

Nancy Lewis

EMERGENCY ORDER  
NO. 17

**Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 5, 1993**

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of a Department of Transportation's Procedural Regulations (See 14 CFR 2.1701 et. seq.). The due date for answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the option of a show-cause order, a tentative order, or in appropriate cases final order without further proceedings.

**Docket Number:** 48641  
**Date filed:** February 4, 1993  
**Due Date for Answers, Conforming Applications, or Motion to Modify Scope:** March 4, 1993  
**Description:** Application of United Parcel Service Co., pursuant to section 401 of the Act and subpart Q of the Regulations, requests an amendment to its certificate of public convenience and necessity for Route 569 so as to add a segment between San Antonio, Texas and Guadalajara, Mexico.

**Docket Number:** 48049  
**Date filed:** February 3, 1993  
**Due Date for Answers, Conforming Applications, or Motion to Modify Scope:** March 3, 1993  
**Description:** Amendment No. 1 to the Application of Translift Airways Limited, pursuant to section 402 of the Act and subpart Q of the Regulations request a foreign air carrier permit for authority to engage in scheduled foreign air transportation of persons, property and mail between Shannon Ireland and the United States to the U.S. point Los Angeles, California.

Phyllis T. Kaylor,  
Chief, Documentary Services Division.  
[FR Doc. 93-3469 Filed 2-12-93; 8:45 am]  
BILLING CODE 4910-62-M

**Federal Railroad Administration**  
[FRA Emergency Order No. 17; Notice No. 2]

**Owners of Railroad Tank Cars; Emergency Order Requiring Inspection and Repair of Stub Sill Tank Cars**

The Federal Railroad Administration (FRA) of the United States Department

of Transportation (DOT) has determined that Emergency Order No. 17 (EO 17), Notice No. 1, (57 FR 41799, September 11, 1992) should be modified. This notice will give FRA's response to questions about the Emergency Order received from the affected public; request the cooperation of trade associations whose members may own, operate, or use stub sill tank cars; and specify the initial date of implementation of this emergency order.

**Background**

On September 2, 1992, FRA issued Emergency Order No. 17, Notice No. 1 (57 FR 41799, September 11, 1992), requiring owners of stub sill tank cars to comply with the Association of American Railroads (AAR) Tank Car Stub Sill Inspection Program, and the AAR Tank Cars Stub Sill Inspection Procedure, placed in effect in the AAR's O&M Circular No. 1, issued to members and private car owners on July 17, 1992. Under EO 17 and the O&M circular, owners of stub sill tank cars must inspect them and shall not return them to service until all defects have been repaired and the cars are in full compliance with Federal railroad safety regulations and the AAR Tank Car Manual. Inspection priorities were established based on characteristics discovered in other inspections and based on accumulated mileage.

FRA has received numerous questions regarding the implementation of EO 17 and, in the interests of promoting better understanding and improved compliance, FRA is taking this opportunity, very early in the tank car stub sill inspection program, to respond to those questions and to clarify its enforcement policy.

This notice makes no substantive changes in the requirements of Emergency Order No. 17, in the manner of obtaining relief from it, or in the penalties for violating it.

**Responses to Questions/Statements of Enforcement Policy**

The questions that follow are examples of actual inquiries made to FRA about EO 17; where several questions relate to a common topic, they have been grouped with a common answer.

1. **Question:** What year does a tank car owner utilize as the "base year" for establishing fleet size for the first 12 months of inspection?

2. **Question:** When utilizing the 1/5 and 1/7 proportional fleet inspection requirements, how does one arrive at the correct fleet size to inspect,

particularly when the fleet size fluctuates monthly/yearly?

**Answer:** Both questions deal with the size of the fleet required to be inspected. There is no "base year." As stated in paragraphs 3 and 4 of EO 17, the number of cars to be inspected each year is the cumulative portion of the owner's total fleet "then remaining in service" at the end of each successive 12-month period. The first 12-month period began September 3, 1992; successive periods begin September 3, 1993, 1994, 1995, and so on.

