

CONFIDENTIAL

BEFORE THE
FEDERAL RAILROAD ADMINISTRATION

DOCKET NO. FRA 2014--0011--N--13:
PROPOSED AGENCY INFORMATION COLLECTION ACTIVITIES;
COMMENT REQUEST

COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS
AND THE AMERICAN SHORT LINE AND
REGIONAL RAILROAD ASSOCIATION

The Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA),¹ on behalf of themselves and their member railroads, submit the following comments in opposition to FRA's request for OMB approval of the information collection activities associated with Emergency Order Docket No. DOT-OST-2014-0067.² AAR and ASLRRA suggest that the Emergency Order (EO) be withdrawn because it has resulted in information confidential from security, safety, and business perspectives being made public and because the objective of the emergency order, informing government officials of the transportation of Bakken crude oil through their jurisdictions, was already being met, and would continue to be met, if the EO is withdrawn. AAR and ASLRRA also request confidential treatment of this submission due to the discussion of the enclosures from the Federal Bureau of

¹ AAR is a trade association whose membership includes freight railroads that operate 83 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 trade association whose membership includes 450 short line and regional railroads.

² See 79 Fed. Reg. 36,860 (June 30, 2014).

Investigation (FBI) and the Transportation Security Administration (TSA), both of which have been classified by the agencies as “For Official Use Only.”

The EO requires that railroads make crude oil routing information available to State Emergency Response Commissions (SERCs). Specifically, the EO requires that a railroad provide to the SERC in each state in which it operates trains transporting 1,000,000 gallons or more of Bakken crude oil information on the number of such trains traveling per week through each county and the routes over which the trains operate.

While AAR and ASLRRRA do not believe it was DOT’s intention, the EO resulted in the information required to be disclosed by the EO to be made publicly available. Such a result is hardly a necessary consequence of informing government officials of the transportation of Bakken crude oil through their jurisdictions. Railroads were already informing government officials of the hazardous materials transported through their communities pursuant to AAR’s circular governing operating practices for the transportation of hazardous materials, OT-55.³

I. Security Interests Require that Crude Oil Route Information be Confidential

There is no doubt that crude oil routing information is sensitive information from a security perspective. On July 18, 2014, the Federal Bureau of Investigation issued a Private Sector Advisory (Attachment A) warning of the possibility of environmental extremists taking action against the transportation of crude oil by rail. The Advisory states: “Extremists may use publically available information to identify potential transportation routes.”

It is not just environmental extremists who pose a threat to the transportation of crude oil by rail. Foreign terrorists are also a risk. Two publications reportedly by Al Qaeda in the Arabian Peninsula contain threats against crude oil trains. An August 2014 publication, *Palestine: betrayal of the guilty conscience*, discusses how to make bombs and specifically lists “oil tankers and trains” as targets.⁴ In March 2014, *Inspire* magazine specifically referred to “Train crude oil” in

³ AAR, “Circular OT-55-N: Recommended Railroad Operating Practices For Transportation of Hazardous Materials,” p. 3 (Aug. 5, 2013).

⁴ *See* http://sitemultimedia.org/docs/SITE_AQAP_Palestine_Betrayal_Conscience.pdf, p. 37.

highlighting targets.⁵ Furthermore, information from Osama Bin Laden's compound indicates that Al-Qaeda has contemplated attacks on trains.⁶

It should come as no surprise, then, that the Transportation Security Administration (TSA) has released an Intelligence Note that "highlights plans to attack freight rail tank cars overseas with magnetic improvised explosive devices" (Attachment B). TSA has also used attacks on tank cars transporting flammable liquids as one of its projected threat scenarios.

Making crude oil routing information publicly available is completely inconsistent with the assessment of the FBI and TSA that crude oil trains might be targets. The public availability of this information elevates security risks by making it easier for someone intent on causing harm to target trains transporting crude oil. A person aspiring to commit harm needs an opportunity to execute. Providing more specific information than the person would otherwise have on crude oil routes would help provide that opportunity.

II. The EO Results in the Public Disclosure of Sensitive Information

Disclosure of crude oil routes to SERCs as required by the EO has proven antithetical to the security concerns expressed by the FBI and TSA. SERCs are established under the Emergency Planning and Community Right-to-Know Act of 1986.⁷ A number of states contend that under their laws, SERCs must disclose submitted information to the public.

