



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

APR 16 2004

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

Mr. Lloyd Heacock
3219 Lowden Street
Kalamazoo, MI 49008-4603

Reference No.: 03-0223

Dear Mr. Heacock:

This is in response to your September 5, 2003 letter and subsequent telephone conversations with members of my staff regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask whether a five-gallon container of gasoline transported on public roads, in a company vehicle, for personal use is subject to the requirements of the HMR. You state that the gasoline was intended to be used to fill the gas tank of your personal vehicle.

The answer is yes. As specified in § 171.1, the HMR govern the transportation of hazardous materials in intrastate, interstate and foreign commerce. Accordingly, hazardous materials that are transported by persons for personal use in their personal vehicles are not subject to the HMR. However, under the scenario described in your letter, although the gasoline was for personal use, it was placed onto a commercial vehicle and transported on a public road. The transportation is, therefore, "in commerce," and the gasoline is subject to the requirements of the HMR.

You also asked whether the materials of trade exception (MOT) applies to this scenario. The answer is yes, the MOT exception applies to the scenario you described, provided all applicable provisions in §§ 171.8 and 173.6 are met. The definition of MOT in § 171.8 states:

A Material of trade means a hazardous material, other than a hazardous waste, that is carried on [a] motor vehicle -

- (1) For the purpose of protecting the health and safety of the motor vehicle operator or passenger;
- (2) For the purpose of supporting the operation or maintenance of a motor vehicle (including auxiliary equipment); or
- (3) By a private motor carrier (including vehicles operated by a rail carrier) in direct support of a principal business that is other than transportation by motor vehicle.



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171.8,
173.6

It is our opinion that the definition, specifically item (2), covers the carriage of gasoline in the scenario you describe and, therefore, the MOT exception applies if all provisions for MOT in § 173.6 are met.

I hope this satisfies your inquiry. If we can be of further assistance, please contact us.

Sincerely,

A handwritten signature in cursive script that reads "Hattie L. Mitchell". The signature is written in dark ink and is positioned above the typed name.

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

Earle M. Jorgensen
Company

FAX 1-202-366-3012

Betts
§171.8(2)
§173.6
Applicability
13-1223



TO: EDWARD MAZZULLO

DATE: DIRECTOR, OFFICE OF HAZARDOUS MATERIAL STANDARDS US DOT

MY NAME IS LLOYD HEACOCK OF KALAMAZOO, MICHIGAN. I DRIVE A
FLAT BED TRACTOR TRAILER HAULING VARIOUS BARS OF STEEL.

I AM REQUESTING A FORMAL GUIDANCE RESPONSE REGARDING
THE TRANSPORTATION OF A FIVE GALLON GAS CAN FOR MY OWN
PERSONAL USE. WOULD THIS BE CONSIDERED IN
COMMERCE, IF SO WOULD THIS QUALIFY AS A MATERIAL
OF TRADE EXCEPTION UNDER DEFINITION 171.8 (2)

WHERE IT STATES, FOR THE PURPOSE OF SUPPORTING THE OPERATION
OR MAINTENANCE OF A MOTOR VEHICLE.

IS THIS LEGAL TO DO?

IF YOU HAVE ANY QUESTIONS WHATSOEVER PLEASE CALL ME
AT THE FOLLOWING NUMBERS 1(269) 324.4867 OR 1(269) 344.4882

PLEASE RETURN CORRESPONDENCE TO

LLOYD HEACOCK
3219 LOWDEN ST
KALAMAZOO MI 49008-4603