



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

MAY 01 2013

Mr. John Byrne
Manager, Regulatory Compliance
Rail Services
General Electric Capital Corporation
161 North Clark Street, 7th
Chicago, IL 60601

Reference No. 12-0225

Dear Mr. Byrne:

This is in response to your October 2, 2012 letter and March 14, 2013 telephone conversation with a member of my staff requesting clarification of the new definition for a tank car "coating/lining owner" added to § 180.503 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) in a final rule the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued on June 25, 2012 under Docket No. PHMSA-2010-0018 (HM-216B). You ask PHMSA to confirm if your understanding of the issues discussed in the following two paragraphs is correct. You also ask who would be defined as the tank car coating/lining owner if the person financially responsible for purchasing the coating/lining and the person financially responsible for maintaining the coating/lining are different people? We apologize for the delay in responding and any inconvenience this may have caused.

You state the HMR's new definition for "coating/lining owner" differs from the one described in Department of Transportation (DOT) Special Permit DOT-SP 12095 and the one proposed in the notice of proposed rulemaking (NPRM) issued under Docket No. HM 216B. The definition in DOT-SP 12095 states the coating/lining owner "means the party responsible for bearing the cost of the maintenance of the lining or coating," whereas the definition in the NPRM states it "means the person responsible for bearing the costs of maintaining the lining/coating." The final rule states "*Coating/lining owner* means the person with the financial responsibility for purchasing and maintaining the integrity of the interior coating or lining."

You also state this new definition is inconsistent with how the tank car industry defines these terms in § 2.1.2 of Appendix D of the Association of American Railroads (AAR) Manual of Standards and Recommended Practices, which describes it as "the party responsible for bearing the cost of the maintenance for the lining or coating," and in Appendix U, which describes it as "the party responsible for the maintenance for the lining or coating." You further state this change will have unintended consequences for General Electric Rail Services

and other tank car owners without promoting rail safety. In addition, you state inclusion of the word "purchaser" to the new definition adds considerable ambiguity to this definition in that the owner of a new manufactured tank car can bill back the purchase price coating/lining to the lessee who is then contractually responsible for its maintenance or include the cost of the coating/lining installation the lessee requests in the lessee's monthly lease payments. Similarly, you state it is the industry's practice and also your company's position that the entity financially responsible for a tank car's coating/lining maintenance is considered and contractually defined as the coating/lining owner without consideration of who actually financed its initial purchase.

PHMSA agrees there is inconsistency with the definition of a tank car coating/lining owner in the final rule and its iterations in the DOT-SP 12095, NPRM, and AAR Manual of Standards and Recommended Practices. Thank you for bringing this matter to our attention. PHMSA will revise this definition in a future rulemaking to remove the words "purchasing and" to clarify that the person responsible for the maintenance of a tank car's coating or lining is the person financially responsible for maintaining a tank car's coating or lining. As you stated earlier, this approach is compatible with the rail industry's historical use of this definition.

I hope this satisfies your request. If you have additional questions, please contact Mr. Karl Alexy, Staff Director, Hazardous Materials Division, Federal Railroad Administration, at 202-493-6229.

Sincerely,



T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

BT



Edmonson
§ 180.503
Tank Cars
12-0225

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October 2, 2012

U.S. DOT
PHMSA Office of Hazardous Materials Standards
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East Building
1200 New Jersey Avenue SE
Washington, DC 20590-0001

Re: Request for Interpretation of Coating/Lining Owner, 49 C.F.R. § 180.503

Dear Sir or Madam:

Pursant to 49 C.F.R. § 105.20, General Electric Railcar Services Corporation ("GERS") is requesting an interpretation related to the Final Rule published by the Pipeline and Hazardous Materials Safety Administration ("PHMSA") on June 25, 2012, under Docket PHMSA-2010-0018 (HM-216B). As you are aware, the Final Rule includes the following definition:

Coating/Lining Owner means the person with the financial responsibility for purchasing and maintaining the integrity of the interior coating or lining.

See 49 C.F.R. § 180.503.

As the owner of almost 30,000 tank cars, GERS has extensive experience and involvement with coatings and linings. GERS has concerns that this new definition will present unintended consequences for tank car owners without furthering the objective of the Final Rule to promote safety within the rail industry.

GERS filed a comment in Public Docket PHMSA-2010-0018 (HM-216B) on September 21, 2012, in which it requested that PHMSA amend the definition of coating/lining owner to mean "the person responsible for bearing the costs of maintaining the lining/coating," which is the definition proposed in the NPRM and the definition commonly utilized in the rail industry. In that letter, GERS requested alternative relief in the form of an interpretation of the new definition. See Attachment A (September 21 Comment). I re-iterate the significant points of that letter here.

