

6/15/92

**STATE OF MINNESOTA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF MOTOR CARRIER SAFETY AND COMPLIANCE**

Concerning the Proposed )  
Adoption of the Rules of the ) **STATEMENT OF NEED**  
State Department of Transportation ) **AND REASONABLENESS**  
Governing Loading and Unloading )  
of Petroleum Transports )

The Commissioner of Transportation presents facts showing the need for and reasonableness of the proposed rule governing the loading and unloading of petroleum transports.

**INTRODUCTION**

The Commissioner of Transportation, under Minnesota Statutes, section 221.031, has adopted a rule governing the loading and unloading of petroleum transports. Minnesota Rules, part 8850.8050, states:

Subpart 1. **Loading.** During loading of a petroleum transport, the driver must be within 25 feet of the cargo tank, but not in the vehicle cab or other enclosure.

Subp. 2. **Unloading.** During unloading of a petroleum transport, the driver must be within 25 feet of the cargo tank, but must not be in an enclosure or in the cab of the vehicle. The fire extinguisher must be out of the vehicle's carrying device, must be ready for instant use, and must be 15 feet or more from the cargo tank.

The term "petroleum transport" is defined in Minnesota Rules, part 8850.6900, subpart 18, as:

" . . . a vehicle, trailer, or semitrailer with a tank (1) that is mounted on it or made an integral part of it, other than the fuel supply tank for the engine of that vehicle, (2) that is filled or emptied while on the vehicle, and (3) that is used to transport petroleum products in bulk."

The term "petroleum products" is defined in Minnesota Statutes, section 221.011, subdivision 18. That subdivision states:

"Petroleum products" means crude petroleum and natural gas and any and all derivatives arising out of the refinement thereof, including anhydrous ammonia and liquid fertilizer.

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The Minnesota Department of Transportation (Mn/DOT) has received complaints from the Minnesota Propane Gas Association and from petroleum transporters about the current rule. Industry representatives expressed three main concerns.

First, the current rule requires that a driver not be in an enclosure during loading of a petroleum transport. The safety and control mechanisms used to start, stop, and control the flow of product from bulk tanks to the transport are usually in an enclosure at loading terminals. Consequently, this is usually the safest place for a transport driver to be during loading.

Second, the current rule requires a driver to be within 25 feet of the cargo tank during unloading. Residential delivery of petroleum products often requires that a driver be further than 25 feet from the truck.

Third, the current rule requires that a fire extinguisher must be removed from the vehicle's carrying device. Removal of the fire extinguisher is not necessary when another fire extinguisher is readily available to a driver during unloading.

After meeting with industry representatives, Mn/DOT agreed to propose amendments to Minnesota Rules, part 8850.8050. This rulemaking proceeding was initiated as a result. Mn/DOT believes the proposed amendments solve the problems expressed by the industry without compromising the safety of transport drivers, other persons, or property.

#### **SMALL BUSINESS CONSIDERATIONS**

In proposing these amendments, the commissioner of transportation has considered the provisions of Minnesota Statutes, section 14.115, relating to the impact of the proposed rule on small businesses.

Minnesota Statutes, section 14.115, subdivision 1, defines small businesses as:

"a business entity, including farming and other agricultural operations and its affiliates, that, (a) is independently owned and operated; (b) is not dominant in its field; and (c) employs fewer than 50 full-time employees or has gross annual sales of less than \$4,000,000. For purposes of a specific rule, an agency may define small business to include more employees if necessary to adapt the rule to the needs and problems of small businesses."

The commissioner of transportation has determined that the proposed rule will not have an impact, within the meaning of the statute, on small businesses. The proposed amendment of the rule does not establish reporting requirements. Neither does it establish schedules or deadlines for compliance. The amendments are offered in response to requests from the industry to eliminate or ease existing regulations.

## PART-BY-PART STATEMENT OF NEED AND REASONABLENESS

### PART 8850.8050. LOADING AND UNLOADING OF PETROLEUM TRANSPORT.

Subpart 1. **Loading.** The department is proposing to repeal the language currently in subpart 1.

