

*Alcohol and Drug Use*, 49 CFR part 219, which is FRA's alcohol and drug regulation that governs prohibitions, post-accident testing, testing for cause, identification of troubled employees, pre-employment testing, and random testing. The petitioner states that the railroad is a small non-profit membership based tourist operation with nine miles of track, 11 hours of service employees, and infrequent joint operations with the Puget Sound and Pacific Railroad, and Tacoma Rail.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2003-15753) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL-401, Washington, DC 20590-0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), or you may visit <http://dms.dot.gov>.

Issued in Washington, DC, on August 27, 2003.

**Michael Logue,**

*Deputy Associate Administrator for Compliance and Program Implementation.*  
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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

#### Sumpter Valley Railroad Restoration, Inc.

[Docket Number FRA-2003-15641]

The Sumpter Valley Railroad seeks a waiver of compliance from the Inspection and Maintenance Standards for Steam Locomotives, 49 CFR part 230, published November 17, 1999. Section 230.3(c)(1) of the standards requires steam locomotives having flue tubes replaced after September 25, 1995 to request Special Consideration to come under the new requirements by January 18, 2001 or undergo a one thousand four hundred seventy-two service day inspection (49 CFR 230.17) prior to being allowed to operate under the requirements. The Sumpter Valley Railroad Restoration, Inc. (SVRY) seeks an extension of time beyond January 18, 2001 to file for Special Consideration for SVRY steam locomotive number 19 which had the flue tubes replaced and was returned to service in May of 1996.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA-2003-15641) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL-401 (Plaza Level), 400 7th Street SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are

available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or at <http://dms.dot.gov>.

Issued in Washington, DC on August 27, 2003.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Notice of Safety Advisory

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Notice of FRA Safety Advisory 2003-02.

**SUMMARY:** FRA is issuing Safety Advisory 2003-02 advising all persons involved in loading and unloading products from railroad tank cars that they cannot rely on internal excess flow valves to stop the flow of product except under the limited conditions for which these valves were designed and installed.

#### FOR FURTHER INFORMATION CONTACT:

Thomas A. Phemister, Hazardous Materials Specialist, Office of Safety, RRS-12, Mail Stop 25, Federal Railroad Administration, Department of Transportation, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202-493-6050).

#### SUPPLEMENTARY INFORMATION:

##### Factual Background

On July 14, 2001, at the Atofina Chemicals, Inc., plant in Riverview, Michigan, a pipe attached to an unloading fitting on a railroad tank car fractured and separated, causing the release of methyl mercaptan, a poisonous, flammable gas. The ensuing fire led to the rupture of hoses on an adjacent tank car containing chlorine, a poisonous, corrosive gas. Before the fire

was extinguished about six hours later, three employees in the plant had been killed, and several other employees required treatment for exposure to the chemicals. About 2,000 residents of the area surrounding the plant were evacuated for about 10 hours.

In the course of its investigation, the National Transportation Safety Board (NTSB or the Board) determined that a contributing cause of the accident and its severity was the plant's reliance on the tank car excess flow valves<sup>1</sup> to activate and stop product flow if a hose or unloading pipe broke.

Also as part of the NTSB investigation, it was determined that both the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) had required Atofina to develop safety plans for the Riverview facility. As a mandatory part of the plans, the company had to consider safeguards to reduce both the risk and the consequences of a catastrophic release of the hazardous materials present at the plant. Both the risk management plan required by EPA and the process safety management plan required by OSHA dealt specifically with the potential for the failure of a flexible hose used in the tank car unloading process that delivered methyl mercaptan into the plant's industrial process. Under both plans, Atofina stated that the release of methyl mercaptan would be stopped by the automatic closure of the tank car's excess flow valves, specifically noting that this would occur even if a pipeline or unloading hose ruptured.<sup>2</sup>

Following its investigation into the accident at the Atofina facility in Riverview, Michigan, the Board issued several recommendations. One of them recommended that FRA:

Issue a hazardous materials bulletin to warn companies involved in tank car loading and unloading operations that tank car excess flow valves cannot be relied upon to stop leaks that occur during those operations.<sup>3</sup>

FRA completely agrees with the safety concerns of the Board in this matter.

