



U.S. Department  
of Transportation  
**Research and  
Special Programs  
Administration**

400 Seventh St., S.W.  
Washington, D.C. 20590

OCT 18 2000

Mr. Phil Stewart  
Dow Chemical Canada, Inc.  
1425 Vidal Street South  
Sarnia, Ontario  
CANADA N7T 8C6

Ref. No. 00-0132

Dear Mr. Stewart:

This is in response to your request concerning the attendance requirements for loading and unloading of a cargo tank motor vehicle under 177.834(i) of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Your questions are paraphrased and answered as follows:

**Scenario 1:**

A cargo tank arrives at our **unloading** rack. The motive power remains connected. The cargo tank is unloaded into a storage tank, tank farm or processing unit by our plant personnel.

Q1. Is the cargo tank considered to be "in transportation"? If so, do all the unloading attendance requirements apply, including the requirement that personnel remain within 25 feet of the tank during the entire offloading operation?

A1. Yes, if the carrier's obligation to transport the hazardous material is not yet fulfilled, the cargo tank is still "in transportation." All unloading requirements of the HMR apply. As provided by § 177.834(i)(2), a carrier's obligation to ensure attendance during unloading ceases, and transportation ends, when: (1) the carrier's obligation for transporting the material is fulfilled; (2) the cargo tank is placed on the consignee's premises; and (3) the motive power has been removed from the premises. Because the unloading is regulated under the HMR, due to the carrier's continuing presence, facility personnel must comply with the applicable unloading in § 177.834. As provided by § 173.30, a person who unloads hazardous materials from a cargo tank motor vehicle must comply with the applicable unloading requirements of Part 177; i.e., § 177.834. Therefore, under scenario 1, plant personnel who perform the unloading function must comply with the attendance requirements in § 177.834.

You provided other alternative scenarios, some where the motive power remained and some where the motive power was removed. If the carrier has no further obligation, as determined under § 177.834(i)(2), then the attendance requirements do not apply to anyone. If the carrier still has an obligation, the attendance requirements then apply to whoever unloads.



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**Scenario 2:**

A cargo tank motor vehicle operated by a motor carrier arrives at our **loading** rack. The motive power remains connected. The cargo tank is loaded from our storage tanks by our plant personnel.

Q2. Is the tank considered to be "in transportation"?

A2. Yes. As provided by § 177.834(i)(1), a cargo tank must be attended by a qualified person at all times when it is being loaded. The person who is responsible for loading the cargo tank is also responsible for ensuring that it is attended. A person is "qualified" if he has been made aware of the nature of the hazardous material which is to be loaded or unloaded, he has been instructed on the procedures to be followed in emergencies, he is authorized to move the cargo tank, and he has the means to do so.  
(See § 177.834(i)(4)).

Q3. Is the tank considered to be "in transportation" if the motive power is removed?

A3. No. A cargo tank removed from its motive power on private property is not considered to be in transportation. Therefore, if a motor carrier delivers a cargo tank to a shipper, disconnects the motive power and leaves the premises, the person loading the cargo tank is not responsible for ensuring attendance as provided by § 177.834(i)(1).

You also stated that your plant sites have no public access and that the loading and unloading racks have fully automated electronic monitoring capabilities that can be controlled from control rooms and that can be manually operated if the automated process malfunctions. The HMR currently do not provide for the use of an automated monitoring system, in lieu of direct human intervention, for the loading and unloading of cargo tanks in transportation. However, you may wish to seek authorization to use an automated monitoring system by submitting an application for exemption in accordance with the procedures in § 107.105. I have enclosed for your information copies of three Federal Register publications on the attendance requirements.

I hope this information is helpful.

Sincerely,



Hattie L. Mitchell  
Chief, Regulatory Review and Reinvention  
Office of Hazardous Materials Standards

Enclosures

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# Dow Chemical Facsimile Transmittal

**To:** U.S. Department of  
Transportation

**Fax:** (202) 366-3012

**From:** Phil Stewart

**Date:** 28/04/2000

**Re:** Loading/Unloading  
Requirements

**Pages:** 2

**CC:**

**Urgent** For Review Please Comment  Please Reply Please Recycle

**Notes:**

To Whom It May Concern:

Attached is a document I sent via your web page earlier today. I received a phone this afternoon stating that I was required to fax this request to your department if I a written response to my questions is required. In light of this, would you please review and send me a written response of interpretation or ruling to the questions listed and sent a reply back to the above mentioned address.

Thanks,

Phil Stewart

## Your Response Has Successfully Been Sent

The following was submitted to [hmis@rspa.dot.gov](mailto:hmis@rspa.dot.gov) on Friday, April 28, 2000 at 11:37:37

message\_type: Other

**comments:** Would you please provide your interpretation or ruling with regards attendance requirements as stipulated in 177.834 (i)(1) & (2), to the following Loading/Unloading situations I have provided below. Preamble All of our plants sites are controlled facilities. This means there is no public access. Loading/Unloading racks have automated electronic monitoring capabilities and controlled via a control rooms. We also have the ability to manually operate these racks if the event our automated process malfunctions. All our loading/unloading racks or areas are designed for full containment should a spill occur including deluge systems should a fire occur . Our plant personnel are qualified and trained on the material they are working with as well as the operating procedures. Situation #1 Cargo tank arrives at unloading rack. Motive of power remains hooked up. The tank will be offloaded into a storage tank or tank farm by our plant personnel. Is this tank considered to be "In Transport"? If so, do all the unloading attendance requirements apply as stipulated including our personnel to be within 25' of the tank during the entire offloading operation? Situation #2 Cargo tank arrives at unloading rack. Motive of power is removed and carrier leaves. The tank will be offloaded into a storage tank or tank farm by our plant personnel. Is this tank considered to be "In Transport"? If so, do all the unloading attendance requirements apply as stipulated including our personnel to be within 25' of the tank during the entire offloading operation? Situation #3 Cargo tank arrives at unloading rack. Motive of power remains hooked up. The tank will be offloaded directly into our processing unit by our plant personnel. Is this tank considered to be "In Transport"? If so, do all the unloading attendance requirements apply as stipulated including our personnel to be within 25' of the tank during the entire offloading operation? Situation #4 Cargo tank arrives at unloading rack. Motive of power is removed and carrier leaves. The tank will be offloaded directly into our processing unit by our plant personnel. Is this tank considered to be "In Transport"? If so, do all the unloading attendance requirements apply as stipulated including our personnel to be within 25' of the tank during the entire offloading operation? Situation #5 Cargo tank arrives at loading rack. The motive of power remains hooked up. The tank will be loaded from our storage tanks by our plant personnel. Is this tank considered to be "In Transport"? If so, do all the loading attendance requirements apply as stipulated. Is our personnel who will be loading this tank required to be within 25' of the tank during the entire loading period or what does attended by a qualified person at all times when the tank is being loaded mean? Situation #6 Cargo tank arrives at loading rack. The motive of power is removed and the carrier leaves. The tank will be loaded from our storage tanks by our plant personnel. Is this tank considered to be "In Transport"? If so, do all the loading attendance requirements apply as stipulated? Is our plant personnel who will be loading this tank required to be within 25' of the tank during the entire loading period or what does attended by a qualified person at all times when the tank is being loaded mean? I apologize for such a wordy document, but I wanted to capture as many of the various types of loading/unloading situations that do occur and to obtain a complete an answer as possible. Thanks in advance, Phil Stewart

organization: Dow Chemical Canada Inc.

phone: (519) 339-5047