



U.S. Department  
of Transportation  
**Research and  
Special Programs  
Administration**

APR 10 2003

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

Mr. Jason E. Burnett  
Alta Genetics, Inc.  
N8350 High Road  
Watertown, WI 53094

Reference No.: 03-0059

Dear Mr. Burnett:

This is in response to your letter and telephone conversation with a member of my staff concerning the exception for cryogenic liquids under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You state that your company transports nitrogen, refrigerated liquid in cylinders and either 119, 150 or 190-gallon portable tanks that are equipped with pressure relief devices so the pressure will not exceed 22 psig. Specifically, you ask if you can take advantage of the exception in § 173.320 and if you are subject to the placarding requirements. You also ask what the licensing requirements are for the drivers of these vehicles.

Section 173.320 excepts highway and rail shipments of cryogenic liquids from certain requirements in the HMR if the packagings are Dewar flasks, insulated cylinders, insulated portable tanks, insulated cargo tanks, or insulated tank cars, and are designed and constructed so that the pressure in the packaging will not exceed 23.5 psig under ambient temperature conditions during transportation. If your packagings of nitrogen, refrigerated liquid meet these conditions, they qualify for the exception in § 173.320 and are not subject to placarding requirements.

For a response to your question regarding the licensing requirements for drivers under 49 CFR Parts 350-399, please contact the Federal Motor Carrier Safety Administration. You may direct your correspondence to:

Mr. Dan Hartman  
State Programs Division Chief, MC-ESS  
Federal Motor Carrier Safety Administration  
400 Seventh Street, S.W.  
Washington, DC 20591

I hope this satisfies your request.

Sincerely,

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



030059

173.320



Corbin  
§ 173.320  
§ 172.504(c)(1)  
Exceptions/  
Placarding  
03-0059

February 20, 2003

Edward T. Mazzullo  
Director of Office of Hazardous Materials Standards  
U.S. DOT/RSPA (DHM-10)  
400 7<sup>th</sup> Street S.W.  
Washington, D.C. 20590-0001

Dear Sir,

I write this letter in an effort to clarify the exception stated in 49 CFR 100-185, 173.320. The exception states that cryogenic liquid in insulated portable tanks constructed so that the pressure will not exceed 25.3 psig are not subject to the requirements of the subchapter when transported by motor vehicle.

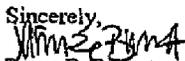
Our company has 45 pick-up trucks in 40 different states. These trucks are equipped with either a 119, 150, or a 190-gallon tank used to transport liquid nitrogen (LN2). They also carry smaller tanks on board that are filled with LN2 as well. The tanks are built to DOT standard and have a psig setting of 22 or less.

The 119-gallon tank is a non-bulk package by definition 171.8. It does not meet the requirements of 172.504 (General Placarding) unless it exceeds an aggregate gross weight of 454kg (1001 lbs.). Our trucks with 119 gallon tanks will always exceed the limitation due to the fact that they have smaller tanks on board which are also filled with LN2. The 150 and 190-gallon tanks are bulk packages by definition 171.8. They meet all of the requirements set forth in 172.514, as well as the exception 172.514(e), because they do not hold more than 1000 gallons. That allows us to label the tank vs. placarding (172.400(a)(3)).

My questions are as follows,

1. Do we meet the requirements of 173.320?
2. If so, does that exception mean that our trucks do not need to be placarded as per 172.504(c)(1) and 172.514?
3. If our trucks do not require placards, do our drivers need Commercial Drivers License's with the hazmat endorsement?

We meet the definition of a private motor carrier conducting interstate commerce with a commercial motor vehicle (49 CFR 200-399, 390.5). This would lead me to believe that our drivers require a commercial driver's license to conduct operations between states. However, definition (D) of 383.5 states that a commercial motor vehicle is a vehicle used in the transport of hazardous materials and requires placarding. If we meet the exception of 173.320, then we are not required to placard, meaning we no longer meet the definition of a commercial motor vehicle, (D) 383.5. But I understand that if at anytime our trucks exceed 10,001 lbs. they once again become a commercial motor vehicle. We would then fall under vehicle group C (383.91), only if required to placard. So that all leads me to my final question, do our driver's need commercial drivers license to operate the vehicles between states, or will registration and a DOT issued number satisfy the requirements? Our goal is to be in total compliance with the Department of Transportation and Federal Motor Carrier Safety Administration. Any insight, clarification you may offer would be greatly appreciated. Thank you for your time and consideration.

Sincerely,  
  
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