Railroad Safety Advisory Committee Securement Recommendation VOTE

From: Woolverton, Larry (FRA)
Sent: Wednesday, April 02, 2014 7:00 AM
To: RSAC Committee & Alternates)

Subject: RE: (RESULTS) Railroad Safety Advisory Committee Securement Recommendation VOTE
Importance: High

Railroad Safety Advisory Committee Members & Alternates, by majority vote the Securement Recommendation has been approved by the Committee and will become the Committee's recommendation to the Administrator.

Thanks everyone for your hard work and perseverance.

Regards,

LARRY W. WOOLVERTON

From: Woolverton, Larry (FRA)
Sent: Tuesday, March 25, 2014 6:58 AM
To: RSAC Committee & Alternates

Subject: Railroad Safety Advisory Committee Securement Recommendation VOTE
Importance: High

Railroad Safety Advisory Committee Members & Alternates, as discussed during the March 6 RSAC Committee meeting, please find the consensus regulatory text from the Securement Working Group attached for your consideration.

The attached regulatory text represents the recommendations of the Working Group regarding RSAC Task 13-03; ***Securement*** and RSAC Task 13-04; ***Operational Testing for Securement***.

You are requested to complete the attached electronic ballot and return it to my attention electronically by no later than close of business on **Monday, March 31, 2014.**

Please note that the preamble text is not being voted upon, but is included only to help with context and understanding.

Please also note that the ballot also seeks a vote that no regulatory changes are necessary with regard to part 217 efficiency testing.

Regards,

LARRY W. WOOLVERTON

The following draft text is for consideration via electronic ballot by the RSAC Securement Working Group.

Amend 49 CFR § 232.5 as follows:

1. Remove the term "yard limits" and add "yard" in its place.

Amend 49 CFR § 232.103(n) as follows:

2. In paragraph (n)(3)(ii) remove the term "yard limits" and add "a yard" in its place.

3. In paragraph (n)(3)(iii) remove the term "yard limits" and add "a yard" in its place.

4. Add new paragraphs (n)(6) through (n)(10) as follows:

(6)(i) The requirements in paragraph (n)(7) through (n)(8) apply to any freight train or standing freight car or cars that contain:

(A) one or more loaded freight car containing a material poisonous by inhalation as defined in 49 CFR 171.8, including anhydrous ammonia (UN 1005) and ammonia solutions (UN 3318); or

(B) twenty (20) or more loaded cars or loaded intermodal portable tanks of any one or any combination of a hazardous material listed in paragraph (i)(A), or any Division 2.1 (flammable gas), Class 3 (flammable or combustible liquid), Class 1.1 or 1.2 (explosive), or a hazardous substance listed at 49 CFR 173.31(f)(2).

(ii) For the purposes of this paragraph, a tank car containing a "residue" of a hazardous material as defined in 49 CFR § 171.8 is not considered a loaded car.

(7)(i) No freight train or standing freight car described in paragraph (n)(6) shall be left unattended on a main track or siding (except when that main track or siding runs through, or is directly adjacent to a yard) until the railroad has adopted and is complying with a plan identifying specific locations or circumstances when the

train or freight cars may be left unattended. The plan shall contain sufficient safety justification for determining when trains and freight cars may be left unattended. The railroad must notify FRA when the railroad develops and has in place a plan, or modifies an existing plan, under this provision prior to operating pursuant to the plan. The plan shall be made available to FRA upon request. FRA reserves the right to require modifications to any plan should it determine the plan is not sufficient.

(ii) Any freight train described in paragraph (n)(6) that is left unattended on a main track or siding that runs through, or is directly adjacent to a yard shall comply with the requirements contained in paragraph (n)(8)(i).

(8)(i) Where a freight train or standing freight car or cars as described in paragraph (n)(6) is left unattended on a main track or siding, the following actions must be taken:

(A) The controlling locomotive cab shall be locked on locomotives capable of being locked or the reverser on the controlling locomotive shall be removed from the control stand and placed in a secured location; and

(B) An employee responsible for securing the freight train or freight cars shall verify with another person qualified to make the determination that the train or cars are secured in accordance with the railroad's processes and procedures.