Code of Federal Regulations, title 49, section 177.834, paragraph (i), clause (1), sets out the general requirements that must be followed during the loading of cargo tanks. That paragraph states:

(i) *Attendance requirements.* (1) *Loading.* A cargo tank must be attended by a qualified person at all times when it is being loaded. The person who is responsible for loading the cargo tank is also responsible for ensuring that it is so attended.

Code of Federal Regulations, title 49, section 177.834, paragraph (i), clauses (3) and (4) describe what is meant by "attends" and "qualified." They state:

(3) A person "attends" the loading or unloading of a cargo tank if, throughout the process, he is awake, has an unobstructed view of the cargo tank, and is within 7.62 meters (25 feet) of the cargo tank.

(4) A person is "qualified" if he has been made aware of the nature of the hazardous material which is to be loaded or unloaded, he has been instructed on the procedures to be followed in emergencies, he is authorized to move the cargo tank, and he has the means to do so.

Minnesota has adopted Code of Federal Regulations, title 49, section 177.834 in Minnesota Statutes, section 221.033, subdivision 1. Under subdivision 1, all transporters of hazardous materials in Minnesota must comply with Code of Federal Regulations, title 49, sections 171 to 199.

Petroleum transporters are transporters of hazardous materials. Under Minnesota Statutes, section 221.011, subdivision 29, "hazardous materials" means:

. . . a substance or material determined by the United States secretary of transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and so designated by the United States secretary of transportation.

Code of Federal Regulations, title 49, part 172, contains tables of materials that have been determined by the United States secretary of transportation to be "hazardous materials." Petroleum products, as defined by Minnesota Statutes, section 221.011, subdivision 18, are

listed as hazardous materials.

The department believes it is imperative that a petroleum transport cargo tank be attended by a qualified person while it is being loaded. This was the department's original purpose in adopting subpart 1. However, subpart 1 includes two additional requirements not found in the federal regulation. First, it makes the driver an attendant by requiring the driver to be within 25 feet of the cargo tank. Second, it prohibits the driver from being in the vehicle cab or an enclosure.

The department is committed to achieving uniformity with federal regulations. Motor carriers, including operators of petroleum transports, must comply with federal and state regulations. Sometimes, local industry and enforcement concerns require the adoption of state regulations that differ slightly from those adopted by the federal government. Whenever possible, Mn/DOT seeks consistency between applicable state and federal regulations. The department believes that uniformity promotes compliance. A single standard is more easily learned and followed by members of the industry and enforcement officers.

In light of the above, Mn/DOT believes it is necessary and reasonable to repeal subpart 1. As stated earlier, at loading terminals, the safety shut-off and control mechanisms are usually in an enclosure. Some terminal facilities have policies that require the driver to be in the enclosure during loading. Others simply direct the driver to leave the loading area once a qualified terminal employee has assumed control of the vehicle. Still others require the driver to comply with part 8850.8050 though the driver's attendance is not necessary to ensure safe loading. Regardless of whether the driver is present, loading terminals provide qualified persons to attend the transport during the loading process because of the federal regulation.

A small percentage of petroleum products transported in petroleum transports is lubrication oil and some lubrication oil is not classed as a hazardous material. The current rule governs the loading of lubrication oil since it is a "petroleum product." However, because the federal rule only applies to hazardous materials, it does not govern the loading of non-hazardous lubrication oil. The department has considered the proposed repeal of subpart 1 in light of this fact and has opted for uniformity with the federal regulation. It is not necessary to retain the current requirements concerning loading non-hazardous lubrication oil since the secretary of transportation has determined that non-hazardous lubrication oil does not pose an unreasonable risk to health, safety, and property.

Code of Federal Regulations, title 49, section 177.834, contains reasonable requirements designed to ensure driver and vehicle safety during the loading of hazardous materials. All petroleum transports are subject to section 177.834 while loading hazardous materials. Only a very small percentage of the product loaded by petroleum transports is not classed as a hazardous material. Therefore, the repeal of subpart 1 is reasonable.

