



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

FEB 25 2019

Robert Sech
Wells Fargo Rail
9377 West Higgins Road
Suite 600
Rosemont, IL 60018

Reference No. 18-0045

Dear Mr. Sech:

This letter is in response to your March 21, 2018, email and April 10, 2018, subsequent phone conversation with a member of my staff requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to tank cars. You explain that Wells Fargo Rail owns a fleet of approximately 6,000 tank cars but does not own a tank car manufacturing or repair facility. You ask if Wells Fargo Rail would meet the definition of a hazmat employer and have hazmat employee(s) based on performance of specific business operations referenced below.

We have paraphrased and answered your questions as follows:

- Q1. You ask if a tank car owner would be defined as a hazmat employer if the tank car owner does not own or manage a tank car repair or manufacturing facility.
- A1. Based on the information provided, it is the opinion of this Office that Wells Fargo Rail is considered a hazmat employer because the company employs a person to oversee the qualification and maintenance program for DOT specification tank cars (i.e., maintains DOT specification tank cars). Per the definition in § 171.8, a hazmat employer is a person who employs or uses at least one hazmat employee to perform a function related to the transportation of hazardous materials in commerce; causes hazardous materials to be transported in commerce; or designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs or tests a package, container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous materials in commerce.
- Q2. Provided a tank car owner is not considered a hazmat employer, you ask if an employee who approves the financial aspects for tank car repair estimates and invoices would be defined as a hazmat employee in accordance with § 171.8.

- A2. It is the opinion of this Office that an employee who manages tank car estimates and invoices for repairs is not considered a hazmat employee solely on the basis of performing that specific business function.
- Q3. You ask if all repairs done by a certified tank car repair facility, in accordance with § 179.7(d), require the repair facility to establish written repair procedures to employees of the facility that work performed on the tank car meets specifications, the Association of American Railroads (AAR) approval, and the owner's acceptance criteria. Moreover, you ask if an owner's acceptance criteria can simply comply with the specification and AAR approval.
- A3. Regarding the requirements for written procedures, the answer is yes. According to § 179.7(d), each tank car facility shall provide written procedures to its employees to ensure that work on the tank car conforms to the specification of the tank car, AAR approval, and the owner's acceptance criteria.

Regarding whether the acceptance criteria can be limited to the specification and AAR approval, the answer is no. However, if a tank car owner does not have acceptance criteria, the owner of the tank car may provide written confirmation to allow the tank car facility to use the acceptance criteria from another tank car owner. Please note, each tank car facility must incorporate the tank car owner's Qualification and Maintenance program into their own Quality Assurance Program for the tank car facility to use another tank car owner's acceptance criteria.

- Q4. You ask if the tank car owner is in compliance with § 180.513(b) and the Continuing Analysis and Surveillance System in accordance with § 180.509 if the certified tank car facility (both new tank car manufacturing or repair) has provided drawings and specifications that show the tank car meets the requirements. In addition, you ask whether the tank car owner has a responsibility to ensure the tank car builder and/or repair facility has ordered and applied the AAR approved materials as required on the drawings/specifications.

A4. A tank car facility is responsible for reporting all work performed and observed damage, deterioration, failed components, or non-compliant parts to the tank car owner. As a tank car owner, Wells Fargo Rail is responsible for furnishing written instructions (owner's acceptance criteria) that provides tank car facilities with information to work on a tank car. In addition, the tank car owner is responsible for ensuring each specification tank car conforms to the requirements of Part 179 and Part 180 (Subpart F) in accordance with the HMR and the requirements of the AAR approval.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,



Dirk Der Kinderen
Chief, Standards Development Branch
Standards and Rulemaking Division

Bakel
Tank Cars
18-0045

January, Ikeya CTR (PHMSA)

From: Foster, Glenn (PHMSA)
Sent: Thursday, March 22, 2018 6:35 AM
To: Dodd, Alice (OST); January, Ikeya CTR (PHMSA)
Cc: DerKinderen, Dirk (PHMSA); Kelley, Shane (PHMSA); Nickels, Matthew (PHMSA)
Subject: Request for a formal letter of interpretation
Attachments: 140134.pdf; 150139.pdf

Ikeya,

Please have the attached checked in and assigned as an Interp.