(ii) A locomotive that is left unattended on a main track or siding that runs through, or is directly adjacent to, a yard is excepted from the requirements in (n)(8)(i)(A) where the locomotive is not equipped with an operative lock and the locomotive has a reverser that cannot be removed from its control stand or has a reverser that is necessary for cold weather operations.

(9) Railroads shall implement operating rules and practices requiring the job briefing of securement for any activity that will impact or require the securement of any unattended equipment in the course of the work being performed.

(10) Railroads shall adopt and comply with procedures to ensure that, as soon as safely practicable, a qualified employee verifies the proper securement of any unattended equipment when the railroad has knowledge that a non-railroad emergency responder has been on, under, or between the equipment.

Amend 49 CFR § 232.105 as follows:

5. Add new paragraph (h) as follows:

(h) Locomotive Cab Exterior Locking Mechanisms. (1) After March 1, 2017, each locomotive left unattended outside of a yard shall be equipped with an operative exterior locking mechanism.

(2) The railroad shall inspect and, where necessary, repair the locking mechanism during a locomotive's periodic inspection required in 49 CFR 229.23.

(3) In the event that a locking mechanism becomes inoperative during the time interval between periodic inspections, the railroad must repair the locking mechanism within 30 days of finding the inoperative lock.

(4) A railroad may continue the use of a locomotive without an operative locking mechanism; however, if the controlling locomotive of a train meeting the requirements of 49 CFR 232.103(n)(6)(i) does not have an operative locking mechanism for the locomotive the train cannot be left unattended on main track or a siding unless the reverser is removed from the control stand as required in § 232.103(n)(8)(i) or the locomotive otherwise meets one of the exceptions described in § 232.103(n)(8)(ii).

Proposed Preamble Language to Securement NPRM

Hours of Service

This proposal, which provides more restrictive securement requirements for specific types of equipment, does not affect FRA's policy concerning the federal hours of service requirements. FRA continues to believe that a railroad cannot require or allow a train employee with an accumulated time on duty of 12 hours or more to remain on a train for the sole purpose of meeting the securement requirements, including those proposed here. A train employee may, however, remain on an unsecured train, if that employee is legitimately waiting for deadhead transportation from duty to a point of final release, performs no covered or commingled service, and is free to leave the equipment when deadhead transportation arrives. In this case, time spent waiting for and in deadhead transportation is treated as neither time on duty nor time off duty.

Job Briefing

This proposal would require each railroad to implement operating rules and practices requiring the discussion of securement among crewmembers and other involved railroad employees before engaging in any job that will impact or require the securement of any equipment in the course of the work being performed. This proposed requirement is analogous to other federal regulations that require crewmembers to have a job briefing before performing various tasks, such as confirming the position of a main track switch before leaving an area. The purpose of this proposed job briefing requirement is to make certain that all crewmembers and other involved railroad employees are aware of what is necessary to properly secure the equipment in compliance with § 232.103(n).

Under this proposal, FRA expects that the crew will discuss the equipment that is impacted, the responsibilities of each employee involved in the securement of a train or vehicle, the number of hand brakes that will be required to secure the affected equipment, the process for ensuring that securement is sufficient, which train crewmember will be responsible for contacting the qualified employee, how the verification will be determined, and any other relevant factors affecting securement.

Locks and Reverser

The proposed rule allows a railroad to leave an (n)(6) train unattended on mainline track or a siding outside of a yard where the railroad has a plan in place and on mainline tracks that are in or adjacent to yards. The proposal, among other factors, requires the employee responsible for the securement of the equipment to lock the controlling locomotive cab or remove and secure the reverser from the control stand.

FRA expects that each locomotive equipped with a locking mechanism will be inspected and maintained at the time of the locomotive's periodic inspection. *See* 49 C.F.R. § 229.23. If a locking mechanism becomes ineffective in the interval between a locomotive's periodic

inspection dates, this provision does not require that a locomotive be removed from service upon the discovery of an ineffective locking mechanism. Railroads may continue to use the locomotive without an operative lock. However, a railroad must repair a locking mechanism within 30 days if it is found inoperative.

For the purposes of this regulation, "operative" means that, when applied, the locking mechanism will reasonably be expected to keep unauthorized people from gaining access into a locomotive while the locomotive is unoccupied. The locomotive must also allow train crews the ability to appropriately control access to a locomotive cab (e.g. to prevent access by a trespasser) when the locomotive cab is occupied. However, in doing so, the railroad must assure that ingress and egress is provided for in normal circumstances and emergencies.

