



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

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

JUL 31 2014

Mr. Joe Evans
President
Evans Transportation Safety Consulting, LLC
922 Clearview Road
Moscow, PA 18444

Ref. No. 14-0096

Dear Mr. Evans:

This is a response to your May 9, 2014 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) with regard to assembling new cargo tank motor vehicles and the requirements and responsibilities of the assembler and the manufacturer. In your incoming letter you describe the following scenario:

Your client is a cargo tank manufacturer who is registered with the U.S. DOT as a manufacturer and holds a valid ASME "U" stamp. In the course of doing business, your client produces cargo tanks for customers for final assembly onto a new chassis to form a complete cargo tank motor vehicle (CTMV). Your client provides installation instructions, which do not include welding on the cargo tank wall, a certificate of compliance with specification shortages, and a completed nameplate with your client's name as the cargo tank manufacturer. Your client also provides to his customers a specification plate to attach to the cargo tank motor vehicle after it has been assembled and tested. The specification plate has no manufacturer's name or certification date.

Based on this scenario, your questions are paraphrased and answered below.

Q1. Is a person registered as a cargo tank motor vehicle assembler in accordance with Part 107, Subpart F, but does not hold an ASME "U" stamp, who: attaches a new cargo tank to a motor vehicle by means other than welding on the cargo tank wall according to the requirements in the HMR and the cargo tank manufacturer's instructions; conducts the appropriate tests and inspections; completes and signs a certificate of compliance; and stamps the certification date on the specification plate as authorized in § 178.345-15(e), considered a cargo tank motor vehicle manufacturer?

A1. No. Section 178.320 states that the term *manufacturer* means any person engaged in the manufacture of a DOT specification cargo tank, cargo tank motor vehicle, or cargo tank equipment that forms part of the cargo tank wall. This term includes attaching a cargo tank to a motor vehicle or to a motor vehicle suspension

component that involves welding on the cargo tank wall. A manufacturer must register with the U.S. DOT in accordance with Part 107, Subpart F. The definition of manufacturer was revised in a final rule issued under Docket HM-189M (October 1, 1996; 61 FR 51334). The preamble to the final rule stated that the definition was revised to clarify that the term does not include persons (i.e., assemblers) who attach a cargo tank to the motor vehicle or to a motor vehicle component if no welding to the cargo tank wall is involved (see also the enclosed copy of letter of interpretation Ref. No. 14-0010).

Q2. May the assembler stamp its name on the specification plate as the cargo tank motor vehicle manufacturer?

A2. No. According to § 178.345-15(e), regarding specification shortages, if a cargo tank is manufactured that does not meet all applicable specification requirements, thereby requiring subsequent manufacturing involving the installation of additional components, parts, appurtenances or accessories, the cargo tank manufacturer may affix the name plate and specification plate, as required by § 178.345-14(b) and (c), without the original date of certification stamped on the specification plate. The manufacturer shall state the specification requirements not complied with on the manufacturer's certificate of compliance. When the cargo tank is brought into full compliance with the applicable specification, a Registered Inspector shall stamp the date of compliance on the specification plate. The Registered Inspector shall also issue a certificate of compliance in accordance with § 180.417. This certificate of compliance issued by a Registered Inspector must show the details of each of the particular operations performed on the cargo tank, the date when the operation was performed, and the name of the person performing the operation (e.g., the name of the manufacturer and the name of the assembler) that is bringing the cargo tank into compliance. In the scenario you provide, the name of the manufacturer on the specification plate must be left blank, as the assembler is not considered to be the manufacturer; rather, the certificate of compliance will indicate that the cargo tank motor vehicle complies with the HMR.

Q3. If the assembler may not stamp its name on the specification plate as the cargo tank motor vehicle manufacturer, whose name should be stamped on the plate?

A3. See A2 above.

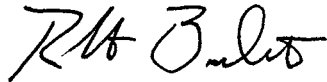
Q4. Since the manufacturer of the cargo tank may not legally stamp its name on the specification plate as the cargo tank motor vehicle manufacturer because it is not completing the final assembly, testing, and certification, who is the cargo tank motor vehicle manufacturer and whose name should be stamped on the specification plate as the cargo tank motor vehicle manufacturer?

