



U.S. Department
of Transportation

1200 New Jersey Avenue SE
Washington, DC 20590

**Pipeline and Hazardous
Materials Safety
Administration**

MAR 29 2016

David French
Valley Building Center
204 East Main Street
Andover, OH 44003

Ref. No. 15-0206

Dear Mr. French:

This responds to your letter of October 23, 2015, and subsequent telephone conversations with a member of my staff, requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). In your request, you state that your company transports a forklift powered by a small diesel engine which utilizes an approximately eight gallon capacity diesel fuel tank. This forklift attaches to the transport vehicle's flatbed trailer in transportation, but detaches entirely from the transport vehicle in order to be operated at customer delivery sites. Your questions are paraphrased and answered as follows.

Q1. Does the fuel tank pertaining to the forklift described in your request fall solely under the requirements of the Federal Motor Carrier Safety Regulations (FMCSR; 49 CFR Parts 350-399)?

A1. No. Under the HMR, § 173.220, paragraph (a), "applicability," relays that a self-propelled vehicle with a fuel tank containing a liquid fuel, such as the forklift described in your request, is subject to the requirements of the HMR when transported as cargo on a transport vehicle, regardless of whether the fuel tank of the forklift meets the definition of a fuel tank in § 171.8. On this point, please also note that § 173.220 applies similarly to the engine of the self-propelled vehicle, not solely the fuel tank. A common shipping name for such a material is "Vehicle, flammable liquid powered" and the corresponding UN ID# is UN3166.

Although subject to the HMR, provided the fuel tank of a vehicle transported as cargo is securely closed, such transport is not subject to any other requirements under the HMR (e.g., shipping papers, labeling, marking, placarding, emergency response information, training) when transported by motor vehicle or rail car. Fuel may remain in the vehicle's fuel tank when transported by highway or rail (see § 173.220(b)(4)). Please note that the definition of a hazardous material (as defined in § 171.8) does not exclude materials that meet one or more of the defining criteria but are being transported under exceptions (e.g., § 173.220(h)(1)).

Q2. Is the forklift described in your request subject to the "UN3166" description and Class 9 hazard classification?

A2. Under § 173.22, it is the shipper's responsibility to classify and describe a hazardous material. This Office does not normally perform this function. However, based on the information you provided, a forklift with an engine and fuel tank containing diesel fuel would be properly described as "UN3166," a Class 9 hazardous material.

I hope this answers your inquiry. If you need additional assistance, please contact this Office again.

Sincerely,

A handwritten signature in black ink, appearing to read "Dirk Der Kinderen". The signature is fluid and cursive, with a large initial "D" and "K".

Dirk Der Kinderen
Chief, Standards Development Branch
Standards and Rulemaking Division

Lesko
\$171.8
Definitions
15-0206

Dodd, Alice (PHMSA)

From: Geller, Shelby CTR (PHMSA)
Sent: Friday, October 23, 2015 3:02 PM
To: Hazmat Interps
Subject: FW: Request for Interpretation
Attachments: PHMSA Request for Interpretation.doc

Dear Shante and Alice,

Attached is a request for a formal letter of interpretation. Mr. French spoke with Steve Webb.

Thanks,
Shelby

From: David French [<mailto:dfrench@valleybuildingcenter.com>]
Sent: Friday, October 23, 2015 11:05 AM
To: PHMSA HM InfoCenter
Subject: Request for Interpretation

To whom it may concern.

Can you please forward this request to the appropriate dept/person. If you have any questions or need any additional information, please do not hesitate to contact me.

Regards

David

--
David C French
Valley Building Center
Mobile: 440-591-3225



October 23, 2015

Mr. Charles E. Betts
Director, Standards and Rulemaking Division
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590

Re: Request for Interpretation

Dear Mr Betts:

Valley Building Center is a retail lumberyard that uses Class B commercial vehicles (flat beds) to make deliveries of non-hazardous materials (lumber, roofing, etc). The vehicles we use have a truck-mounted forklift that detaches from the truck to help facilitate customer delivery requirements as well as to help prevent lifting injuries within our driver pool. The truck-mounted trucklifts are powered by a small diesel engine and have an approx eight gallon diesel fuel tank.

Could you please give Valley Building Center an interpretation of (HMR; 49 171-180) regarding whether or not our truck-mounted forklift would fall under the definition of fuel tank as defined in 49 CFR 171.8 "a tank, other than cargo tank, used to transport flammable or combustible liquid, or compressed gas for the purpose of supplying fuel for propulsion of the transport vehicle to which it is attached, or for the operation of other equipment on the transport vehicle"? Our belief is that the truck-mounted forklift fuel system would be covered under 49 CFR 393.65 and 393.67 of the Federal Motor Carrier Safety Regulations and are not used as packaging for hazardous materials and therefore not subject to the HMR UN3166, Class 9, MISC classification.

Valley Building Center appreciates your attention to this matter. I am available if you have any other questions.

440 591 3225

Sincerely,

David C French
Valley Building Center
204 East Main Street,
Andover, OH 44003
440-293-5133