



U.S. Department
of Transportation

Research and
Special Programs
Administration

Office of the
Chief Counsel

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Washington D.C. 20590

OCT 3 1997

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Dear Mr. Day:

The purpose of this letter is to respond to your September 15, 1997 letter and confirm several points that we discussed during August 25, 1997 and September 5, 1997 telephone conversations regarding the final rule published in the Federal Register on August 18, 1997, in RSPA docket HM-225 (62 Fed. Reg. 44038).

First, the final rule in docket HM-225 provides alternatives to compliance with the long-standing requirement in § 178.337-11(a)(1)(i) that "Each internal self-closing stop valve and excess flow valve must automatically close if any of its attachments are sheared off or if any attached hoses or piping are separated." In lieu of an automatic closure system, an alternate requirement in § 171.5(a)(1)(iii) specifies that a person attending the unloading of a cargo tank motor vehicle shall promptly activate the internal self-closing stop valve and shut down all motive and auxiliary power equipment in the event of an unintentional release of lading to the environment. Subparagraph 171.5(a)(1)(iii)(C) allows that a fully operational remote-controlled system may be used to promptly activate the internal self-closing stop valve and that:

the attendance requirements of § 177.834(i)(3) of [the Hazardous Materials Regulations (HMR); 49 C.F.R. § 177.834(i)(3)] are satisfied when a qualified person:

- (1) Is carrying a radio transmitter that can activate the closure of the internal self-closing stop valve;
- (2) Remains within the operating range of the transmitter; and
- (3) Has an unobstructed view of the cargo tank motor vehicle at all times that the internal stop-valve is open.

During our conversations, you stated that if your clients choose to install remote-controlled systems on their fleet of cargo tank motor vehicles, as permitted under § 171.5(a)(1)(iii)(C), they cannot comply with the "requirement" set forth in the second sentence of that subparagraph, without employing a second operator.

Section 177.834(i)(3) requires a person attending the unloading of a cargo tank to be awake, have an unobstructed view of the cargo tank, and be within 25 feet of the cargo tank. The language in § 171.5(a)(1)(iii)(C), quoted above, does not impose a new requirement, but allows the operator to be more than 25 feet from the cargo tank if the operator has an unobstructed view of the cargo tank, is carrying a radio transmitter that can activate the internal self-closing stop valve and remains within the operating range of the transmitter. Notwithstanding this provision, an operator who uses a remote-controlled system to promptly activate the internal self-closing stop valve under § 171.5(a)(1)(iii)(C) may remain within 25 feet of the cargo tank during unloading. It is our understanding that almost all unloading operations from highway transports, as well as many unloading operations from bobtail tanks, are to receiving tanks located within 25 feet of the cargo tank motor vehicle.

Based on our discussion of § 171.5(a)(1)(iii)(C), you indicated that you would advise your clients that they can satisfy the requirement in § 171.5(a)(1)(iii) by installing a fully operational remote-controlled system capable of stopping the transfer of lading by operation of a transmitter carried by a qualified attendant, and that they are not required to take advantage of the waiver provision in § 171.5(a)(1)(iii)(C). You also stated, however, that you intend to advise your clients that they may satisfy the attendance requirements in § 177.834(i)(3) by having a single operator remain in proximity to, and maintain an unobstructed view of, any part of the delivery hose during unloading, even when the operator does not have an unobstructed view of the cargo tank. As I explained during our conversations, RSPA rejects that interpretation of the § 177.834(i)(3) attendance requirements. It is neither safe nor in conformance with the attendance requirements for a cargo tank operator to be out of sight of the cargo tank during an unloading operation, particularly considering that liquefied petroleum gas is highly flammable and that the vehicle's engine, a potential source of ignition in the event of a leak at or near the cargo tank, is running during the unloading operation.

Because RSPA became aware of this erroneous industry interpretation of the long-standing attendance requirements during public workshops held by the agency after issuance of the interim final rule in docket HM-225, the agency believed it necessary to alert industry, in the preamble to the final rule in docket HM-225, that the industry interpretation is incorrect. Specifically, the agency stated:

RSPA rejects the industry's interpretation of the long-standing operator attendance rules in § 177.834(i)(3) that a single operator satisfies requirements for an unobstructed view of the cargo tank, and is within 25 feet of the cargo tank, merely by being in proximity to, and having an unobstructed view of, any part of the delivery hose, which may be 100 feet or more away from the cargo tank motor vehicle, during the unloading (transfer) operation. The rule clearly requires an operator be in a position from which the earliest signs of problems that may occur during the unloading operation are readily detectable, thereby permitting an operator to promptly take corrective measures, including moving the cargo tank, actuating the remote means of automatic closure of the internal

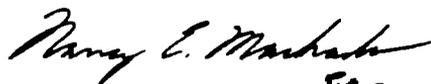
self-closing stop valve, or other action, as appropriate. RSPA contends the rule requires that an operator always be within 25 feet of the cargo tank. Simply being within 25 feet of any one of the cargo tank motor vehicle's appurtenances or auxiliary equipment does not constitute compliance.

62 Fed. Reg. at 44044.

In order to be in compliance with §177.834(i), an operator must be awake, must remain within 25 feet of the cargo tank and must have an unobstructed view of the cargo tank during the unloading process. Alternatively, under § 171.5(a)(1)(iii)(C), an operator may move to positions beyond 25 feet of the cargo tank provided the operator maintains an unobstructed view of the cargo tank, carries a radio transmitter that can activate the closure of the internal self-closing stop valve and remains within the operating range of the transmitter.

Finally, you asked what RSPA intended by imposing a March 1, 1999 expiration date for the HM-225 final rule. Specifically, you question whether RSPA intended that all MC 330 and 331 cargo tank motor vehicles be retrofitted with passive systems that meet the current requirements in § 178.337-11(a)(1)(i) by the time the final rule expires. On August 18, 1997, RSPA published an Advance Notice of Proposed Rulemaking in RSPA docket HM-225A (62 Fed. Reg. 44059) requesting comments regarding jurisdiction, emergency discharge controls, qualification and use of delivery hoses, and attendance requirements. The questions posed in the ANPRM are indicative of the range of options RSPA is considering. Nevertheless, your clients may choose to install systems that meet the current requirements in § 178.337-11(a)(1)(i) if they so desire; the final rule simply provides a temporary alternative to compliance with the § 178.337-11(a)(1)(i) requirements.

Sincerely,



Nancy E. Machado *EM*
Attorney