A4. As described above, the name of the cargo tank motor vehicle manufacturer on the specification plate must be left blank; and the certificate of compliance issued by a Registered Inspector must show the details of each of the particular operations

performed on the cargo tank, the date when the operation was performed, and the name of the person performing the operation (e.g., the name of the manufacturer and the name of the assembler) that is bringing the cargo tank into compliance.

We appreciate you bringing this issue to our attention. We realize that there is a gap in the regulations and intend to address it in a future rulemaking. I hope this information is helpful. If you have any more questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. Benedict".

Robert Benedict
Chief, Standards Development
Standards and Rulemaking Division

O'Donnell
§178.320
§178.345-15 (e)
Cargo Tank
14-0096

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U. S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Attn: Mr. T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division
1200 New Jersey Avenue, SE
Washington, DC 20590
Sent Via email

May 9, 2014

Dear Glenn:

I am writing this letter on behalf of several clients in the hope of receiving a regulatory clarification regarding the assembly of new cargo tank motor vehicles. I have recently spoken to Suzanne Rach of US DOT FMCSA who referred my questions to you via email. I am aware of a recent interpretation dated March 19, 2014 to Mr. David Ford regarding the remounting of a cargo tank onto a new chassis. My questions relate to the new construction of a cargo tank motor vehicle. I submit the following:

49 CFR 107.502 *Assembly* means the performance of any of the following functions when the function does not involve welding on the cargo tank wall: (1) The mounting of one or more tanks or cargo tanks on a motor vehicle or to a motor vehicle suspension component; (2) The installation of equipment or components necessary to meet the specification requirements prior to the certification of the cargo tank motor vehicle; or (3) The installation of linings, coatings, or other materials to the inside of a cargo tank wall.

49 CFR 178.320 defines a *Manufacturer* as any person engaged in the manufacture of a DOT specification cargo tank, cargo tank motor vehicle, or cargo tank equipment that forms part of the cargo tank wall. This term includes attaching a cargo tank to a motor vehicle or to a motor vehicle suspension component that involves welding on the cargo tank wall. A manufacturer must register with the Department in accordance with subpart F of part 107 in subpart A of this chapter.

Scenario:

A cargo tank manufacturer is registered with US DOT as a manufacture and holds a valid ASME "U" stamp. They produce DOT specification cargo tanks for various customers for final assembly onto a new chassis to form a completed cargo tank motor vehicle. They provide complete installation instructions, to the assembler, which do not involve welding on the cargo tank wall, a Certificate of Compliance with specification shortages and they place a completed nameplate with their name as the cargo tank manufacturer on the plate. They also provide a specification plate to the customer for attachment to the

cargo tank motor vehicle once it is assembled and tested. There is no name stamped on the specification plate for the cargo tank motor vehicle manufacturer and the certification date is left blank.

Q1- The customer (Assembler) who receives the cargo tank does not hold an ASME "U" stamp, is registered with US DOT as an "Assembler". They assemble the cargo tank to the chassis in accordance with 49 CFR requirements and the cargo tank manufacturer's instructions, conduct the appropriate tests and inspections, complete and sign a certificate of compliance and stamp the certification date on the specification plate as they are allowed to under 49 CFR 178.345-15(e). Are they a cargo tank motor vehicle manufacturer?

Q2- Can the "Assembler" in this situation stamp their name on the specification plate as the cargo tank motor vehicle manufacturer?

Q2 – If the "Assembler" cannot stamp their name on the specification plate as the cargo tank motor vehicle manufacturer whose name should be stamped on the plate?

Q3 – The cargo tank manufacturer cannot legally stamp their name on the specification plate as the cargo tank motor vehicle manufacturer because they are not completing the final assembly, testing and certification. So who is the cargo tank motor vehicle manufacturer and whose name should be stamped on the specification plate as the cargo tank motor vehicle manufacturer?

I appreciate your time in responding to these questions. Compliance is essential in these matters. This has been and continues to be an on-going concern in the cargo tank motor vehicle industry.

Sincerely yours,

Joe Evans

Joe Evans
President
Evans Transportation Safety Consulting, LLC

Building confidence with integrity to ensure the highest quality in customer satisfaction!

Drakeford, Carolyn (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Tuesday, May 13, 2014 3:28 PM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: FORMAL INTERPRETATION REQUEST
Attachments: ASSEMBLER request for interp-signed.pdf

Expires: Friday, May 23, 2014 12:00 AM

Hi Carolyn,

This caller requested we submit this e-mail as a formal letter of interpretation.