**Subpart. 2. Unloading.** Most petroleum transports are unloaded at bulk plants (facilities where product is stored in bulk tanks) or at service stations. A small percentage unload fuel oil at farms and homes. The department is proposing to amend subpart 2 in ways that affect both types of unloading operations. However, it is important to note that the department is not proposing to eliminate the requirement that the driver be in attendance by being within 25 feet of the cargo tank and not in the cab or an enclosure during unloading. Bulk plants and service stations do not have enclosures designed to provide control of the unloading process. Therefore, it is necessary that the driver remain present during unloading so that the valves can be closed quickly if a hose breaks or there is an overflow.

To accommodate residential deliveries of fuel oil, the department is proposing to amend this subpart by making a delivery hose part of the cargo tank. This amendment is necessary because residential delivery often requires the driver to bring the delivery hose to the side or rear of a building. This is usually more than 25 feet from the vehicle. It is practical for a driver to be in attendance at the point where the fuel oil is transferred to the residential tank. Most spills occur at this point rather than at the vehicle. Therefore, the department is proposing to amend the rule to allow the driver to remain with the hose instead of being near the vehicle.

The amendment is reasonable because it conforms to Code of Federal Regulations, title 49, section 177.834, paragraph (i), clause (5). That clause states that "a delivery hose, when attached to the cargo tank, is considered a part of the vehicle."

The proposed amendment will promote safety during residential unloading without compromising safety during other unloading operations. The driver will rarely be further than 25 feet from the vehicle at bulk plants and service stations since it is not necessary to use great lengths of hose during unloading at those locations.

The department is also proposing two substantive amendments with regard to fire extinguishers.

First, the current rule requires that the vehicle's fire extinguisher must be removed from its carrying device. Petroleum transports are subject to the commissioner's rules on equipment, parts, and accessories, under Minnesota Statutes, section 221.031 and Minnesota Rules, part 8850.8200. Part 8850.8200 incorporates Code of Federal Regulations, title 49, section 393.95 by reference. Paragraph (a) of that section sets out the requirements for fire extinguishers. Essentially, the federal regulation requires every power unit to be equipped with a fire extinguisher that has at least a 10 B:C rating. This fire extinguisher is the one that the current rule says must be removed from its carrying device.

Amending this subpart is both necessary and reasonable since fire extinguishers, other than those carried in the vehicle, are often available at unloading sites. As long as a fire extinguisher that meets the federal requirements is accessible and ready for instant use, it

makes no difference if it is removed from the vehicle or a holder at the facility. The amendment allows a driver to leave the vehicle's fire extinguisher in place if another of equal or greater capacity is available. If another fire extinguisher is not available, the one carried in the vehicle must be removed from its carrying device. In either case, it is important that the fire extinguisher be "ready for instant use." If the vehicle's fire extinguisher is not removed, the driver must make sure the substitute fire extinguisher is close at hand and is removed from its place of storage so that it can be used instantly, if necessary.

This subpart is also being amended to specifically establish the requirements for fire extinguishers. The amendment is necessary because the department is proposing that fire extinguishers, other than those carried in the vehicle, may be used by a driver. Previously, it was not necessary to specify the fire extinguisher requirements since all petroleum transports are required to carry a fire extinguisher that meets that requirements of Code of Federal Regulations, title 49, section 393.95, (a)(2)(i) -- one that has an Underwriter's Laboratories rating of 10 B:C or more. However, if a driver intends to rely on a fire extinguisher other than the vehicle's, it is necessary to state that the substitute fire extinguisher must meet the same requirements.

The proposed amendment is reasonable because specifying that the fire extinguisher must have a 10 B:C rating does not impose any new or additional requirement on a petroleum carrier or petroleum transport driver. It allows a driver to decide whether it is necessary to remove the vehicle's fire extinguisher from its carrying device. If a driver is satisfied that an equally capable fire extinguisher is available, it is not necessary to require removal of the one from the vehicle.

