



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

Mr. Byron G. Adkins
Director, Commercial Vehicle Safety
2341 Deerfield Drive
Ft. Mill, SC 29541

JUN 17 2014

Ref. No.: 14-0099

Dear Mr. Adkins:

This is in response to your letter dated May 7, 2014, requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) relating to the § 171.8 definition of fuel tank. You present a scenario where a 500 to 750 gallon intermediate bulk container (IBC) or portable fuel tank is transported as freight on the deck of a transport vehicle along with an item of equipment. The IBC or portable fuel tank may or may not be used to fuel the item of equipment being transported; is neither attached to or an integral part of the piece of equipment; and is not attached to and used for supplying fuel for the transport vehicle or other auxiliary equipment on the transport vehicle. You ask if the IBC or portable tank meets the § 171.8 definition of fuel tank.

Based on the information provided, it is the opinion of this office that the described IBC or portable tank does not meet the § 171.8 definition of fuel tank. For a tank to meet the § 171.8 definition of fuel tank it must be attached to and used for the purpose of supplying fuel for the propulsion of the transport vehicle, or for the operation of other equipment on the transport vehicle. The described IBC or portable tank does not meet either of these conditions.

Further, § 173.220(f) only excepts from the requirements of the HMR, hazardous materials that are integral components of, necessary for the operation of, and securely installed in mechanical equipment. Therefore, the described IBC or portable tank is treated as an item of cargo and is subject to all applicable requirements of the HMR.

I trust this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

Shane C. Kelley
Acting International Standards Coordinator
Standards and Rulemaking Division

Babich
§ 171.8
§ 173.220
Portable Tanks
14-0099



May 7, 2014

VIA CERTIFIED MAIL DELIVERY

PHMSA Office of Hazardous Materials Standards
Attn: PHH-10
East Bldg.
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

**SUBJECT: Request for interpretation / clarification (49 CFR 173.220)
Exemption of portable fuel tanks & IBC systems**

This request for interpretation / clarification is submitted on behalf of motor carrier Sunbelt Rentals, Inc., a Ft. Mill, SC based equipment rental, sales and service company operating nationwide.

The following correspondence was reviewed in preparation:

1. 11 September 2013: PHMSA Response Ref. No. 13-0120 (Western International, Inc.)
2. 10 May 2013: USDOT/FMCSA/Southern Service Center e-mail response (David W. Ford, Hazardous Materials Program Manager REG4 Atlanta, to (jeff@onehorn.com)
3. 16 November 2011: PHMSA Response Ref. No. 11-0181 (McAda Drilling Fluids, Inc.)
4. 26 September 2000: PHMSA Response Ref. No. 00-0002 (SJC Compliance Education)
5. 30 May 2013: Western International, Inc. letter to PHMSA Office of Hazardous Materials

Sunbelt Rentals, Inc. seeks clarification regarding CFR 49 §173.220, and the application of this regulation relative to the transport of portable fuel tanks. Additionally, we seek clarification of the following language as it applies to portable fuel tank transport, “...*or for the operation of other equipment on the transport vehicle*”

Western International, Inc. submitted a request for clarification [30 May 2013] to PHMSA, wherein the writer stated, “*certain exceptions exist for fuel tanks that are not intended for propulsion of the transport vehicle, however, is intended for the operation of equipment installed on the transport vehicle*”. In the response to Western International, Inc. [PHMSA Ref. No. 13-0120, 11 Sept. 2013], Mr. T. Glenn Foster states that the IBC tanks are not subject to the HMR, in accordance with the definition of a fuel tank found at 49 CFR 171.8. Sunbelt Rentals notes here that the IBC fuel tanks which are the subject of this correspondence are not installed on a transport vehicle, and as such, are considered portable or temporary (not manufactured or installed within the generator as with the SJC Compliance request or mounted to a skid as cited in McAda Drilling Fluids heater example).

Sunbelt Rentals, Inc. understands that the regulation supports such auxiliary equipment “*on the transport vehicle*” such as a reefer cooling unit or an auxiliary winch assembly motor; however, the confusion exists within the industry (and commercial vehicle enforcement community) when interpreting the regulation’s intent as it pertains to other equipment / machinery being transported. I provide a more detailed example of this to follow.

The issue at hand for further clarification here exists when a large piece of portable construction equipment (generator, pump, or air compressor) is transported via commercial vehicle to a client jobsite. In some instances, a 500-750 gallon IBC fuel cell or portable fuel tank (manufactured with skid mounts affixed to bottom of tank) is transported on the deck of a transport vehicle along with the generator, pump or air compressor. In this instance, is it possible to assume the “*intent*” is the IBC tank will be used to supply temporary fuel to the construction machinery? In many instances, the machinery is transported to one location for delivery, and the fuel cell may indeed be transported to another client site. Clearly, ambiguity exists as to the application of the regulation when analyzing the 2 above circumstances.

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Sunbelt Rentals, Inc. shares a common concern with many within the transportation industry as it relates to the practice of transporting portable construction equipment and temporary fuel systems. Is the intent of the regulatory experts authoring the language found at 49 CFR 171.8 (*definition of Fuel Tank*), "*for the operation of other equipment on the transport vehicle*" extended to portable construction equipment which is only being transported and not installed on the transport vehicle, nor operated or fueled while on the transport vehicle, but only at such time it is off loaded at a worksite. If this is the case, then freight carriers can then transport IBC fuel cells as freight as long as they have a tractor, forklift, excavator, or other piece of equipment on the deck and simply state that the fuel tank is "*for the operation of other equipment on the transport vehicle*". We think not, but come before you now to provide regulatory clarification and interpretation.

Does the regulation speak clearly and concisely to equipment which is a part of the transport vehicle (such as a reefer or motorized winch), or is there a broader interpretation which exempts the fuel tanks, being transported on the vehicle along with a piece of construction equipment? Is this qualified by the "intent" that the fuel tank being transported is intended to supply the construction equipment on the same load? This is the point of clarification being requested at this time.

We await your response, and thank you for your review of this matter.

(s) SUNBELT RENTALS, INC.



Byron G. Adkins
Director – Commercial Vehicle Safety
2341 Deerfield Drive
Ft. Mill, SC 29541

Cc: M.J. Conner, Sunbelt Rentals, Inc.

Enc: Attachments