Thanks,
Glenn

From: rob.sech@wellsfargo.com [mailto:rob.sech@wellsfargo.com]
Sent: Wednesday, March 21, 2018 5:06 PM
To: Foster, Glenn (PHMSA) <Glenn.Foster@dot.gov>
Subject: Request for a formal letter of interpretation

Glenn,

I am the AVP of Engineering at Wells Fargo Rail who owns a fleet of approximately 6000 tank cars. Wells Fargo Rail does not own any railcar manufacturing or repair facilities. Larry Strouse, Railroad Safety Specialist of the Federal Railroad Administration has requested information pertaining a Hazmat Employer and Hazmat Employee. I am requesting an interpretation if a tank car owner is considered a Hazmat Employer if they do not own or manage any repair facilities. Furthermore, is the normal business process regarding the person that approves the of cleaning and repairs made to tank cars considered a Hazmat Employee? I have included your 2015 interpretation response letter to Ms. Bridgett Lobstein in my request as a prior historical interpretation; however, GE Rail at that time owned and operated tank car repair facilities.

At times, the tank car owner does not have the ability to review and approve tank car repairs. An example is the double shelf coupler that is a requirement on tank cars in accordance with 49 CFR Part 179.14 and the AAR M-1002 Tank Car Manual. That device is defined as a safety system on tank cars and is part of the periodic qualification of tank cars as prescribed in 49 CFR Part 180.503. I have also include your 2016 letter of interpretation regarding running gear inspections as it pertains to 49 CFR Part 173.31. If the oversight inspection, repair and proper replacement regarding this safety system on tank cars can be done by any repair facility and railroad handling line as allowed by 49 CFR Part 179.14 and the AAR Field Manual Rules 16-18 without prior car owner's permission based on the tank car owner subscribing to the AAR Interchange Rules (see AAR Field Manual Rule A, B and #1). A second example is ability of a railroad to apply a bottom outlet cap assembly under AAR Field Manual Rule 81 without prior approval from the car owner and the repair invoiced as prescribed the AAR as the first notification to the tank car owner that repairs were made.

My request for a formal letter of interpretation pertains to the following questions:

1. Is a tank car owner defined as a hazmat employer if that tank car owner does not own or manage any tank car repair or manufacturing facility?
2. If it is deemed that a tank car owner is not a hazmat employer, is an employee of that tank car owner who approves the financial aspects of tank car repair estimates/invoices defined as a hazmat employee as defined in 49 CFR Part 171.8?

3. Based on the allowance for railroad to apply/tighten tank car service equipment (bottom outlet cap example) and for the allowance for a railroad to inspect and replace double shelf coupler in accordance with 49 CFR Part 179.14 and the AAR Field Manual Rules without obtaining oral or written permission from the tank car owner, can one interpret that all repairs done by a certified tank car repair facility under 49 CFR Part 179.7(12)d requires the repair facility to establish written repair procedures for their employees that the work on the tank car conforms to the specification, AAR approval, and owner's acceptance criteria. If the tank car owner's acceptance criteria is that specification and the AAR Approval, the owner is not required to provide any other written or oral acceptance criteria requirements.
4. If the certified tank car facility (both new car manufacturing or repair) provides drawings and specifications stating that the tank car meets those requirements, is the tank car owner in compliance with the 49 CFR Part 180.513(b) and Continuing Analysis and Surveillance System as stated in 49 CFR Part 18.509? Does the tank owner have the responsibility to ensure the tank car builder and/or repair facility has ordered and applied the AAR approved material as stipulated on the drawings/specifications? Both the new tank car acquisition and the repair process does not provide an adequate method of ensuring the tank car owner can audit that facility. Please call me, I would like to discuss this issue in more detail.

§179.14 Coupler vertical restraint system.

(a) *Performance standard.* Each tank car shall be equipped with couplers capable of sustaining, without disengagement or material failure, vertical loads of at least 200,000 pounds (90,718.5 kg) applied in upward and downward directions in combination with buff loads of 2,000 pounds (907.2 kg), when coupled to cars which may or may not be equipped with couplers having this vertical restraint capability.

(b) *Test verification.* Except as provided in paragraph (d) of this section, compliance with the requirements of paragraph (a) of this section shall be achieved by verification testing of the coupler vertical restraint system in accordance with paragraph (c) of this section.