The department considered repealing the current rule on unloading of petroleum transports. Code of Federal Regulations, title 49, section 177.834, paragraph (i), clause (2), is the federal rule on unloading of cargo tanks. However, the federal rule does not include a requirement that the driver not be in the vehicle cab or an enclosure during unloading and contains no reference to the availability of a fire extinguisher. The department believes this is an instance where deviation from the federal regulation is warranted.

The federal regulation requires that a person "attends" a cargo tank during unloading. Under the federal regulation, a driver could attend the cargo tank while remaining in the cab or being in a service station facility as long as the driver is awake, has an unobstructed view of the tank, and is within 25 feet. The department believes it is necessary to retain the requirements of the current rule.

If there is an overflow during unloading, it is important that the driver react quickly to shut off the flow of product. A driver in a cab may not be able to detect an overflow as quickly as if he were outside of the vehicle. This is especially true if the driver is concentrating on completing paperwork related to the delivery. Even if an overflow is detected immediately, a driver in a cab will necessarily take more time to reach the hose or the shut-off valves

since the shut-off valves are usually located on the right side of a petroleum transport.

As stated before, most petroleum transports are unloaded at bulk plants or service stations. Many service stations offer to sell food, beverages, and merchandise to its customers. Some have arcade games or other amusement devices. Drivers in these facilities might have their attention distracted, even momentarily, from the unloading process. It is reasonable to require that a driver not be in such a facility, and subject to such distractions, during the time a transport is unloading.

Unloading of petroleum products in residential areas and at service stations presents a foreseeable danger of fire. Persons not subject to a driver's control, like service station customers, might light matches or smoke. While a driver should use care to keep fire away from the cargo tank and to prevent persons in the vicinity from smoking, lighting matches, or carrying lighted smoking material, that might not always be possible. A driver generally does not have the authority to give directions to service station customers. Further, since a driver must be within 25 feet of the cargo tank during unloading, the driver cannot leave the immediate vicinity of the cargo tank to request the assistance of a service station manager or employee when necessary. The department, therefore, believes it is necessary and reasonable to retain the requirement that a fire extinguisher be ready for instant use.

Other amendments to this subpart are needed to correct errors of form or grammar.

## **WITNESSES AND SUMMARY OF TESTIMONY**

**A. Expert witnesses.** If a hearing is required, the department does not intend to use expert witnesses to provide evidence establishing the need for and reasonableness of the proposed rules. The department may, if necessary to adequately address evidence and argument presented by the public, arrange for the testimony of expert witnesses.

**B. Mn/DOT witnesses.** If a hearing is required, the department will introduce its Statement of Need and Reasonableness as an exhibit into the record in accordance with Minnesota Rules, part 1400.0500, subpart 3. The following department personnel will be available at the hearing, if one is required, for questioning by the Administrative Law Judge and other interested persons or to briefly summarize all or a portion of the Statement of Need and Reasonableness if requested by the Administrative Law Judge.

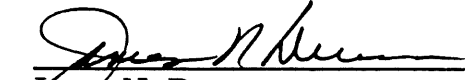
**1. Elizabeth M. Parker.** Elizabeth M. Parker is the Director of the Office of Motor Carrier Safety and Compliance. She was involved in meetings with industry representatives and in the development of the proposed rule. She may be called to testify about the need for and reasonableness of any of the proposed provisions.

**2. Ward Briggs.** Ward Briggs is an attorney with the Office of Motor Carrier Safety and Compliance. He has been involved in the development and drafting of the

proposed rules and may be called to testify about the need for and reasonableness of any of the proposed provisions.

**3. Pete Marcotte.** Pete Marcotte is a hazardous materials specialist with the Office of Motor Carrier Safety and Compliance. He has been involved in meetings with industry representatives and is highly trained in state and federal regulations that pertain to the transportation of hazardous materials. He may be called to testify about the need for and reasonableness of any of the proposed provisions.

DATE: 6/1/92

  
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James N. Denn  
Commissioner of Transportation