FRA is aware that fleet sizes can fluctuate on a monthly, quarterly, or yearly basis. This agency expects owners to make diligent efforts to inspect sufficient numbers of cars each month so that, at the end of each 12-month period, it will be obvious that the goals of O&M Circular No. 1, and the mandate of EO 17 are being carried out. The chart below will illustrate the inspection requirements for a fleet that changes in size over time.

As of date	Cumulative cars to insp. (percent)	Cars in service	Cars inspected this period	Cumulative number cars req. inspection
9-3-93	20	1,000	200	200
9-3-94	40	900	160	360
9-3-95	60	1,100	300	660
9-3-96	80	800	340	640
9-3-97	100	1,000	340	1,000

In this example, using the five-year schedule for jacketed stub sill tank cars, the owner cannot just inspect 200 cars per year (20% of the 1,000 car "starting" fleet); rather, each year the owner must inspect sufficient cars so that, as of each anniversary date, an additional 20% of the cars in service are inspected. Significant reductions in fleet size may mean that no inspections are required in a given year and significant increases in the fleet may require performing considerably more than the "average" number of inspections in that year. FRA is holding to this requirement in order to ensure that all stub sill tank cars are inspected on time; as the chart implies, a reduction in the inspection burden of one owner (with a reduction in fleet size) logically means an increase in the inspection burden for another (with an increased fleet size).

3. **Question:** If an owner has cars leased to another entity (a lessee), what prevents that lessee from holding the cars and then "dumping" them near the end of the 12-month period for the owner to inspect?

**Answer:** If provided adequate information, FRA may seek a civil penalty from or take other enforcement

action against any person who impedes the performance of inspections required by EO 17. It is in the owner's interest to keep FRA fully informed about any such situation.

4. *Question:* What specific group or specific individual within the AAR is responsible for recordkeeping and exempting groups of cars from inspection?

*Answer:* Mr. P.G. Kinnecom has that responsibility. (This answer was furnished by AAR.)

5. *Question:* After tank cars are inspected, where and to whom should owners send the data?

*Answer:* The AAR advises that Form SS-2 data should be submitted in computer-readable format on a 3½" or 5¼" diskette to its consultant: Sims Professional Engineers, 8516 Henry Street—suite 1, Highland, Indiana 46322. AAR, in separate correspondence, has advised its members and private car owners of the software to use for converting hard-copy Form SS-2 data onto diskettes.

6. *Question:* If the AAR does not respond within a reasonable time to an exemption request relative to the 400,000 mile requirement for cars that are older than 20 years, what course of action should the owner then take?

*Answer:* Owners should contact Mr. M.B. Flagg, AAR Director Tank Car/Special Equipment Services at 202/639-2146. (This answer was furnished by AAR.)

7. *Question:* Is the AAR's Tank Car Committee responsible for making the determination that exempts owners from the 20 year/400,000 mile requirement?

*Answer:* AAR staff has that responsibility, using guidelines established by the Tank Car Committee. (This answer was furnished by AAR.)

8. *Question:* Will EO 17 allow owners to postpone inspecting portions of their fleet in anticipation of provisions of the program being relaxed?

*Answer:* No. If this question has its roots in the modification FRA made in the provisions of EO 16, car owners should understand that modifications to that emergency order were made in response to a re-assessment, based on knowledge developed by inspecting dual diameter tank cars, of the state of emergency that existed when it was first issued. EO 17 is quite specific about the need to inspect all stub sill tank cars, and all owners must inspect their proportionate share.

9. *Question:* Will the current structure (i.e., the front-loading of defective cars in the program's early stages) of the stub sill inspection program taint the data

and possibly cause FRA to come to some premature conclusions?

*Answer:* No. FRA knows from AAR Early Warning letters and Maintenance Advisories, and from its own evaluations, that high mileage and Priority II stub sill cars are susceptible to cracking and this agency insisted that the inspection program look at those cars first.

10. *Question:* Is a mobile unit using fiber optics allowed for inspection of jacketed cars?

11. *Question:* If a crack is found by a mobile unit inspection, what is the disposition of the car?

