included, among other things, factors for the manner in which the cars were loaded and, for tank cars, the relative danger of the hazardous material being transported. The results of the risk matrix divided the freight cars with defective bolsters into three specific groups: Group I included hazardous material tank cars, Group II included coal cars and mill gondola cars, and Group III included all other cars. See 69 FR 23851. For purposes of priority, hazardous material tank cars were further divided into three hazard-based categories: Category I included pressurized shipments (liquefied compressed gases) such as propane, anhydrous ammonia, and chlorine, Category II included flammable liquids, corrosives, and liquids with a poisonous hazard; and Category III included molten sulfur, elevated temperature materials, and the low-hazard Class 9 "other regulated materials." Appendix A to this Notice displays the results of the risk matrix applied to hazardous materials transported in railroad tank cars and shows which commodities are included in each of the three Categories. Based on the lower degree of hazard involved, hazardous material tank cars (Group I cars) used to transport Category III hazardous materials, were prioritized with the Group III (all other) cars.

Information received by FRA since its issuance of Emergency Order No. 23, Notice No. 1, indicates that the identification of the affected tank cars needs to be clarified. In order to make clear the applicability of Emergency Order No. 23, FRA believes it is necessary intends that Emergency Order No. 23 apply to all tank cars used to transport hazardous materials risk-rated in Categories I and II by AAR's matrix, and equipped with bolsters cast in 1995, 1996, 1997, 1998 or 1999, and bearing either (1) AAR Identification Number B-2410 and NCM Pattern Number 52122 or (2) AAR Identification Number B-2409 and NCM Pattern Number 52202. "Tank cars" includes DOT-, TC- (Transport Canada), and AAR-Specification tank cars. Tank cars transporting Category III hazardous materials, tank cars transporting non-regulated materials, and tank cars cleaned and purged of all hazardous materials were not intended to be covered by Emergency Order No. 23.

Amended Finding and Order

Based on the information contained in Emergency Order No. 23, Notice No. 1 (69 FR 23850), and on the information received subsequent to the issuance of that notice described in detail above, I continue to find that an emergency situation involving a hazard of death or personal injury exists. Consequently, I hereby direct and order that, except as necessary to carry out this order, no person may transport, offer for transportation, load, or continue in service any tank car used to transport hazardous materials risk-rated in Categories I and II by AAR's matrix and equipped with bolsters cast in 1995, 1996, 1997, 1998, or 1999, and bearing either (1) AAR Identification Number B-2410 and NCM Pattern Number 52122 or (2) AAR Identification Number B-2409 and NCM Pattern Number 52202, until each of the described bolsters is removed from the car and replaced with a bolster of suitable design and manufacture. Railroads are permitted to haul such a car if necessary to effectuate such removal and replacement, but only to the nearest available location where the removal and replacement of the subject bolster can be made.

Relief

This Notice No. 2 does not amend the Relief provisions contained in Emergency Order No. 23, Notice No. 1. See 69 FR 23851.

Penalties

Any violation of Emergency Order No. 23 shall subject the person committing the violation to a civil penalty in the maximum amount set forth in 49 CFR part 209, Appendix A. FRA may, through the Attorney General, also seek injunctive relief to enforce this order as established by 49 U.S.C. 20112.

Effective Date and Notice to Affected Persons

This Emergency Order No. 23 became effective on April 30, 2004 and applies according to its terms except as expressly amended by this notice. Emergency Order No. 23, Notice No. 2, will be published in the Federal Register and will take effect upon its issuance. A copy of Emergency Order No. 23, Notice No. 2, will also be sent by e-mail or facsimile to the AAR for distribution to its members.

Review

Opportunity for formal review of Emergency Order No. 23 will be provided in accordance with 49 U.S.C. 20104(b) and 5 U.S.C. 554. Administrative procedures governing such review are found at 49 CFR 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, DC on May 11, 2004.

Allan Rutter,
Federal Railroad Administrator.
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