The NTSB has previously investigated accidents involving the release of dangerous chemicals during industrial

accidents and, in response to an accident in Baton Rouge, Louisiana, on July 30, 1983, the Board issued a report stating that excess flow valves were not designed to act as emergency shutoff devices during cargo transfer.<sup>4</sup>

#### **Excess Flow Valves in the Railroad Hazardous Materials Regulatory Environment**

As a general rule, the specifications for tank cars, at 49 CFR Part 179, include excess flow valves as a permissive feature on what the regulations refer to as "pressure" tank cars and do not mention the devices in the specification for "non-pressure" tank cars. The regulations state:

The interior pipes of the loading and unloading valves shall be anchored and, except as prescribed in § 179.102 or § 179.103, may be equipped with excess flow valves of approved design. (Emphasis supplied.)<sup>5</sup>

The packaging requirements in § 173.314 require excess flow valves for the interior pipes of loading/unloading valves, sampling devices, and gauging devices on tank cars transporting materials with a primary or secondary hazard of 2.1 (flammable gas); excess flow valves are also required on the interior pipes of liquid discharge valves on tank cars transporting chlorine.<sup>6</sup> FRA believes that most cars built to the pressure car standards have excess flow valves, but the same cannot be said for non-pressure cars, many of which, in fact, transport commodities at pressures greater than the ambient atmosphere.

An excess flow valve is, typically, a metallic device inserted into the interior piping of a tank car, just below the valve(s) used to load and unload the car. In the event that the valves are sheared off in a railroad accident, there will be a sudden rush of product out the opening thus created. With nothing to impede the flow of fluid product, the excess flow valve will move toward the opening and seat, thus sealing off the opening.

In response to concerns that the then-current regulatory provision for excess flow valves might be ambiguous, in 1985 the DOT published a notice of proposed rulemaking to amend the tank car specifications by adopting what is now the contemporary standard. Proponents of the clarification stated that tank-mounted excess flow valves

are not intended to substitute for adequate excess flow equipment in plant loading systems. "The only use of such valves is for protection against loss of lading due to shearing of external closure during transit."<sup>7</sup>

The hazardous materials regulations (HMR) are quite clear that excess flow valves are limited in purpose and scope:

An excess flow valve as referred to in this specification, is a device which closes automatically against the outward flow of the contents of the tank in case the external closure valve is broken off or removed during transit \* \* \*

Excess flow valves, by their nature, must encounter a high-volume, surging flow of product to be activated. If that were not the case, they might function in unintended situations, such as when a tank car is being unloaded with the aid of a strong pump. As designed, essentially any apparatus attached to the outside of the external closure valve will create sufficient internal friction (whether hose or pipe) that the flow of product will not be sufficient to activate the excess flow valve.

#### **Safety Warning**

Excess flow valves, by both design and regulation, are intended to function only when the external closure valve is sheared, broken off, or otherwise removed during transit. These devices may also function as a back-up flow control device during tank car loading or unloading activities. While FRA neither regulates nor enforces the risk management plans required by EPA or the process safety management plan required by OSHA, it does have considerable expertise in the design, construction, and use of railroad tank cars and the safety features designed into them. FRA cannot urge strongly enough that the excess flow valve feature commonly included in pressure-type tank cars is not to be relied upon to stop leaks that may occur during loading or unloading operations.

Issued at Washington, DC, on August 28, 2003.

**George Gavalla,**

*Associate Administrator for Safety, Federal Railroad Administration.*

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<sup>1</sup> Excess flow valves appear in the hazardous materials regulations, inter alia, at 49 CFR 179.100-13(c) and (d). The Tank Car Manual, (Specifications for Tank Cars, Manual of Standards and Recommended Practices, Section C-III, Association of American Railroads, Washington, DC, © 2000, Appendix A, Table A1) uses the term "check valve."

<sup>2</sup> Correspondence dated July 16, 2002, from Marion C. Blakely, Chairman, NTSB, to Allan Rutter, Administrator, FRA, summarizing the Board's investigation, including a public hearing, of this incident.

<sup>3</sup> NTSB Safety Recommendation R-02-16.

<sup>4</sup> NTSB, Vinyl Chloride Monomer Release From a Railroad Tank Car and Fire, Formosa Plastics Corporation Plant, Baton Rouge, Louisiana, July 30, 1983, Hazardous Materials Accident Report NTSB/HZM-85/08 (Washington, DC: NTSB, 1985).

<sup>5</sup> 49 CFR 179.100-13(b) Venting, loading and unloading valves, measuring and sampling devices.

<sup>6</sup> 49 CFR 173.314 (j) and (k), respectively.

<sup>7</sup> Docket HM-166W, NPRM at 53 FR at 36418, September 19, 1988; Final Rule adopting the amendment as proposed, 54 FR 38790, September 20, 1989.

<sup>8</sup> 49 CFR 179.100-13(d).