12. *Question:* Does EO 17 grant the option, similar to that of earlier random inspections, of allowing tank cars with certain cracks of limited length to remain in service for later repair?

*Answer:* These three questions deal with the procedures for inspecting cars and the disposition of cars that have been inspected and found flawed.

FRA does not prohibit the use of mobile inspection units. Some confusion may stem from the wording of successive paragraphs in O&M Circular No. 1: Paragraph 2 requires "jacketed" cars " \* \* \* to be shopped, stub sills inspected, \* \* \*" and Paragraph 3 requires "non-jacketed" cars " \* \* \* to be inspected \* \* \*." In enforcing paragraph 1 of EO 17, which requires owners to comply with O&M Circular, FRA will consider any site capable of accommodating inspection personnel and equipment for adequately performing stub sill inspections as a "shop."

If a crack or defect is discovered during an inspection performed by a mobile unit, the car may move for repair if it is safe to do so. In enforcing paragraph 2 of EO 17, FRA will consider compliance with procedures similar to those set out in 49 CFR 215.9 as satisfactory. In other words, the owner can designate a qualified person (in the owner's judgement) to make a determination that the car is safe to move for repair and the restrictions necessary for its safe movement. The car should be tagged ("B/O per EO 17" would be acceptable) and the railroad notified.

EO 17 does not deal with crack measurement, but requires, in paragraph 2, cracks/defects critical to stub sill structural integrity to be repaired before the car is returned to service. The nature and length of a prohibited crack or defect will depend on its location and other factors, including any propensity for a defect to initiate crack growth.

Owners should note that, although FRA believes 49 CFR 215.9 establishes a good model for a procedure usable

under this Emergency Order, the agency has not determined that tank cars with defective stub sills are also defective under the Freight Car Safety Standards of part 215. Those standards establish safety requirements for freight cars in general; this Emergency Order establishes specific inspection and repair requirements for an extraordinary problem, and one that can lead to sudden structural failure, outside the realm of part 215.

13. *Question:* Can cars inspected under priority programs before EO 17, with SS-1 forms already filed, be converted to SS-2 reports with mileage added?

*Answer:* Yes, during the first year of the EO 17 program, FRA will allow cars inspected under priority programs before EO 17 to be converted to "SS-2" cars with the completion of the SS-2 form. Such cars must have SS-2 forms filed in order for them to be "exempt from further inspection" under paragraph 8 of O&M Circular No. 1. Paragraph 5 of EO 17 requires as SS-2 form to be filed before the car is considered to have been inspected; without an SS-2 form, in other words, there has been no "inspection" and therefore no issue of "further" inspection.

Form SS-2 seeks very little data not recorded on form SS-1: (1) The original AAR Certificate of Construction number, (2) the stub sill design type, and (3) car mileage. All three data elements will be required in converting an "SS-1 car" into an "SS-2 car." FRA believes that some priority program inspections before this Emergency Order may have been recorded on forms predating the SS-1 form as finally approved. FRA includes those cars under the general description "SS-1" cars.

Cars whose inspections were recorded on form SS-1 may include those described in paragraph 4 of O&M Circular No. 1 and their inclusion as "SS-2" cars satisfies FRA's purpose of capturing the maximum amount of stub sill inspection data in the minimum time. FRA assumes that as many as 3,000 stub sill tank cars will fall into the SS-1 category; for example, many prudent owners of dual-diameter cars subject to EO 16 realized the problems with stub sill cars generally and performed stub sill inspections at the same time as the inspections required by that emergency order.

14. *Question:* What record format including proof of inspection must be retained under EO 17?

*Answer:* Paragraph 6 of EO 17 does not specify a particular format for the record of fleet size or the cumulative

total of cars inspected. Paragraph 12 of O&M Circular No. 1 requires owners "to maintain records and dates of all stub sill inspections, including hard copies of completed Forms SS-2." The Stub Sill Inspection Procedure, also part of O&M Circular No. 1, further requires the owner to submit SS-2 data "in computer-readable format." Any of these forms of records are acceptable to FRA, including microfiche. AAR advises that all cars for which a Form SS-2 is submitted shall have a 2-inch green square marked on diagonally opposite sill webs as required by paragraph 11 of O&M Circular No. 1.

