



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

OCT 17 2019

Daniel Shelton
President
HazMat Resources, Inc.
141 Wendover Drive
Kingsport, TN 37660

Reference No. 19-0095

Dear Mr. Shelton:

This letter is in response to your July 23, 2019, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to cargo tank motor vehicles (CTMVs) and work that is performed under the supervision of a Registered Inspector (RI). You describe a scenario in which an existing MC 331 cargo tank is remounted to a new motor vehicle chassis to complete the CTMV. Further, the assembly work includes installation of new piping, rear-end protection, and an emergency discharge system. You state that the assembly work is not performed in the presence of an RI, but that inspection and testing is carried out by an RI once the assembly work is complete.

Specifically, you ask with regard to §§ 180.413(e)(2) and 173.315(n)(3)(i), whether work that is inspected and tested after all assembly work is completed qualifies as “performed under the supervision” and “installed under the supervision” of an RI, respectively, even if the RI was not present for the assembly work performed.

The answer is no. “Under the supervision of” in the context of §§ 180.413(e)(2) and 173.315(n)(3)(i) means the RI must be present during both performance of assembly work (i.e., mounting of the chassis and installation of the emergency discharge control system) and inspection and testing.

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

January, Ikeya CTR (PHMSA)

Subject: FW: RI Question

From: Foster, Glenn (PHMSA)
Sent: Tuesday, July 23, 2019 7:38 AM
To: Dodd, Alice (PHMSA) <Alice.Dodd@dot.gov>; January, Ikeya CTR (PHMSA) <ikeya.january.ctr@dot.gov>
Subject: RI Question

Alice / Ikeya,

Please have the following logged in and assigned an Interp. I will forward some additional background information shortly.

Thanks,
Glenn

From: Kelley, Shane (PHMSA)
Sent: Tuesday, July 23, 2019 7:35 AM
To: Foster, Glenn (PHMSA) <Glenn.Foster@dot.gov>
Cc: Quade, William (PHMSA) <william.quade@dot.gov>; Bomgardner, Paul (FMCSA) <paul.bomgardner@dot.gov>; Babich, Vincent (FMCSA) <vincent.babich@dot.gov>; Simmons, James (FMCSA) <james.simmons@dot.gov>
Subject: Fwd: RI Question

Good morning Glenn -

Can we please have this logged and assigned for response?

I suspect there is a history here but hope that we could provide at least some guidance - however minimal - working with our motor carrier partners - and we can point to the petition process to fill any gap that we cannot extend to by interp. So that Mr. Shelton has a clear path forward should our answer be less specific than he would like it to be.

Shane

From: Kelley, Shane (PHMSA) <shane.kelley@dot.gov>
Sent: Tuesday, July 23, 2019 6:20 AM
To: Daniel Shelton <dshelton@hazmatresources.com>
Cc: Quade, William (PHMSA) <william.quade@dot.gov>; Simmons, James (FMCSA) <james.simmons@dot.gov>; Greene, Clay (FMCSA) <clay.greene@dot.gov>
Subject: Re: RI Question

Good morning Daniel -

Great to hear from you.

Let me review this with the team and get back to you. If we don't have any request on file that is actively being worked, would you be comfortable with me using your email as a new incoming of record?

That would allow us to review, provide what clarity we can within the bounds of a clarification letter, and ensure we take any next steps as appropriate (to include welcoming a petition etc. for additional consideration if the level of clarity requested exceeds the boundaries of an interp).

While we can't introduce a new definition through a clarification letter, my hopes would be we could provide at least some level of clarity that would be useful to you.

Best

Shane

From: Daniel Shelton <dshelton@hazmatresources.com>

Sent: Tuesday, July 23, 2019 6:53 AM

To: Kelley, Shane (PHMSA)

Cc: Quade, William (PHMSA); Simmons, James (FMCSA); Greene, Clay (FMCSA)

Subject: FW: RI Question

Good morning Shane, this is an old question (September 2004) and we (the industry and the regulators) do not have an answer. The competent authority uses the phrase "under the supervision of a registered inspector" but has not defined what the Department means by that phrase. Please provide a definition of what is meant by the term "under the supervision of a registered inspector". Please be clear and concise in your response. Does it mean the registered inspector can sit in his office but because he is the person's supervisor that means the person is working under the supervision of a registered inspector or does it mean the registered inspector must be present observing the process

the person is using to perform job functions normally associated with a registered inspector or is it something in between.