(c) *Coupler vertical restraint tests.* A coupler vertical restraint system shall be tested under the following conditions:

(1) The test coupler shall be tested with a mating coupler (or simulated coupler) having only frictional vertical force resistance at the mating interface; or a mating coupler (or simulated coupler) having the capabilities described in paragraph (a) of this section;

(2) The testing apparatus shall simulate the vertical coupler performance at the mating interface and may not interfere with coupler failure or otherwise inhibit failure due to force applications and reactions; and

(3) The test shall be conducted as follows:

(i) A minimum of 200,000 pounds (90,718.5 kg) vertical downward load shall be applied continuously for at least 5 minutes to the test coupler head simultaneously with the application of a nominal 2,000 pounds (907.2 kg) buff load;

(ii) The procedures prescribed in paragraph (c)(3)(i) of this section, shall be repeated with a minimum vertical upward load of 200,000 pounds (90,718.5 kg); and

(iii) A minimum of three consecutive successful tests shall be performed for each load combination prescribed in paragraphs (c)(3)(i) and (ii) of this section. A test is successful when a vertical disengagement or material failure does not occur during the application of any of the loads prescribed in this paragraph.

(d) *Authorized couplers.* As an alternative to the test verifications in paragraph (c) of this section, the following couplers are authorized:

(1) E double shelf couplers designated by the Association of American Railroads' Catalog Nos.: SE60CHT, SE60CC, SE60CHTE, SE60CE, SE60DC, SE60DE, SE67CC, SE67CE, SE67BHT, SE67BC, SE67BHTE, SE67BE, SE68BHT, SE68BC, SE68BHTE, SE68BE, SE69AHTe, and SE69AE.

(2) F double shelf couplers designated by the Association of American Railroads' Catalog Nos.: SF70CHT, SF70CC, SF70CHTE, SF70CE, SF73AC, SF73AE, SF73AHT, SF73AHTe, SF79CHT, SF79CC, SF79CHTE, and SF79CE.

(Amdt. 179-42, 54 FR 38797, Sept. 20, 1989)

Qualification of	Tests and inspections	§180.509(*)
Tank	Visual inspection	d
	Structural Integrity inspection	e
	Thickness Test - Note 1	f
	Safety System inspection	h
Service Equipment	Service Equipment	a
Coating/Lining	Internal Coatings and Linings	

NOTE 1: Subparagraph (f)(2) may require thickness tests at an interval different from the other items for qualification of the tank.

Railworthy, Railworthiness for a tank car means that the tank, service equipment, safety systems, and all other components covered by this subchapter conform to the HMR, and are otherwise suitable for continued service and capable of performing their intended function until their next qualification.

Reactive to the tank or service equipment means a material that, in contact with the inner shell of the tank or with the service equipment, may react to produce heat, gases, and/or pressure which could substantially reduce the effectiveness of the packaging or the safety of its use.

Reinforced tank shell butt weld means the portion of a butt weld covered by a reinforcing pad.

Reinforcing pad means an attachment welded directly to the tank supporting major structural components for the purpose of preventing damage to the tank through fatigue, overstressing, denting, puncturing, or tearing.

Reliability means the quantified ability of an item or structure to operate without failure for the specified period of its design life or until its next qualification.

Representation means attesting through documenting, in writing or by marking on the tank (or jacket), that a tank car is qualified and railworthy. See also §§180.511 and 180.517(b).

Safety system means one or more of the following: Thermal protection systems, insulation systems, tank head puncture resistance systems, coupler vertical restraint systems, and systems used to protect d-sconnuties (e.g., skid protection and protective housings) as required under this subchapter.

Robert Sech

AVP - Engineering

Wells Fargo Rail | 9377 W. Higgins Road, Suite 600 | Rosemont, IL 60018
Office: (847) 384-5366 | Cell (219) 617-7930 | Fax (847) 318-7588

rob.sech@wellsfargo.com



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

DEC 09 2016

Mr. Donald Brittingham
A.I.D., Inc.
208 143rd Street
Ocean City, MD 21842

Reference No. 15-0139

Dear Mr. Brittingham:

This letter is in response to your July 6, 2015, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you asked if 49 CFR § 173.31 requires shippers of tank cars containing hazardous materials or the residue of a hazardous material to inspect the tank car's "running gear components (wheels, axles, brake system components, bolsters, side frames, etc.)" and all other tank car fittings like "sill steps [and] grab irons couplers"^a for defects prior to offering the tank car for transportation.

Generally, the HMR do not require an offeror of a tank car to inspect the tank car's running gear components or safety appliances (as identified by 49 CFR Part 231) for defects prior to offering the tank car into transportation. However, § 173.31 prohibits the offering of a tank car unless it meets the applicable specification and packaging requirements of the HMR, and paragraph (d) of § 173.31 sets forth the minimum requirements for an offeror's external visual inspection of a tank car being offered into transportation. Regarding the coupling gear, paragraph (d)(1)(viii) of § 173.31 specifically requires an offeror to examine, among other things, a tank car's coupler vertical restraint system for conditions that make the tank car unsafe for transportation.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

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

^a We understand your reference to "grab iron couplers" to refer to grab irons and coupling gear.