Thanks,

Victoria

From: Joe Evans [<mailto:joevans50@hotmail.com>]
Sent: Tuesday, May 13, 2014 9:48 AM
To: INFOCNTR (PHMSA)
Subject: FORMAL INTERPRETATION REQUEST

To:

T. Glenn Foster

Glenn I have attached a request for a formal interpretation.

Thanks in advance for a quick response.

Best Regards!

Joe Evans
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O'Donnell, Lisa (PHMSA)

From: Hardridge, John (FMCSA)
Sent: Thursday, June 26, 2014 4:14 PM
To: O'Donnell, Lisa (PHMSA); Bomgardner, Paul (FMCSA)
Cc: Benedict, Robert (PHMSA); Freeman, Cheryl (PHMSA); Majors, Leonard (PHMSA); Ford, David (FMCSA); Rach, Suzanne (FMCSA)
Subject: RE: 14-0096.docx

Lisa,

Paul & I have reviewed your attached interpretation and concur however, Paul wants to know if we can wait three years to release the interp till the revisions to the rules are accomplished?????

Regards,

*John Hardridge, Lead Transportation Specialist
Hazardous Materials Division
Office of Enforcement & Compliance
Federal Motor Carrier Safety Administration
United States Department of Transportation
(202) 366-0811*

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From: O'Donnell, Lisa (PHMSA)
Sent: Thursday, June 26, 2014 4:09 PM
To: Bomgardner, Paul (FMCSA)
Cc: Benedict, Robert (PHMSA); Freeman, Cheryl (PHMSA); Majors, Leonard (PHMSA); Ford, David (FMCSA); Rach, Suzanne (FMCSA); Hardridge, John (FMCSA)
Subject: 14-0096.docx

Paul,

Do you concur with the attached letter as revised per our discussion today?

Thanks much,

Lisa

March 19, 2014

Mr. David Ford
200 Hardy Ivy Way
Holly Spring, NC 27540

Reference No. 14-0010

Dear Mr. Ford:

This is in response to your December 5, 2013 letter, and March 4, 2014 telephone conversation with a member of my staff requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the mounting of an existing Department of Transportation (DOT) specification cargo tank on a new or used motor vehicle chassis. Specifically, you ask several questions concerning the type of certification, registration, and/or documentation needed to perform this activity.

You state those performing the installation may not be cargo tank manufacturers or cargo tank motor vehicle manufacturers. You also state those performing this installation may either: (1) do so at the request of a customer who owns the cargo tank, or (2) purchase a used cargo tank and vehicle chassis and assemble it to sell to the general public. Further, you state the cargo tanks you observed undergoing this procedure are bolted, and not welded, to their new chassis. We have paraphrased your questions, and answered them in the order you provided.

Q1. Is a person, as this term is defined in § 171.8, who mounts an existing DOT specification cargo tank on a motor vehicle chassis required to issue a certificate of compliance and/or apply a specification plate to the newly mounted cargo tank motor vehicle?

A1. The answer is no provided the mounting of a cargo tank on a cargo tank motor vehicle chassis is performed: 1) with no structural change (i.e., "modification" as defined in § 180.403) to the cargo tank, 2) in conformance with the cargo tank's original specification for attachment to the chassis or the specification for attachment to the chassis in effect at the time of the mounting, and 3) under the supervision of an inspector registered with the DOT in conformance with § 107.502(b) (see § 180.413(e)(2)). If the mounting involves modifications such as welding on the cargo tank head or shell, or a change or modification of the tank's method of attachment to the chassis, § 180.413(e)(1) requires the person mounting a cargo tank on a motor vehicle chassis to perform this task in conformance with § 180.413(d)(2), which include modifications to the cargo tank's specification plate, and that this task be certified through the issuance of a certificate by a Design Certifying Engineer (DCE).

