



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

NOV -4 2005

Reference No.: 05-0248

Ms. Cindy S. Bryant
Transport Regulatory Specialist
Cognis Corporation
5051 Estecreek Drive
Cincinnati, OH 45232-1446

Dear Ms. Bryant:

This responds to your September 27, 2005 letter requesting clarification of applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to loading operations. Specifically, you ask whether the attendance requirements in § 177.834(i) apply when a shipper is filling a cargo tank prior to the carrier's arrival at the facility to take possession of the shipment for transportation.

The answer is no. The filling of a cargo tank or other bulk packaging by a shipper is regulated as a pre-transportation function under the HMR. Thus, a shipper must comply with applicable HMR requirements concerning compatibility of lading with the packaging, outage and filling limits, securing of valves and closures, venting, and similar provisions. The attendance requirements in § 177.834(i) apply to loading and unloading operations conducted by carrier personnel. Shipper personnel filling a cargo tank prior to a carrier taking possession of the hazardous material for transportation need not comply with the attendance requirements in § 177.834(i).

I trust this satisfies your inquiry.

Sincerely,

Susan Gorsky
Acting Director
Office of Hazardous Materials Standards



050248

177.834 (i)

September 27, 2005

Foster
§177.834(i)
Loading/Unloading
05-0248



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Attn: Mr. Ed Mazzullo

Subject: HM-223, Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage

I have a questions concerning HM-223 and would greatly appreciate clarification. The questions are specific to cargo tank loading.

Prior to HM-223, when the carrier's motive power was not present at the loading (filling) of a cargo tank, the cargo tank was not considered to be "in transportation". Therefore, attendance requirements in part 177 did not apply.

However, from reading HM-223 it seems it does not make a difference who loads (fills) a bulk package, such as a cargo tank. The loading/filling function is regulated when performed by any person, be it the shipper or carrier. If a shipper performs a loading (filling) function prior to the carrier's arrival, it is a pre-transportation function and is subject to all applicable regulatory requirements, as stated in the docket. Section 173.30 states that a person who is subject to the loading/unloading regulations must load or unload hazardous materials into or from a transport vehicle in conformance with applicable loading and unloading requirements of parts 174, 175, 176, and 177. I would appreciate confirmation on whether this means the attendance requirements of 177.834(i) apply when the carrier's motive power is not present.

If this interpretation is **not** what was intended as an outcome of HM-223, will PHMSA correct it in a rulemaking? If PHMSA will be addressing this in a future rulemaking, what timeline might the regulated community anticipate and what suggestions do you give for immediate compliance (i.e. which interpretation should the regulated community comply with today)?

If this interpretation is what was intended, can appropriate electronic surveillance and shut-off systems be used to meet attendance requirements?

I can be reached at 513/482-5022 to discuss.

Sincere regards,

A handwritten signature in black ink, appearing to read "Cindy S. Bryant". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Cindy S. Bryant
Transport Regulatory Specialist