Nichels
173.31
Tank Cars

Goodall, Shante CTR (PHMSA)

15-0189

From: Geller, Shelby CTR (PHMSA)
Sent: Tuesday, July 07, 2015 12:23 PM
To: Hazmat Interps
Subject: FW: Request formal letter of interpretation

Hi Shante and Alice,

Below is a request for a formal letter of interpretation. Mr. Brittingham spoke with myself.

Mr. Brittingham's address is:

A.I.D., Inc.
208 143rd Street
Ocean City, MD 21842

Thanks,
Shelby

From: Donald brittingham [mailto:aidtrain@comcast.net]
Sent: Monday, July 06, 2015 4:22 PM
To: INFOCNTR (PHMSA)
Cc: hhenry@mchsi.com
Subject: Request formal letter of interpretation

Does part 173.31 "Use of Tank Cars" specifically (d) "Examination Before Shipping" require the shipper of tank cars containing hazardous materials or when empty the residue of hazardous materials to inspect the tank cars running gear components (wheels, axles, brake system components, bolsters, side frames, etc.) and all other tank car fittings like sill steps, grab irons couplers for defects that might make the tank car unsafe for transportation?

Thank You
Donald Brittingham
A.I.D., Inc.
302-743-2935



U.S. Department of Transportation
**Pipeline and Hazardous Materials
Safety Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

Bridgette A. Lobstein
Executive Vice President
Operations Leader – Rail Services
General Electric
161 N. Clark St.
Chicago, IL 60601

MAR 23 2015

Ref. No.: 14-0134

Dear Ms. Lobstein:

This is in response to your July 3, 2014 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171 - 180) applicable to the definition of a “hazmat employee” and the training requirements of Subpart H of Part 172 of the HMR. In your incoming letter, you state your business is divided into functions: Sales, Contract Administration, Business Development, Government Relations, Operations, Finance, Asset Management/Marketing, Compliance, Legal, Information Technology (IT) Systems, and Human Resources. The principle mission of serving your customers is through your Sales, Contract Administration, and Operations divisions. The Sales Team maintains customer relationships with the various industries served by the business. The Contract Administration Team provides customer relations support for the Sales Team on leases and billing. Operations includes oversight of shop management, car flow, fleet management, procurement, regulatory quality and compliance, Environmental Health and Safety, and Engineering. You state that you consider only Operations employees to be hazmat employees, and ask for clarification of a “hazmat employee” as defined by § 171.8 of the HMR. You also ask whether employees at the General Electric (GE) Railcar Services Chicago headquarters should be considered hazmat employees and subject to the quality assurance program (QAP) training requirements of 49 CFR Part 179.7.

In the scenario you describe, GE Railcar Services repairs, qualifies, and maintains a fleet of tank cars through its affiliated companies at locations (shops and mobile units) owned by GE Rail Services or third party providers. Some of the activities supporting the repair, maintenance, qualification, and marking of the GERS tank car fleet are performed at the Chicago headquarters (HQ) by personnel employed in different business units such as Sales, Contract Administration, and Operations.

Examples of these activities are:

1. Sales and/or Contract Administration personnel who confirm the ownership of tank car service equipment and interior coatings and linings required by 49 CFR Part 180.513.

2. Sales and/or Contract Administration personnel who approve the use of qualification and maintenance procedures developed by GE or third parties required by 49 CFR Part 180.513.
3. Sales and/or Contract Administration personnel who apply for Federal Railroad Administration (FRA) One Time Movement Approvals for nonconforming tank cars required by 49 CFR Part 174.50.
4. Engineering and Purchasing personnel who develop and approve written procedures for the repair, alteration, conversion, qualification and maintenance of tank cars, purchase replacement service equipment and gaskets required by 49 CFR 179.9 and 49 CFR Parts 180.501 through 180.517.

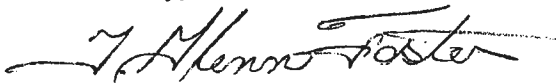
Per § 171.8, a "hazmat employee" is defined as a person employed by a hazmat employer and who, in the course of their employment, loads, unloads, or handles hazardous materials; designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce or directly affects hazardous materials transportation safety.

