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[Notices]
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DEPARTMENT OF TRANSPORTATION
Federal Railroad Administration
[FRA Emergency Order No. 17, Notice No. 3]

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

The Federal Railroad Administration (FRA) of the United States Department of Transportation finds that Emergency Order No. 17, Notice No. 1 (57 FR 41799; September 11, 1992) and Notice No. 2 (58 FR 8647; February 16, 1993) should be modified. This notice will require owners of stub sill tank cars to comply with the Association of American Railroads' O&M Circular No. 1, Supplement No. 2 (CPC-1030) issued on August 10, 1994.

Effective Date: This amendment is effective March 27, 1995.
For Further Information Contact: Edward W. Pritchard, Chief, Hazardous Materials Division, Office of Safety Enforcement, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366-9252 or Thomas A. Phemister, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366-0635.

Authority

Authority to enforce the Federal railroad safety laws, including laws pertaining to the transportation of hazardous materials by railroad, has [[Page 15812]] been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads, shippers of hazardous materials, and owners of tank cars are subject to FRA's safety jurisdiction under the Federal railroad safety laws, 49 U.S.C. 20101 et seq., and the Federal hazardous materials transportation safety laws, 49 U.S.C. 5101 et seq. FRA is authorized to issue emergency orders where an unsafe condition or practice creates ``an emergency situation involving a hazard of death or personal injury." 49 U.S.C. 20104. These orders may immediately impose ``restrictions and prohibitions * * * that may be necessary to abate the situation." (Ibid.)

Background

On September 3, 1992, FRA issued Emergency Order No. 17, Notice No. 1 (57 FR 41799) 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 EO17 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 received numerous questions regarding the implementation of EO 17. FRA issued EO 17, Notice No. 2, on February 8, 1993, responding to those questions and clarifying its enforcement policy regarding the tank car stub sill inspection program. FRA's goal was to establish understanding and to facilitate compliance early in the program. Towards the end of the first year of the stub sill inspection program, FRA's monitoring efforts disclosed some irregularities in inspection data and a generalized lack of standardized inspection techniques and written procedures. These findings sparked investigations into shops performing the required inspections. From these investigations, it became apparent that the AAR's O&M Circular No. 1 needed to be revised to eliminate these early imperfections in the stub sill program. FRA believed that AAR could be instrumental in influencing tank car owners to develop written procedures for inspections and could also provide assistance if necessary. Accordingly, on February 14, 1994, FRA wrote AAR and asked that certain subgroups of tank cars be placed into an 18-month priority inspection program. Further, FRA requested tank car manufacturers and owners to develop written procedures for each design of stub sill tank car for distribution to repair facilities performing the required inspections. AAR agreed and ordered several subgroups of tank cars into an 18-month priority inspection program. In addition, on August 10, 1994, AAR issued a supplement to its original O&M Circular No. 1. Supplement No. 2 (to O&M Circular No. 1), copy attached as Appendix A, requests owners to develop written procedures that encompass: (1) Identifying structurally significant components and welds; (2) a means of access to these components and welds, including removal of the jacket, insulation, or thermal coating, if required; (3) inspection techniques to ensure the detection of damage; and (4) proper identification, measurement, and reporting of cracks by line item on the required inspection report form (AAR Form SS-2). Supplement No. 2

also requests owners to forward a copy of the inspection procedures to the inspecting parties and to AAR.

This notice amends Emergency Order No. 17 by incorporating O&M Circular No. 1, Supplement No. 2, thus making tank car owners who do not respond to the request to develop design-specific inspection procedures liable for civil penalties. This notice will also add a requirement that copies of the design-specific inspection procedures must be sent to FRA as well as to AAR. For now, FRA will not review and approve these procedures but will use the copies sent to it as information for its monitoring program. Naturally, FRA reserves the authority to review and approve design-specific inspection procedures if, in the judgment of the agency, experience with their implementation warrants such action.

After spot-checking several repair facilities, FRA has discovered that, some 7 months after AAR's supplement was issued, shops and repair facilities still do not have design-specific procedures for conducting inspections under this emergency order. FRA cannot accept this lack of responsiveness to a program vital to transportation safety. Accordingly, this order will also require car owners to submit to AAR and to FRA their design-specific procedures within 60 days of the date of this order and will prohibit, as of the first anniversary of the AAR's Supplement No. 2 (August 10, 1995), any person from performing further inspections pursuant to this Emergency Order unless the owner has supplied the parties performing the inspection with an inspection procedure applicable to that specific design type.

