



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

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

FEB 29 2000

Mr Jeffrey A. Leese  
Honeywell  
101 Columbia Road  
Morristown, New Jersey 07962

Ref. No. 00-0049

Dear Mr. Leese:

This responds to your letter of February 2, 2000, concerning requirements for attending the unloading of cargo tank motor vehicles under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask whether attendance requirements apply when a cargo tank has been placed on private property at the consignee's location and the motive power has been removed.

The answer is no. Under § 177.834(i)(2), a cargo tank unloading operation need not be attended when the cargo tank has been placed on the consignee's premises and the motive power has been removed from the cargo tank and removed from the premises.

As defined by federal hazardous materials transportation law (49 U.S.C. 5101-5127), "transportation" means the movement of property and loading, unloading, or storage incidental to the movement. Neither the statute nor the HMR define the terms "loading incidental to movement," "unloading incidental to movement," or "storage incidental to movement." You are correct that there is confusion concerning the meaning of "transportation in commerce" and whether particular activities are covered by that term and, therefore, subject to regulation under the HMR. Current exceptions for cargo tank unloading operations that are conducted on private property at a consignee's location when the motive power is removed are as stated in the February 13, 1998 and March 11, 1999 letters you cite, i.e., "not subject to the attendance requirements." In Docket No. RSPA-98-4952, we are reconsidering the general rule that transportation in commerce is complete when a hazardous material is delivered to a consignee's location and the delivering carrier has physically tendered the material to the consignee by



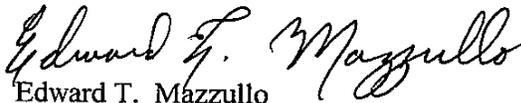
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177-834

unloading or disconnecting a trailer or cargo tank for unloading by the consignee. Copies of the two advance notices of proposed rulemaking issued under HM-223 are enclosed for your information.

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

Sincerely,

A handwritten signature in cursive script that reads "Edward T. Mazzullo".

Edward T. Mazzullo

Director, Office of Hazardous Materials Standards

Enclosures

Honeywell  
P.O. Box 1057  
Morristown, NJ 07962-1057

Gorsky  
§ 177.834  
00-0049

February 2, 2000

Mr. Edward Mazzullo  
Director, Office of Hazardous Materials Standards  
DHM-10  
Research and Special Projects Administration  
400 Seventh Street SW  
Washington, DC 20590-0001

**RE: 49 CFR 177.834(i) Cargo Tank Loading/Unloading Attendance**

Dear Mr. Mazzullo:

In researching the need for physical or remote monitoring of a cargo tank during loading or unloading of a hazardous material, I have found two (2) letters of clarification which give diametrically opposite guidance.

Assuming the cargo tank has been spotted on private property at a consignee's location and assuming the motive power has been removed from the trailer and removed from the premises:

2/13/98 – Delmar F. Billings to Dana Murphy – the trailer is no longer “in transportation” and not subject to the attendance requirements

3/11/99 – Thomas G. Allan to Robert Monteith – the trailer is still considered to be “in transportation” (and is subject to the attendance requirements of the HMR).

On Feb 2<sup>nd</sup>, I spoke to Ms. Eileen Mack at the DOT Hazardous Materials Information Center in an attempt to resolve this conflict. She stated the DOT position was that while the definition of a trailer “in transportation” was currently being developed (in Docket RSPA 98-4952); there is currently no language in the HMR specifically addressing this issue. As a result, no violation of the HMR could occur if a cargo tank was loaded or unloaded without DOT defined attendance, assuming the trailer was placed on the consignee's premises and the motive power was removed from the cargo tank and removed from the premises.

We are seeking written confirmation of this position.

Please address all correspondence or feel free to contact me at:

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Honeywell  
101 Columbia Road  
Morristown, NJ 07962  
Phone: 973-455-6794  
FAX: 973-455-5391

Regards,



Jeffrey A. Leese  
Manager Regulatory Affairs.