This Office agrees that your Operations workers would be considered hazmat employees. In other words, a person who performs duties that are regulated under the HMR is considered to be a hazmat employee. Persons who, in the normal course of their employment, perform or manage the work of those performing, one or more of the activities listed above would be considered hazmat employees and require general awareness, function-specific, safety/, security awareness and quality assurance program required by 49 CFR 172 .704 and 49 CFR 179.7 within 90 days of employment and every three years thereafter.

By contrast, we also note that sales/contracts employees would generally not be hazmat employees. For example, those persons who would not be considered hazmat employees would be Customer Service personnel whose only involvement in the tank car repair, qualification, and maintenance process is to send previously approved qualification, maintenance, and/or repair procedures to third party shops for use on GE tank cars unless they were also instrumental in securing FRA One Time Movement Approvals.

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,



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



Andrews
171.8, 179.7
Definitions
14-0134

GE Capital

July 3, 2014

Office of Hazardous Materials Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
East Building, 2nd Floor
Washington, DC 20590

Brigitte A. Lobstein
Executive Vice President
Operations Leader
Rail Services

161 N Clark Street
Chicago, IL 60601
USA

T +1 312 853 5295
F +1 312 853 5019
brigitte.lobstein@ge.com

To whom it may concern:

By way of introduction, I am the Operations Leader for General Electric Railcar Services Corporation and its affiliates, including General Electric Railcar Repair Services Corporation (collectively "GE Rail Services"). Larry Strouse, Railroad Safety Specialist of the Federal Railroad Administration has suggested that I ask for clarification of the definition of "hazmat employee" as set forth in 49 CFR § 171.8.

Specifically, GE Rail Services is seeking to understand PHMSA's interpretation of the QAP training requirements set forth in Section 179.7 (applicable to "tank car facilities") and how, if at all, they would apply to the corporate headquarters of GE Rail Services as a tank car owner.

By way of background, GE Rail Services is wholly owned by General Electric Capital Corporation, the financial services arm of General Electric. GE Rail Services consists primarily of two entities: General Electric Railcar Services Corporation which owns our railcar fleet, and General Electric Railcar Repair Services Corporation, which owns our railcar repair shops.

GE Rail Services provides financial products to the rail industry. These include operating leases, finance leases, and loan products. Operating lease products offer several financial benefits to our customers, including those related to short term (relative to the asset life) usage of the equipment. In order to offer, operating lease products, GE Rail Services owns the equipment which it offers for lease (approximately 110,000 railcars and 1,100 locomotives). In conjunction with this product, GE Rail Services offers maintenance and repair services for its equipment. This offering is made through its network of owned and third party contract shops. GE Rail Services oversees its shop networks through engineering support, process oversight, training, and quality audits. It should be noted that GE Rail Services does not offer maintenance and repair services to third party cars owners except on an incidental basis.

The corporate headquarters of GE Rail Services is located in downtown Chicago, IL. There are approximately 180 employees located there. Organizationally, the business is divided into functions: Sales, Contract Administration, Business Development, Government Relations, Operations, Finance, Asset Management/Marketing, Compliance, Legal, IT (Systems), and Human Resources. These functions serve two principal stakeholder groups: the business' shareholder GE Capital, and the customer base. Much of the work done at headquarters involves addressing the needs and concerns of those two groups. Charged with the principal missions of serving the customer are: Sales, Contract (Lease) Administration, and Operations. The Sales team is traditionally an organization that maintains customer relationships with the various industries served by the business (agriculture, grain, coal, chemicals, crude oil, pulp and paper). The Contract Administration provides customer relations support for the Sales team, handling customer concerns and questions regarding their leases, bills etc. during the term of the customer leases. It should be noted that both Sales and Contract Administration do not address equipment-related issues: these are handled by Operations. Operations includes oversight of the following activities: shop management, car flow, fleet management, procurement, regulatory quality and compliance, EH&S, and engineering. All of the employees in Operations in our corporate headquarters are salaried employees (as opposed to hourly) and do either supervisory or technical support for the field shop operations.

I give the above general description to give context to our question of whether employees at the corporate headquarters should be considered hazmat employees for purposes of the regulations. We consider only Operations employees to be hazmat employees. We have also conducted general awareness training for all headquarters employees. We do this because GE Rail Services strives to be an industry leader in the areas of safety, quality and regulatory compliance.

We believe that this is matter of importance to the leasing industry. We would be happy to meet with you to discuss our business and this issue in greater depth.

I would like to thank you in advance for your guidance to ensure our compliance with the regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Brigitte A. Lobstein". The signature is written in a cursive, flowing style.

Brigitte A. Lobstein