GERS is sending the present request for interpretation because this issue has a significant impact on GERS' business and it is unclear whether the definition of coating/lining owner will be amended as requested in GERS' September 21, 2012 public comment. Further, it is unknown when PHMSA will take further action related to HM-216B and the various comments filed by others in the industry following the publication of the Final Rule.

The new definition differs from the proposed definition published in the Notice of Proposed Rulemaking ("NPRM") and from the definition set forth in DOT-SP 12095. See Hazardous Materials:

Incorporating Rail Special Permits Into the Hazardous Materials Regulations, 76 Fed. Reg. 51324, at 51324 (Aug. 18, 2011) (“Lining/coating owner means the person responsible for bearing the costs of maintaining the lining/coating”); DOT-SP 12095 at § 180.503 (“Lining/coating owner means the party responsible for bearing the costs of the maintenance of the lining or coating”). It is also inconsistent with how the tank car industry has historically defined the term. See AAR Manual of Standards and Recommended Practices, Appendix D, § 2.1.2 (defining “lining/coating owner” as “the party responsible for bearing the cost of the maintenance for the lining or coating”); Appendix U (defining “lining or coating owner” as “the party responsible for the maintenance for the lining or coating”).

In addition to these inconsistencies, the inclusion of the concept of purchaser adds considerable ambiguity to the definition of coating/lining owner. In many situations, a tank car owner will purchase a coating/lining when purchasing a newly manufactured tank car, and then bill back the purchase price of the coating/lining to its tank car lessee who is then contractually required to pay for the maintenance costs associated with the coating/lining and is contractually defined as the coating/lining owner. Similarly, a lessee may specify a particular coating/lining which the tank car owner will install in existing cars at the beginning of a lease, with the purchase price of the coating/lining included in the lessee’s monthly lease payments. In this situation, the lease will also specify that the lessee is financially responsible for maintaining the lining/coating and is contractually defined as the coating/lining owner.

It has been industry practice, both under DOT-SP 12095 and under AAR Appendices D and U, for the entity that is financially responsible for the maintenance of the coating/lining to be viewed as the coating/lining owner, without consideration of who actually financed the initial purchase of the coating/lining.

It is GERS’ position that when it purchases/finances a coating/lining as part of the purchase of a newly manufactured tank and then enters a lease agreement wherein the lessee is financially responsible for maintaining the coating/lining and wherein the monthly lease payment was calculated to include payment related to the purchase of the coating/lining, the lessee rather than GERS is deemed the coating/lining owner under 49 C.F.R. § 180.503. Similarly, it is GERS’s position that when it pays to have a coating/lining installed in an existing car at the beginning of a lease that obligates the lessee to bear the costs of maintaining the coating/lining, and then bills back the purchase cost of the coating/lining purchase and installation to the lessee as part of the lease agreement, the lessee rather than GERS is considered to be the coating/lining owner per 49 C.F.R. § 180.503. Please confirm that GERS’ interpretation of coating/lining owner under these facts is correct.

GERS is also requesting an interpretation regarding which entity would be viewed as the coating/lining owner based on the following scenario:

GERS leases a coated/lined tank car to Lessee A for a ten year term. GERS finances the installation of the coating/lining at the beginning of the lease. Per the lease agreement with Lessee A, Lessee A is financially responsible for bearing the costs of maintaining integrity of the coating/lining. The cost of the coating/lining purchase is billed back to Lessee A as part of Lessee A’s monthly lease payments. Five years into the lease term, Lessee A defaults on the lease and the tank car is returned to GERS with the coating/lining intact and in good condition. GERS enters a new lease with Lessee B. The lease with Lessee B states that Lessee B is financially responsible for bearing the costs of maintaining the integrity of the coating/lining.

Given that the current definition of coating/lining owner defines the owner as the person with the financial responsible for purchasing and maintaining the coating/lining, who would be defined as the coating/lining owner in the situation described above wherein the person financially responsible for purchasing the coating/lining and the person financially responsible for maintaining the coating/lining are different people?

If you need further information, please let me know. I look forward to receiving PHMSA's interpretation of the new coating/lining owner definition.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Byrne", is written over a circular stamp or watermark.

John Byrne
Manager, Regulatory Compliance
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312-853-5026

Cc: Karl Alexy
Eileen Edmonson