What is sad about this situation is it appears this question was asked in 2004, I am not aware of an official response in the last 15 years.

Thank you for a timely reply.

From: Shelton, Danny

Sent: Wednesday, September 1, 2004 8:42 AM

To: Mannikko, Michael <michael.mannikko@fmcsa.dot.gov>; Delorenzo, Joseph <joseph.delorenzo@fmcsa.dot.gov>

Subject: RE: RI Question

Good morning Mike, thanks for the information. I would like for you to consider modifying your request to also include what information is being included on the specification plate. I have some serious questions as to how they are marking the specification plate, or what information is currently on the specification plate, especially for new tanks, not necessarily for old tanks. Specifically the following areas:

(c)*Specification plate*. The following information must be marked on the specification plate in accordance with this section:

(c)(1) Cargo tank motor vehicle manufacturer (CTMV mfr.).

(c)(2) Cargo tank motor vehicle certification date (CTMV cert. date).

(c)(3) Cargo tank manufacturer (CT mfr.).

(c)(4) Cargo tank date of manufacture (CT date of mfr.), month and year.

Let me know what you think.

From: Mannikko, Michael

Sent: Wednesday, September 01, 2004 8:56 AM

To: Shelton, Danny; Delorenzo, Joseph

Subject: FW: RI Question

Dan,

Below is the question I have regarding work to be performed under the supervision of a registered inspector. Joe Delorenzo suggested I forward the information to you.

Thanks

Mike

A company specializing in the removal and rechassis of MC331 bobtail tanks performs work under contract to a motor carrier who is a registered CT facility. The company performing the assembly work had been assigned a CT registration number through FMCSA in April 2004. The assembler has failed to complete the registration process under Part 107.503 to identify anyone with the company as a registered inspector but continues to perform assembly functions.

The assembler mounts the cargo tanks on new motor vehicle chassis without welding on the cargo tank head or shell. The assembly process includes installation of new piping, rear-end protection and the installation of the required emergency discharge system for compressed gases in accordance with 173.315(n). A finished unit is sandblasted and painted and ready for delivery.

Upon final completion of all assembly work, the motor carrier directs one of their registered inspectors to the assembly facility to inspect the finished unit and perform the necessary tests under 49 CFR Part 180. Regulatory Parts 180 and 173 describe specific functions (180.413(e)(2) and (173.315 (n) (3) (i)) that are to be performed under the supervision of a Registered Inspector.

Does a registered inspector who inspects the equipment after all assembly work is performed including the installation of an emergency discharge control systems qualify as “performed under the supervision of a registered inspector”.

1) 180.413 (e)(2) In accordance with the original specification for attachment to the chassis or the specification for attachment to the chassis in effect at the time of the mounting, and performed under the supervision of a Registered Inspector if the mounting of a cargo tank on a motor vehicle chassis does not involve welding on the cargo tank head or shell or a change or modification of the methods of attachment.

2) 173.315 (n) (3) (i) states “...emergency discharge control equipment must be installed under the supervision of a Registered Inspector

Dodd, Alice (PHMSA)

From: Foster, Glenn (PHMSA)
Sent: Tuesday, July 23, 2019 7:39 AM
To: Dodd, Alice (PHMSA); January, Ikeya CTR (PHMSA)
Subject: FW: RI Question

Additional background information from Shelton request.