15. *Question:* What welds are considered to be critical welds?

*Answer:* Critical welds are those welds shown in Figures No. 1 through No. 6 of O&M Circular No. 1.

16. *Question:* What area of the stub sill is required to be inspected under EO 17?

*Answer:* EO 17 requires compliance with AAR O&M Circular No. 1. Circular No. 1 states, "Weld attachments of draft sill-to-pad, draft sill-to-head brace (if used), head brace-to pad, and pad-to-tank must be examined." Illustrations attached to the circular provide a visual reference as well.

The inspection area described in O&M Circular No. 1 only encompasses the outboard area, that is, the area towards the end of the car from a vertical line drawn through the approximate center of the tank cradle/bolster Web. While problem areas inboard of the bolster are unlikely to result in complete stub sill separation, inspection data from EO 16 and a recent incident involving cracking in the inboard stub sill area (resulting in a release of product) prompted FRA to request the Tank Car Committee to investigate the problem. Whether or not this single incident is related to the more wide-spread dangers that are the background to EO 17, FRA encourages owners to inspect the complete stub sill assembly, inboard as well as outboard.

17. *Question:* Do stub sill inspections under EO 17 require draft gears to be dropped?

*Answer:* O&M Circular No. 1 requires draft gear to be removed if stub sill attachment welds are obscured by design, except that it is not necessary to remove draft gear if welds are inspected using fiber optics or if sill is tested by the acoustic emission (AE) method. (This answer was furnished by AAR.)

18. *Question:* When inspecting cars in accordance with EO 16 and EO 17, can the shop assume that Rule 88B automatically applies?

*Answer:* While both EO 16 and EO 17 mention AAR Interchange Rule 88B, neither of them impose a "stand alone"

requirement for compliance with it. If AAR Interchange Rule 88B applies to a particular car affected by either of the emergency orders, it applies by its own terms and not because of the FRA order(s). FRA mentioned Rule 88B as an aid to owners, to remind them, for instance, that if they do certain repairs to meet the directives of one of the emergency orders, and if those repairs make a tank retest mandatory, then Rule 88B goes into effect for that car. AAR advises: "While it may make sense to do both (stub sill and Rule 88B) inspections together, O&M Circular No. 1 does not require that for AAR's stub sill inspection program. Shops should be guided by owner's instructions." While neither EO 16 nor EO 17 incorporates AAR's interchange rules, owners are reminded that paragraph 2 of EO 17 forbids returning a car to service following its inspection " \* \* \* until all defects have been repaired and the car is in full compliance with the Federal railroad safety regulations, including the Hazardous Materials Regulations, and the AAR Tank Car Manual."

19. *Question:* Does EO 17 require cars with accumulated mileage in excess of 400,000 miles, built or rebuilt after January 1, 1984, to be inspected?

*Answer:* Yes, in enforcing paragraph 1 of EO 17, FRA will assume that paragraph 6 of O&M Circular No. 1 takes precedence over paragraph 8 of the circular. There is a population of cars that was built after January 1, 1984 and has accumulated in excess of 400,000 miles that will be required, by the terms of EO 17, to be inspected.

20. *Question:* Would FRA consider a weighted average of 18 per cent per year of the combined insulated and non-insulated fleet for instances where the 20 percent of insulated and 14.3 percent of non-insulated car inspections cannot be met?

*Answer:* No, not at this time. FRA expects diligent efforts on the part of all owners of stub sill tank cars to inspect an estimated 21,000-22,000 stub sill tank cars per year for the first five years and nearly 6,000 cars per year in the sixth and seventh years of the program established by AAR O&M Circular No. 1.

#### Notice to Affected Persons

This second notice to Emergency Order No. 17 will be published in the Federal Register and a copy of this document will be furnished to representatives of all the interests known by FRA to be affected by the order. Associations and other groups receiving this Notice No. 2 are urged to inform their members of its contents,

preferably by making a copy of it available.

Issued in Washington, DC on February 8, 1993.

S. Mark Lindsey,

Acting Administrator.