- Q2. Does the person who mounts an existing DOT specification cargo tank on a motor vehicle chassis meet the definition of a "cargo tank motor vehicle manufacturer," and must he or she be registered as such?
- A2. A person who mounts a DOT specification cargo tank on a motor vehicle or to a motor vehicle suspension component without making changes to the cargo tank's structure or design, such as through bolting in a manner that does not affect a cargo tank's structure or design, is not a cargo tank manufacturer as this term is defined in § 178.320(a). This person is performing a cargo tank "assembly," and must register to perform this type of activity as an assembler in conformance with 49 CFR Part 107, Subpart F, entitled "Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers" (see §§ 107.502(a)(1)(i), 107.502(b), and 180.413(a)(3)). Section 178.320(a) defines a cargo tank "manufacturer" as any person who engages in the manufacture of a DOT specification cargo tank, cargo tank motor vehicle, or cargo tank equipment that forms part of the cargo tank wall, and includes attaching a cargo tank to a motor vehicle or to a motor vehicle suspension component that involves welding on the cargo tank wall. A cargo tank manufacturer must register with DOT as a manufacturer in conformance with 49 CFR Part 107, Subpart F.
- Q3. A person mounts an existing DOT specification cargo tank on a motor vehicle chassis. The cargo tank still has the original rear-end protection device. Is the person who mounts the cargo tank on the chassis required to obtain documentation (e.g., DCE certification) that verifies the existing rear-end protection device meets the current HMR? If so, does he or she have to retain that documentation? Does that person also have to provide that documentation to the cargo tank owner?
- A3. If the mounting affects the cargo tank's tank wall or shell, the answer is yes to all three questions (see "modification" as defined in § 180.403). If the mounting does not affect the cargo tank's wall or shell, no DCE certification is needed. A person who modifies a cargo tank must obtain its manufacturer's certificate and, where applicable, American Society of Mechanical Engineers (ASME) manufacturer's data report, such as Form U-1A, to ensure the modified cargo tank's design configuration meets applicable HMR design and accident protection requirements in conformance with § 180.413(e)(1). The records of this modification must be retained by the person making the modification and provided to the cargo tank owner in conformance with § 180.413(f). Section 180.413(f) requires that each owner of a cargo tank motor vehicle must retain all records of repair, modification, stretching, or rebarrelling made to each of their cargo tanks during the time the cargo tank motor vehicle is in service and for one year afterward. These records must be retained at the owner's principal place of business and include notations of any tests conducted to verify the suitability of each cargo tank's repair, modification, stretching, or rebarrelling. If a motor carrier is not the owner of the cargo tank motor vehicle in its service, that motor carrier must retain copies of the manufacturer's certificate and related papers or the alternative report authorized in § 180.417(a)(3)(i) or (a)(3)(ii), and the vehicle certification report at its principal place of business during the period

the cargo tank motor vehicle is in its service and for one year afterward (see § 180.417(a)(2)).

- Q4. Is the person who mounts an existing DOT specification cargo tank on a motor vehicle required to obtain documentation of the original chassis attachment system and follow that documentation? Is this person required to retain copies and provide copies to the cargo tank owner?
- A4. The answer is yes to both questions if the mounting performed is an assembly, as this term is defined in § 107.502(a)(1). As stated in Answer A3, if the mounting performed is a modification, § 180.413(f) requires that each owner of a cargo tank motor vehicle must retain at the owner's principal place of business all records of repair, modification, stretching, or rebarrelling, including notation of any tests conducted to verify the suitability of the repair, modification, stretching, or rebarrelling made to each cargo tank during the time the cargo tank motor vehicle is in service and for one year thereafter. Section § 180.413(f) also requires that copies of these records must be retained by a motor carrier, if not the owner of the cargo tank motor vehicle, at its principal place of business during the period the cargo tank motor vehicle is in the carrier's service.
- Q5. Is the person who mounts an existing DOT specification cargo tank on a motor vehicle chassis required to obtain the original certificate of compliance and an ASME U-1A form, titled "Manufacturer's Data Report for Pressure Vessels," if applicable, prior to doing the work? Is this person required to retain copies and provide copies of this form to the cargo tank owner?
- A5. See Answers A3 and A4.
- Q6. If the person doing the work or the cargo tank owner is unable to obtain the DCE certification for the rear-end protection, may the cargo tank still be mounted on a new chassis and serve in specification service?
- A6. Provided the mounting does not involve any cargo tank modifications as stated in Answer A3, the answer is yes.

I hope this satisfies your request.

Sincerely,

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

178.320, 180.403, 180.413 7 180.417