In mandating the disclosure of information to the SERCs, DOT stated that the information

is intended for those persons with a need-to-know; that is first responders at the State and local level, as well [as] other appropriate emergency response planners. DOT expects the SERCs to treat the data as confidential, providing it only to those with a need-to-know,

⁵ See <https://azelin.files.wordpress.com/2014/04/inspire-magazine-issue-12.pdf>.

⁶ See <http://www.cbc.ca/news/world/bin-laden-raid-info-shows-interest-in-u-s-trains-1.1062600>.

⁷ 42 U.S.C. §§ 11001 et seq.

and with the understanding that recipients of the data will continue to treat it as confidential.⁸

Unfortunately, insofar as confidentiality is concerned, the result of the EO has proven inconsistent with DOT's intent. Since SERCs in many states have contended they have no choice but to make the routing information public because of the laws governing SERCs, the SERCs have refused to keep crude oil routing information confidential.

III. The EO Is Not Serving a Useful Purpose

The EO is not needed to provide emergency responders with notice that crude oil shipments are being transported through their communities because railroads have been providing that information for many years. OT-55 provides that railroads will give emergency response agencies and planning groups information on the hazardous materials transported through their communities. Class I railroads and short lines have notified communities as provided by OT-55.

For emergency response planning purposes, there is no need to disclose the actual route taken by a crude oil train. Notifying an emergency responder of the hazardous materials transported through the community, including crude oil, is sufficient.

IV. The Routing Information is Also Confidential Commercial Information

Railroading is a highly competitive business. A railroad's traffic is susceptible to shifting to competing railroads and competing modes. As is the case with any company engaged in a competitive business, railroads keep their customers confidential to the extent possible. Forced disclosure of routing information provides a means for competitors to ascertain a railroad's customers and constitutes the disclosure of confidential commercial information.

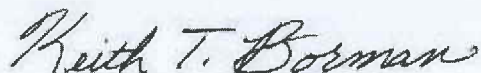
V. OMB Should Reject the Information Collection Request

AAR and ASLRRRA emphasize they support providing government officials with information on the hazardous materials being transported through their communities, including, of course, Bakken crude oil. However, the EO is not needed to accomplish that objective, as demonstrated by longstanding railroad

⁸ FRA, "Frequently Asked Questions on DOT's May 7, 2014, Emergency Order (EO) Regarding Notification to Communities of Bakken Crude Oil Shipments," www.regulations.gov, Document No. DOT-OST-2014-0067-0003.

practice. Since the objective of the EO is already being met, OMB should refuse approval of the information collection request on the grounds that it is antithetical to the nation's safety and security interests and compromises the railroads' legitimate commercial interests.

Respectfully submitted,



Keith T. Borman
Counsel for the American Short Line
and Regional Railroad Association
Suite 7020
50 F St., N.W.
Washington, D.C. 20001
(202) 585-3448



Louis P. Warchot
Michael J. Rush
Counsel for the Association
of American Railroads
Suite 1000
425 Third St., S.W.
Washington, D.C. 20024
(202) 639-2504

August 29, 2014

***Private Sector Advisory*****18 July 2014*****(U//FOUO) Increased Use of Railways to Transport Crude Oil May Lead to Acts of Environmental Extremism***

(U//FOUO) The use of railways to transport crude oil will likely increase as shale oil production in the United States and tar sands oil production in Canada increases. Environmental extremists believe the use of fossil fuels contributes to the destruction of our environment and may believe that rail transport of crude oil creates the potential for environmental hazardous train derailments and oil spills.

(U//FOUO) Currently there is no specific information to indicate environmental extremists are planning or will target railways used to transport crude or shale oil. Criminal acts, however, may occur and violate federal law if extremists perceive low-level criminal actions are ineffective in gaining public support against the use of railways or if regulatory or legislative measures are perceived as too slow or ineffective. Should criminal acts occur, it is more likely environmental extremists would attempt to delay or disrupt rail traffic to cause economic losses from the interruption or garner media attention rather than to directly sabotage a rail line that could cause a fuel spill and more environmental harm. Extremists may use publically available information to identify potential transportation routes or to target new or existing terminals, facilities, businesses, or funding entities associated with the oil industry through actions intended to cause economic losses.