[FR Doc. 93-3467 Filed 2-12-93; 8:45 am]

BILLING CODE 4910-06-M

#### Maritime Administration

##### Merger of Approved Trustee; First National Bank et al

Notice is hereby given that effective December 31, 1987, The First National Bank of St. Paul, St. Paul, MN; The First National Bank of Burnsville, Burnsville, MN; First Edina National Bank, Edina, MN; First National Bank of Hopkins, Hopkins, MN; First Bank (National Association)-Lake Minneapolis, MN; First Northtown National Bank, Blaine, MN; First Plymouth National Bank, Plymouth, MN; First Bank Robbinsdale, National Association, Robbinsdale, MN; First Southdale National Bank of Edina, Edina, MN; First Bank East, National Association, St. Paul, MN; First Bank Grand, National Association, St. Paul, MN; First Bank Security, National Association, St. Paul, MN; First Bank White Bear Lake, National Association, White Bear Lake, MN, merged with and into First National Bank of Minneapolis, Minneapolis, MN under the name of First Bank, National Association as the surviving corporation in the merger.

Dated: February 9, 1993.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 93-3489 Filed 2-12-93; 8:45 am]

BILLING CODE 4910-01-M

##### Merger of Approved Trustees

Notice is hereby given that effective January 1, 1993, Chase Lincoln First Bank, National Association, Rochester, New York, merged with and into The Chase Manhattan Bank, National Association, New York, New York, under the name of The Chase Manhattan Bank, National Association as the surviving corporation in the merger.

Dated: February 9, 1993.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 93-3470 Filed 2-12-93; 8:45 am]

BILLING CODE 4910-01-M

National Highway Traffic Safety Administration

[Docket No. 92-45; Notice 2]

Mazda (North America), Inc.; Grant of Petition for Determination of Inconsequential Noncompliance

Mazda (North America), Inc. (Mazda) representing Mazda Motor Corporation of Hiroshima, Japan, determined that some of its vehicles fail to comply with 49 CFR 571.108, "Lamps, Reflective Devices, and Associated Equipment," Federal Motor Vehicle Safety Standard (FMVSS) No. 108, and filed an appropriate report pursuant to 49 CFR part 573. Mazda also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety. This notice grants that petition.

Notice of receipt of the petition was published on September 11, 1992, and an opportunity afforded for comment (57 FR 41803).

During the period of July 1991 through June 1992, Mazda produced 29,622 model 929 passenger cars which were equipped with headlamps that failed to include the "O" mark required by FMVSS No. 108 for a point of reference when aiming the lamps. Further, these vehicles failed to include aiming instructions on a permanently affixed label or in the owner's manual. In addition, Mazda produced 7,000 model 626's which incorporated the "O" mark on the headlamp, but did not include aiming instructions on a permanently affixed label or in the owner's manual.

Paragraph S7.8.5.2(a)(2) *Horizontal aim* states that "[a]n 'O' mark shall be used to indicate alignment of the headlamps relative to the longitudinal axis of the vehicle." Paragraphs S7.8.5.2(a)(1) *Vertical aim* and (a)(2) reference the necessity to provide "an equal number of graduations from the 'O' position representing angular changes in the axis." The subject headlamps do not bear the "O" mark.

Paragraph S7.8.5.2(b)(1) *Aiming instructions* states that "[t]he aiming instructions for properly aiming the headlighting system using the VHAD [vehicle headlamp aiming device] shall be provided on a label permanently affixed to the vehicle adjacent to the VHAD, or in the vehicle operator's manual."

Mazda supported its petition for inconsequential noncompliance in two ways. To support its omission of aiming instructions, Mazda offered its own

rationale. To support its omission of the "O" mark, Mazda incorporated, by reference, the rationale used by Koito Manufacturing Company, Ltd. (Koito) in its July 7, 1992, petition to NHTSA on this same issue (57 FR 33543).

Mazda supported its omission of aiming instructions with the following:

It is Mazda's belief that the designs of the VHADs incorporated in both the Mazda 929 and the Mazda 626 are so simple to use and the markings are so obvious, that even untrained individuals will have no difficulty correctly aiming the lamps using the VHAD without any instructions.

