



U.S. Department  
of Transportation

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

**Pipeline and  
Hazardous Materials Safety  
Administration**  
JAN 9 2006

Mr. Alan I. Roberts

Ref. No. 05-0267

Dangerous Goods Advisory Council  
1100 H Street, N.W., Suite 740  
Washington, DC 20005

Dear Mr. Roberts:

This responds to your request for clarification of the applicability of the Hazardous Materials Regulations (HMR; 49 CFF Parts 171-180) to loading and unloading operations. You are concerned specifically to requirements in the HMR applicable to loading operations conducted by offerors and unloading operations conducted by consignees.

As your letter correctly notes, a loading operation may be considered a pre-transportation function or a transportation function depending on the circumstances of the particular operation. The filing of a cargo tank or other bulk packaging or the loading of packaged or containerized hazardous materials onto a transport vehicle by an offeror is regulated as a pre-transportation function under the HMR. Thus, an offeror must comply with applicable HMR requirements concerning compatibility of loading with the packaging, outage and filling limits, securing of valves and closures, venting, segregation, cargo securement, 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 the onset of transportation in commerce (i.e., the arrival of the carrier and the attachment of motive power) need not comply with the attendance requirements in § 177.834(i). Similarly, the attendance requirements in § 177.834(i) do not apply to unloading operations conducted by consignee personnel after the carrier delivers the cargo tank, disconnects the motive power, and leaves the unloading site.

I hope this information is helpful. Please contact this office should you need additional information.

Sincerely,

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



050267



**Dangerous Goods Advisory Council**

Suite 740 ♦ 1100 H Street NW ♦ Washington DC 20005 ♦ 202/289-4550 ♦ Fax 202/289-4074 ♦ www.dgac.org

October 12, 2005

Mr. Edward Mazullo  
Office of Hazardous Materials Standards (PHH-10)  
Pipeline and Hazardous Materials Safety Administration  
U. S. Department of Transportation  
400 Seventh Street, S.W.  
Washington, DC 20590

*McIntyre*  
*§ 173.30*  
*§ 177.834 (i)*  
*Loading ~ Unloading*  
*05-0267*

Dear Mr. Mazullo:

In light of HM-223 and previous interpretations, I am seeking your reaffirmation that the attendance requirements in §177.834(i) do not apply to an offeror loading a cargo tank when the motive power unit is not connected and the carrier is not on the premises.

The HM-223 final rule identified the filling of a bulk packaging as a pretransportation function when carried out by the offeror in §171.1(b)(3) and as a transportation function when performed by carrier personnel or in the presence of carrier personnel in §171.1(c)(2). The requirement in §173.30, while originally proposed for deletion, was retained and revised in the HM-223 final rule. The preamble states that the provision was retained as revised to "clarify that persons who are subject to the loading and unloading requirements of the HMR must comply with all applicable loading and unloading regulations."

Prior to HM-223, §173.30 required that a person who loads or unloads a hazardous material into a transport vehicle was required to do so in accordance with the requirements in Part 177. An interpretation (Ref. No. 98-0242) clarifies that an offeror "who loads or unloads hazardous materials on a transport vehicle is performing a carrier function and must comply with the applicable loading and unloading requirements." A response in an interpretation dated October 18, 2000 (Ref. No. 00-0132) qualifies this statement as follows:

*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)."*

With the introduction of the term "pretransportation function", it would seem that an offeror is only subject to loading or unloading requirements required "to assure the safe transportation of a hazardous material" while in the public domain. This could be the intended meaning of the word "applicable" in the revised §173.30, but this is not clear.

Given the amendment of §173.30 under HM-223, your reaffirmation of the non applicability of the attendance requirement to an offeror, as well as clarification on which other loading and unloading requirements in Part 177 are applicable to an offeror would be appreciated.

Sincerely,

Alan I. Roberts  
President