The reverser is the directional control for the locomotive. Removing it would essentially put the locomotive in neutral, preventing it from moving forward or backward under the power of the engine. FRA understands that some railroads would like to secure reversers in the cabs of unlocked controlling locomotives. FRA has no objection to securing a reverser in an unlocked locomotive as long as the reverser is kept in a box or other compartment that can be locked within the locomotive cab. However, FRA would not consider a reverser "secured" within the meaning of this proposal if the railroad allows the reverser to be stored merely out of plain sight.

Notification and Verification

Employees who are responsible for securing equipment covered by this proposed rule must verify securement. Under the existing EO 28, such verification must occur with the train dispatcher. The subsequent guidance and this proposed rule text provides greater flexibility by requiring the responsible employee to notify another person qualified to make the determination of 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. Finally, the qualified employee must verify with the train crew that the equipment is secured in accordance with the railroad's processes and procedures.

This requirement provides a check on those individuals setting hand brakes to ensure appropriate securement procedures are followed. FRA believes this type of verification requirement will help ensure that any employee who is responsible for securing equipment containing hazardous materials will follow appropriate procedures because the employee will need to fully consider the securement procedures in order to relay what was done to the qualified employee. Further, the qualified railroad employee (e.g. a trainmaster, road foreman of engines, or another train crew employee) will be in a position to ensure that a sufficient number of hand brakes have been applied.

In most instances, FRA expects that the train crew will have precise information about the tonnage and length of the train and the type of equipment being secured. However, FRA understands that in many instances train crews may not have precise information available to them concerning grade and terrain features and relevant weather conditions. In such situations, a

train crew should, in good faith, provide the best information available. As an example, the train crew may not have a precise measurement for the grade of the track while tying down a train in a hilly location. It would be sufficient for the train crew in this example to describe that the equipment is being left unattended on low descending grade or in a bowl. In this example, the important factor to FRA is not that the precise grade be relayed, but that there is some consideration about how the grade impacts the securement actions that are taken and that the consideration is relayed to the qualified employee.

The verification element proposed here merely requires that the person verifying the securement is a qualified railroad employee. Under this proposed rule, the qualified railroad employee must have adequate knowledge of the railroad's securement requirements for the specific location or for the specific circumstance for which the equipment will be left unattended. Without limiting the type of employee who may be qualified, FRA envisions that a dispatcher, roadmaster, yardmaster, road foreman of engines, or another crew member would be able to serve in the verification capacity.

Emergency Response

Finally, FRA is proposing to require railroads to develop procedures to ensure that a qualified railroad employee inspects all equipment that any emergency responder has been on, under, or between for proper securement before the rail equipment or train is left unattended. Because it may be possible for emergency responders to modify the state of the equipment while performing their jobs by going on, under, or between equipment, it is critical for the railroad to have a qualified employee subsequently inspect the equipment to ensure that the equipment remains properly secured before it is again left unattended.

The proposed rule requires railroads to establish a process to ensure that a qualified railroad employee inspects all equipment that any emergency responder (e.g. fireman, paramedic, etc.) has been on, under, or between for proper securement before the train or vehicle is left unattended. FRA understands that on rare occasions there may be situations where an emergency responder accesses railroad equipment without the knowledge of the railroad. FRA will expect that a qualified railroad employee will inspect equipment after it has been accessed by an emergency responder in any circumstance where the railroad acting in a reasonable manner knew or should have known of an emergency responder's presence on, under, or between the subject equipment.

Residue Cars

The additional requirements proposed here mostly apply only to equipment that includes loaded tank cars. Thus, the proposed regulatory text exempts residue cars from consideration. Residue cars are defined by PHMSA under the hazardous materials regulations (HMRs). FRA will continue to rely on the HMRs for this definition, even if amended.

Together, FRA and PHMSA are concurrently considering new regulations relating to the placement in trains of cars containing hazardous materials. In that effort, loaded and residue cars may be treated the same. FRA does not believe that any resulting train placement regulation would affect the securement regulations we are considering in the instant proceeding. Nevertheless, the parties have expressed concerns that such inconsistent use may foster confusion or be "pitted against one another." FRA seeks further comment explaining how such confusion or conflict may manifest itself.