From: Kelley, Shane (PHMSA)
Sent: Tuesday, July 23, 2019 7:36 AM
To: Foster, Glenn (PHMSA) <Glenn.Foster@dot.gov>
Subject: Fwd: RI Question

Some more bg

From: Daniel Shelton <dshelton@hazmatresources.com>
Sent: Tuesday, July 23, 2019 7:33 AM
To: Kelley, Shane (PHMSA)
Subject: FW: RI Question

Shane here is some more communications with RSPA and Susan Gorsky a long time ago. Thanks

From: Shelton, Danny
Sent: Wednesday, September 8, 2004 2:45 PM
To: Gorsky, Susan <RSPA> <susan.gorsky@RSPA.dot.gov>
Subject: FW: RI Question

Susan, does the RI have to be present during the time that cargo tanks are re-mounted to a new chassis or can the RI be 100 miles away and simply come by the facility and sign off on the work?

From: Shelton, Danny
Sent: Friday, September 03, 2004 6:09 AM
To: Mannikko, Michael; Delorenzo, Joseph
Cc: Gorsky, Susan <RSPA>; Staniszewski, Stanley <RSPA>; Olson, Philip <RSPA>
Subject: RE: RI Question

Mike, unless I am missing something here, what you are saying is that Arrow tank marks their name on the specification plate as the cargo tank motor vehicle manufacturer but leaves the date of certification blank. Does Arrow provide the company a certificate of compliance with shortages identified and if so how is the issue regarding rear end protection and a DCE being addressed.

Joe, this really goes to the heart of the issue in New York where the officer cited the company that re-mounted an existing tank, RSPA said they were a manufacturer, and then issued them an exemption. Later RSPA rescinded the interpretation saying they were not a manufacturer. We will move this forward and see what happens but I can tell you that until we change these regulations like we are proposing to do, this is going to be sticky.

Susan, this is the issue that we talked about regarding the RI not being present when the work is being performed but this is really a bigger issue. Will you be back in the office on Tuesday. If so can we set up a meeting on Wednesday of next week to discuss. Mike, if that meeting happens, are you or can you be available. Joe can you be available? Distinguished colleagues from the Office of Technology are you available?

Let me know.

From: Mannikko, Michael
Sent: Thursday, September 02, 2004 8:21 AM
To: Shelton, Danny; Delorenzo, Joseph
Subject: RE: RI Question

Dan,

I may have miscommunicated what function the assembly operation is performing. It is my understanding there have been no new vessels mounted on the chassis. The operation removes the bottle from one chassis and places it on another with new plumbing etc. I am guessing approximately 15-20% of the work involves having the bottle stretched by Arrow Tank. Arrow places the specification plate adjacent to the old plate as required with all the necessary plate markings.

Mike

--D---Original Message-----

From: Shelton, Danny
Sent: Wed 9/1/2004 9:41 AM
To: Mannikko, Michael; Delorenzo, Joseph
Cc:
Subject: RE: RI Question

Good morning Mike, thanks for the information. I would like for you to consider modifying your request to also include what information is being included on the specification plate. I have some serious questions as to how they are marking the specification plate, or what information is currently on the specification plate, especially for new tanks, not necessarily for old tanks. Specifically the following areas:

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Let me know what you think.

From: Mannikko, Michael
Sent: Wednesday, September 01, 2004 8:56 AM
To: Shelton, Danny; Delorenzo, Joseph
Subject: FW: RI Question

Dan,

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2) 173.315 (n) (3) (i) states "...emergency discharge control equipment must be installed under the supervision of a Registered Inspector

-----Original Message-----

From: Delorenzo, Joseph

Sent: Thu 8/19/2004 10:16 AM

To: Mannikko, Michael

Cc:

Subject: RI Question

Mike -

I discussed this question you had about the RIs with HQ & RSPA. RSPA believes that when the regulations say under the supervision of an RI that the RI must be there to supervise the work being performed. They cannot act like an AI and just come around when ever they feel like it. I am going to get a written interp on that because I think it is a good questions we'd like to have in writing.

Let me know if you need anything else.

Joe DeLorenzo
HazMat Specialist, Midwest Service Center
19900 Governors Drive, Suite 210
Olympia Fields, IL 60461
Ph: 708-283-3572
Fax: 708-283-3579
E-mail: joseph.delorenzo@fmcsa.dot.gov