To the extent that there are individuals who would be reluctant to attempt aiming adjustments without instructions, every Mazda dealer has such information readily available.

[R]elying on outside assistance to properly aim the headlights \* \* \* is identical to the situation that has successfully existed for so many years for vehicles that require external mechanical aiming.

It is also our belief that the headlights on these vehicles will only rarely need adjustment. The vehicles are shipped with the headlights properly aimed, and unless they are involved in a crash, there will be little instance of the aim needing readjustment.

Unlike Mazda, Koito stated in its petition that the vehicles on which its noncompliant headlamps were installed included instructions in the owner's manuals as to how the headlamps could be aimed. This is not true in Mazda's case.

To support its omission of the "O" mark, Mazda incorporated, by reference, the rationale used by Koito Manufacturing Company, Ltd. (Koito) in its petition to NHTSA on this same issue (57 FR 48266). Koito's rationale for omission of the "O" mark was as follows:

(1) The purpose of the "O" mark would be to provide the base point on the scale. In place of this mark, the Koito headlamps concerned make use of a pair of lines which are clearly distinguished by their color and/or their thickness (bold). Even in the absence of the "O" mark, the user and dealer can easily determine the reference lines and perform a correct aiming adjustment.

\* \* \* \* \*

(3) Headlamps which are equipped with aiming pads allow aiming by an aimer which must satisfy Society of Automotive Engineers (SAE) J602 requirements, as stipulated by FMVSS. Of aimers meeting SAE J602 requirements and currently available on the market, the most popular is the one made by H-Company.

This aimer does not make use of the "O" mark. It features indicator scale reference lines which are very similar to Koito's VHAD (Vehicle Headlamp Aiming Device) reference lines, and which function in the same way. We believe that the great majority of the users and dealers are well accustomed to this system.

(4) Up to the present date, Koito has not received any claim or complaint representing a user's inability to determine the reference line positions.

(5) In order to demonstrate the efficacy of this aiming system, Koito has conducted a demonstration test. Ten unbiased subjects with no prior familiarity with the system were asked to readjust headlamps which had been deliberately misaligned. All ten were successful in making the required correction in the manner intended by the designers of this system.

(6) All of the concerned headlamps were subject to the test and were certified [to be in] compliance [with] all the requirements, including [the] VHAD adjusting system, in FMVSS 108 by ETL Testing Laboratories Inc., an authoritative organization in the United States. This shows that there is no problem in headlamp aiming inspection and adjustment.

No comments were received on the petition.

On October 22, 1992, NHTSA granted Koito's petition. The agency determined that failure to provide the "O" mark was inconsequential as it related to motor vehicle safety (57 FR 48266). As NHTSA noted, before filing its petition, a Koito representative met with NHTSA personnel to discuss the noncompliance, and to demonstrate its inconsequentiality. The NHTSA employees who were present at that meeting considered that the pair of bold lines provided a sufficient and unmistakable replacement for the "O" mark. In their view, vehicle owners, lacking familiarity with the new VHAD systems, would not notice that an "O" mark was missing, and would aim their headlamps with the pair of bold lines as an adequate reference point. For this reason, NHTSA granted the petition of the headlamp manufacturer.

NHTSA noted that there was an additional responsibility upon the installer of the headlamp (i.e., the vehicle manufacturer installing the lamp as original equipment) to comply with the additional requirement to provide aiming instructions. Paragraph S7.8.5.2(b)(1) of Standard No. 108, Aiming Instructions, requires that:

The instructions for properly aiming the headlighting system using the VHAD (vehicle headlamp aiming device) shall be provided on a label permanently affixed to the vehicle adjacent to the VHAD, or in the vehicle operator's manual.

NHTSA was concerned about the possible effect upon safety of the double noncompliance, and has obtained a commitment from Mazda that it will prepare and distribute an operator's manual insert which shall be furnished to the owners of the affected vehicles. In NHTSA's view, this moots Mazda's petition for noncompliance with respect to paragraph S7.8.5.2(b)(1).