FRA is aware of some concern within the community of tank car owners that O&M Circular Letter No. 1, Supplement No. 2 could be read to require duplicate, and potentially contradictory, effort by owners to develop inspection plans and procedures. FRA does not find anything in AAR's supplement to justify this concern. On the contrary, FRA encourages owners of stub sill tank cars to cooperate with each other, share information about the designs and the inspection techniques necessary for each, and develop inspection procedures based on the broadest spectrum of knowledge possible for each unique stub sill design. As outlined in FRA's February 1994 letter to AAR, the agency agrees that the written procedures should include the following elements:

- Identification of structurally significant components and welds;
- Access means to these components and welds, including removal of jacket, insulation, or thermal coating, if required;
- Inspection techniques to use to ensure the detection of

- damage; and,
- Proper identification, measurement and reporting of cracks by line item on AAR Form SS-2.

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

Finding and Order

I find that the unsafe conditions causing an emergency situation involving a hazard of death or personal injury that led to the issuance of Emergency Order No. 17 still exist and, accordingly, pursuant to the authority in 49 U.S.C. 20104, delegated to me by the Secretary of Transportation (49 CFR 1.49), it is ordered:

1. That, in addition to the requirements of Emergency Order No. 17, Notice No. 1, owners of stub sill tank cars shall also comply with the AAR Tank Car Stub Sill Inspection Program placed in effect in the Association of American Railroads' O&M Circular No. 1, Supplement No. 2, issued to members and private car owners on August 10, 1994, a copy of which is attached hereto as Appendix A and incorporated herein by reference;
2. That, in addition to furnishing copies of the procedures to AAR and to the inspecting parties, as required by Circular No. 1, Supplement No. 2, owners are required, within 60 days of the date this Notice was issued, to [[Page 15813]] furnish a copy of the procedures to FRA by sending it to the FRA Office of Safety Enforcement, Hazardous Materials Division, 400 Seventh Street, S.W., Washington, D.C. 20590;
3. That each owner of stub sill tank cars is responsible for distribution of the procedures to the parties performing the inspections and ensuring that the inspecting parties understand and follow the written procedures; and
4. That, effective August 10, 1995, no person may inspect a tank car pursuant to this Emergency Order unless the owner has supplied the inspection point with an inspection procedure applicable to that specific design type.

Relief

Tank car owners may obtain relief from this Emergency Order by inspecting the affected cars as required and repairing them as necessary.

Penalties

Any violation of this order shall subject the person committing the violations to a civil penalty of up to \$20,000. 49 U.S.C. 21301. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. 20112.

Notice to Affected Persons

This Notice No. 3 will be published in the Federal Register and will be sent by mail or facsimile to the Association of American Railroads, The American Short Line Railroad Association, the Regional Railroads of America, the Railway Progress Institute, all members of the AAR Tank Car Committee, the Chemical Manufacturers Association, and the American Petroleum Institute. These organizations are encouraged to make wide distribution of this modification of Emergency Order No. 17 within their membership and to other known interested parties.

Issued in Washington, D.C. on March 20, 1995.
Donald M. Itzkoff,
Deputy Administrator.

Appendix A--Association of American Railroads' O&M Circular No. 1, Supplement No. 2

The text of the Association of American Railroads' O&M Circular No. 1, Supplement No. 2 (CPC-1030), as issued on August 10, 1994, over the signature of Mr. J.J. Robinson, Senior Assistant Vice President, Operations and Maintenance Department, Casualty Prevention Division is as follows:

AAR O&M Circular No. 1; Supplement No. 2 Tank Car Stub Sill Inspection Program

1. Audits of the inspections being performed at several tank car facilities have revealed the need for each tank car owner to develop written inspection procedures for each unique stub sill design represented in his or her fleet, to distribute the procedures to the parties performing the inspections, and to ensure that the inspecting parties fully understand and consistently follow the written procedures. These written procedures should include the following elements:

- Identification of structurally significant components and welds;
- Access means to these components and welds, including removal of jacket, insulation or thermal coating, if required;
- Inspection techniques to use to ensure the detection of damage; and,
- Proper identification, measurement and reporting of cracks by line item on AAR Form SS-2.

In order to ensure the quality of the data and consistency of the inspection results, owners are requested to develop these procedures and to forward them to the inspecting parties as soon as possible. A copy of the procedures should also be filed with AAR, to the attention of the Manager - Freight & Tank Car Design; 50 F Street NW; Washington, DC 20001. Owners should contact the builders for assistance in the development of these procedures.

2. The SILSPEC software used to report the results of stub sill inspections has been updated to include a more comprehensive "look-up" of builders and stub sill design styles. A paper copy of the look-up table and the referenced Figures is enclosed, as is a table of Stub Sill Design Style templates, which defines weld locations that must and must not be reported for each design. If there is a need to report cars built to any of the designs that have been added to the table, a copy of the updated software may be obtained from Paul Kinnecom at 202/639-2147 (FAX 202/639-2930).

(Note: Because the AAR's O&M Circular No. 1, Supplement No. 2 has been sent to all AAR members and to private car owners, FRA is not reproducing the inspection program's table and figures in the Federal Register.)

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