



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

JUN 05 2013

Sergeant Patrick Zatopek
Texas Highway Patrol Commercial Vehicle Enforcement
Texas Department of Public Safety – CVE
5505 Ave. N
Rosenberg, Texas 77471

Ref. No.: 13-0079

Dear Mr. Zatopek:

This is in response to your April 03, 2013 e-mail requesting clarification of the requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if § 177.834(c) which prohibits smoking on or about any motor vehicle while loading or unloading any Class 1 (explosive), Class 3 (flammable liquid), Class 4 (flammable solid), Class 5 (oxidizing), or Division 2.1 (flammable gas) materials applies to the use of electronic cigarettes otherwise known as e-cigarettes.

The answer to your question is no. The requirement prohibiting smoking during loading and unloading of the types of materials listed in § 177.834(c) is intended to address lit tobacco products. As e-cigarettes operate on battery power, and without the application of an open flame, the use of these products do not fall under the scope of prohibited activities under § 177.834(c).

I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

Delmer Billings
Senior Regulatory Advisor
Standards and Rulemaking Division

Drakeford, Carolyn (PHMSA)

Webb
§177.834
Loading & Unloading
13-0079

From: Billings, Delmer (PHMSA)
Sent: Thursday, April 11, 2013 9:02 AM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Electronic Cigarettes

Carolyn

Please log for a memo response to Paul. Have specialist see me.

Thanks,
Del

From: Bomgardner, Paul (FMCSA)
Sent: Wednesday, April 03, 2013 2:27 PM
To: Patrick.Zatopek@dps.texas.gov
Cc: Billings, Delmer (PHMSA)
Subject: Electronic Cigarettes

Request:

I am requesting clarification and/or interpretation regarding 49 CFR § 397.13 Smoking. This referenced section states:

- “No person may smoke or carry a lighted cigarette, cigar, or pipe on or within 25 feet of—
- (a) A motor vehicle which contains Class 1 materials, Class 5 materials, or flammable materials classified as Division 2.1, Class 3, Divisions 4.1 and 4.2; or
 - (b) An empty tank motor vehicle which has been used to transport Class 3, flammable materials, or Division 2.1 flammable gases, which when so used, was required to be marked or placarded in accordance with the rules in §177.823 of this title.”

My question is whether this section relates to an electronic cigarette otherwise known as an e-cigarette? My knowledge of e-cigarettes is that they use lithium batteries to power the device that converts liquid nicotine into a mist, or vapor, that the user inhales. There's no fire, no ash and no smoky smell. In my opinion, the word “lighted” in the above referenced section excepts the e-cigarettes from this regulation. I request your clarification or interpretation on this matter in order to promote uniform enforcement practices.

I will also contact the Pipeline and Hazardous Materials Administration (PHMSA) to make this same request as it relates to 49 CFR §177.834(c) on smoking while loading or unloading. Your consideration and clarification on this request is appreciated.

Thank you,
Patrick B. Zatopek, Sergeant
Texas Highway Patrol
Commercial Vehicle Enforcement - Rosenberg

Response:

Sgt. Zatopek:

The question on electronic cigarettes came up in January 2012. At that time, I conferred with Delmer Billings at PHMSA. We agreed that, because of the way electronic cigarettes operate (a small heating coil that produces steam), it

does not meet the same level of heat as a burning cigarette. Therefore, electronic cigarettes are not prohibited under 397.13 or 177.823.

I am cc'ing Mr. Billings, in case he wants to add anything.

Regards,

Paul Bomgardner

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