Hazardous Materials Notice

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
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Summary:

The purpose of this Hazardous Materials Notice is to rescind Technical Bulletin HM-99-4, regarding the establishment of conditions under which tank cars with certain nonconforming conditions could move without the issuance of a movement approval.

Discussion:

The Hazardous Materials Regulations, at 49 CFR § 174.50, provide in relevant part:

> 174.50 *Nonconforming or leaking packages.*
>
> A leaking non-bulk package may not be forwarded until repaired, reconditioned, or overpacked in accordance with § 173.3 of this subchapter. Except as otherwise provided in this section, a bulk packaging that no longer conforms to this subchapter may not be forwarded by rail unless repaired or approved for movement by the Associate Administrator for Safety, Federal Railroad Administration. Notification and approval must be in writing, or through telephonic or electronic means, with subsequent written confirmation provided within two weeks. For the applicable address and telephone number, see § 107.117(d)(4) of this chapter . . . .

The regulations established the movement approval under § 174.50, instead of requiring the more involved process of obtaining an exemption under Part 107, to accommodate the movement for repair of bulk packagings requiring only relatively simple repairs – such as the replacement of a defective but not leaking valve – in order to again conform to the regulatory requirements.

In June, 2000, FRA (the Federal Railroad Administration) issued Technical Bulletin HM-99-4 establishing, by way of a policy statement, the conditions under which the grant of a movement approval could be presumed, allowing the car to begin its journey for repairs after the agency was

notified, but before the issuance of a formal approval. Under the "presumed approval" process, the nonconformance of the tank car was limited to valve defects (without leaks) only. In addition, all of the following conditions had to be met:

- The defect must be found in the controlled environment of a shipper/consignee's facility (and not in transit);
- A representative of the shipper, present at the scene, must make a good faith determination that the car cannot be repaired at the site;
- The tank car may contain only a residue of a hazardous material;
- The tank car may not be leaking as per Subpart B of part 173;
- The movement must be direct to a repair facility (or a cleaning facility intermediate to arrival at a repair shop); and
- The non-conforming valve must be tagged as required by HM-99-4.

Finally, the "presumed approval" process required the party seeking the approval to fax the initial information to FRA and to follow up within two weeks, in writing, explaining the existence of all of the qualifying conditions.

FRA has reviewed its records and finds that the "presumed approval" process is either unnecessary, because it is so little used, or is primarily honored in the breach because neither the initial contact with the agency, nor the follow-up, is being made. Further, discussions with tank car users demonstrates a high degree of confusion about the terms and conditions of the "presumed approval" process.

Accordingly, and effective immediately, FRA is revoking the "presumed approval" process by rescinding Technical Bulletin HM-99-4 and issuing this revised policy statement. Persons responsible for the care and use of tank cars are referred to 49 CFR § 174.50 and to the "Approval Application for Nonconforming Packages," found on FRA's website at: http://www.fra.dot.gov/safety/hazmat.htm. If there are questions, please feel free to call a member of the Hazardous Materials Division staff; their names and numbers also appear at the same web address.

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