(U) Environmental extremists assert criminal actions are necessary to end perceived destruction or exploitation of our natural resources and ecosystems. Possible indicators of potential criminal activity by environmental extremists include:

- (U) Graffiti opposed to the use of trains to transport crude or shale oil near railways or oil terminals;
- (U) Low-level criminal activity, minor acts of vandalism, or tactics to obstruct, disrupt, or interrupt rail traffic to delay crude oil transportation;
- (U) Threatening telephone calls or e-mails to businesses or contractors associated with the oil industry referencing oil by rail or other environmental concerns;
- (U) The use of social media platforms like Twitter or Facebook to track routes or share targeted rails or facilities;
- (U) Cyber attacks or attempted cyber attacks against businesses associated with the oil industry;
- (U) Signs of trespassing near oil terminals or railways used to transport crude oil suggesting pre-incident surveillance; and
- (U) Discovery of materials which could be used to construct improvised incendiary or explosive devices near railways used to transport shale or crude oil.

(U) FBI Joint Terrorism Task Forces (JTTFs) operate in most major cities. Individuals who obtain information or have identified leads regarding domestic terrorism-related activity are requested to contact the JTTF located in their area.

(U) This product has been prepared by the FBI Counterterrorism Division, Counterterrorism Analysis Section in coordination with the FBI Criminal Investigative Division, Criminal Intelligence Section. Comments and queries may be addressed to the Section Chief at 202-324-3000 or via e-mail at FBI_CTAS@ic.fbi.gov.

UNCLASSIFIED//FOR OFFICIAL USE ONLY



31 March 2014

(U) Situational Awareness: Potential Threat to Freight Rail

(U//FOUO) This Transportation Security Administration's Office of Intelligence and Analysis (TSA-OIA) Note highlights plans to attack freight rail tank cars overseas with magnetic improvised explosive devices (IEDs).

(U) According to January 2014 press reports, the currently detained Indian Mujahideen (IM) co-founder Yasin Bhatkal revealed IM intended to use "magnetic explosive devices" against freight rail tank cars, hoping to turn freight trains to giant firestorms.¹

(U) A police raid conducted after Bhatkal's August 2013 capture led to the discovery of IM members preparing magnetic IEDs (also known as "sticky bombs") and more than 50 magnets.^{2,3}

(U) Past "Sticky Bomb" Attacks on Transportation

(U) From 2008 to 2014, mass transit busses were successfully targeted 30 times using magnetic IEDs.⁴ In an effort to avoid detection, the devices are sometimes painted to match the surface to which they are attached.⁵

TSA-OIA is not aware of a past attempt to place a magnetic IED on a train tank car.



(U) Translations

<p>الحشوات اللاصقة (U) صاعق كهربائي بطارية 9 فولت ساعة توقيت مغناطيس قوي عازل من الورق</p>	<p>Title – "Adhesive Charge" (U) Line 1 – "Electric detonator" Line 2 – "9 Volt battery" Line 3 – "Stopwatch" Line 4 – <unclear> Line 5 – "Powerful magnet" Line 6 – "Paper insulation"</p>
--	---

UNCLASSIFIED//FOR OFFICIAL USE ONLY



(U) Outlook

(U) Although extremist media outlets provide an extensive amount of information on producing magnetic IEDs inexpensively, TSA-OIA is not aware of any plots involving the use of these devices within the Homeland.⁶

(U//FOUO) Prepared by the TSA Office of Intelligence and Analysis. For dissemination questions, contact the TSA-OIA Production Support Branch, TSA.OIA.Production@tsa.dhs.gov.

(U) TSA Office of Security Policy and Industry Engagement (TSA-OSPIE) recommends the following mitigation measures:

- **(U//FOUO) Look for anything that seems out of place or out of the ordinary**
- **(U//FOUO) Report signs of tampering, suspicious objects, and suspicious human activity**
- **(U//FOUO) DO NOT touch a suspicious object or approach a threatening person**
- **(U//FOUO) DO NOT use an electronic, cell or radio equipment within 300 feet of the object**

(U) Tracked by: HSEC-8.6; HSEC-8.8; HSEC-8.10

¹ (U) Hindustantimes.com; "(U) IM plans to convert oil carrying goods train into sticky bombs;" 16 Jan 2014; (U)

² (U) Hindustantimes.com; "(U) IM plans to convert oil carrying goods train into sticky bombs;" 16 Jan 2014; (U)

³ (U) reddiff.com; "(U) Indian Mujahideen likely to strike in May;" 24 Jan 2014; (U)

⁴ (U) start.umd.edu/gtd; National Consortium for the Study of Terrorism and Responses to Terrorism (START); Global Terrorism Database; 2012; (U)

⁵ (U) NYtimes.com; "(U) Militants turn to small bombs in Iraq attacks;" 13 Nov 2008; (U)

⁶ (U) SITEIntelligence; "(U) JSM ISI Sticky Bomb Manual;" 18 Feb 2011; (U)