U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

JAN 21 1999

Mr. Michael Ritchie
Minnesota Department of Transportation
Office of Motor Carrier Services
Mail Stop 420
110 Centre Pointe Curve
Mendota Heights, MN 55118

Ref. No. 98-0379

Dear Mr. Ritchie:

This is in response to your letter of December 11, 1998, requesting clarification of the requirements for using non-specification cargo tanks for flammable liquid petroleum products in intrastate transportation under the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). Your questions are responded to as follows:

Q. Do the provisions of § 173.8(d)(1) mean that a State may not allow any additional non-specification cargo tanks into its existing cargo tank program?

A. In order for an intrastate motor carrier to use a non-specification cargo tank for flammable liquid petroleum products, the provisions of § 173.8 must be met. As provided by § 173.8(d)(1), the cargo tank must be in use as a packaging for hazardous materials before October 1, 1998. After this date no new cargo tanks may be entered into service under this provision.

Q. Must an intrastate carrier show proof that the packaging was in hazardous materials service before October 1, 1998 for it to be eligible for a State program?

A. No specific documentation is required by § 173.8; however, each State may require documentation or certification to ensure that this exception is not abused.

Q. If an inspection finds a State registered cargo tank out of compliance, must it be removed from the State program or can it remain in the program if all deficiencies are corrected?

A. It may remain in the State program provided all deficiencies are corrected.

173.8

Q. If a carrier operates a vehicle in interstate commerce carrying non-hazardous freight, are they excluded from eligibility in an intrastate program?

A. If any portion of a carrier's business is conducted across state lines, the carrier is considered an interstate carrier for all of its operations and may not use the exception provided in § 173.8.

I hope this information is helpful.

Sincerely,

Delmer F. Billings
Chief, Standards Development
Office of Hazardous Materials Standards

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LaValle
§ 173.8
98-0379

December 11, 1998

Edward Mazzullo
Director, Office of
Hazardous Materials Standards
USDOT /RSPA/DHM-10
400 Seventh Street SW
Washington, D.C. 20590-0001

Re: Request for interpretation on provisions of HM-200.

Dear Mr. Mazzullo,

Minnesota Statutes and Rules authorize the use of some non-specification cargo tanks for transportation of gasoline. The Minnesota Cargo Tank Variance Program authorizes the use of non-specification cargo tanks with a capacity of 3000 gallons or less that are inspected and approved by officers of this department. The Variance Program has been in effect since 1986. The Minnesota Cargo Tank Registration Program allows the use of cargo tanks with a capacity of up to 3500 gallons that were originally constructed to the MC-306 standard, but have had the specification plate removed or covered. The Registration Program, in effect since 1992, excepts registrants from retrofit of manhole assemblies, and requires an annual external visual inspection and monthly inspections by the operators. Both programs are limited to persons that operate exclusively as intrastate carriers.

On October 1, 1998, mandatory compliance with the provisions of HM-200 was required. 49 CFR 173.8 allows the use of non-specification cargo tanks for transportation of Class 3 petroleum products in intrastate commerce if the provisions of paragraphs (b) and (d) of that section are complied with. Paragraph (d) sets forth the conditions that must be met to conform with the regulation and we request clarification on issues addressed in this section.

§ 173.8 (d) (1) states the packaging must have been in use as a hazardous materials packaging before July 1, 1998. The HM-200 Corrections and Technical Amendments document, published in the Federal Register on September 22, 1997, states, on page 49561, "No new non-specification cargo tanks used to transport flammable liquid petroleum products may be placed in service after October 1, 1998." The Minnesota Department of Transportation received several applications for enrollment in the State programs between July 1 and October 1 , 1998.

1. Do the provisions of paragraph (d) (1) mean that a State may allow no additional non-specification tanks in its existing cargo tank program? After July 1, 1998 or October 1, 1998?

2. Must an intrastate carrier show proof that the packaging was in hazardous materials service before July 1, 1998, for it to be eligible for a State program?

§ 173.8 (d) (2) requires that the packaging be operated in conformance with the requirements of the State in which it is authorized. Paragraph (d) (4) states that the packaging must be in conformance with all other applicable requirements of Subchapter C..

3. If an inspection finds a previously registered cargo tank out of compliance with State or Federal inspection or hazard communication requirements, must it be removed from the State program or can it remain in the program if all deficiencies are corrected?

Many carriers transport hazardous materials in intrastate commerce only, but haul non-hazardous commodities in interstate commerce.

4. If a carrier operates a vehicle in interstate commerce carrying non-hazardous freight, are they excluded from eligibility in an intrastate program?

On October 1, 1998 the provisions of HM-200 became effective, and USDOT has jurisdiction over this matter. If your have questions, please contact me at (651) 405-6120 or by e-mail at michael.ritchie@dot.state.mn.us . Thank you for your assistance.

Yours truly,

Michael Ritchie
Hazardous Materials Specialist