



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

JAN 21 2010

Mr. Paul D. Borghesani
The Law Offices of Paul D. Borghesani
307 S. Main Street, Suite 300
Elkhart, Indiana 46516

Ref. No. 09-0074

Dear Mr. Borghesani:

This responds to your letter regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) and the Federal Motor Carrier Safety Regulations (FMCSRs; 49 CFR Parts 300-399) to the transportation of motor vehicles that contain various types and quantities of hazardous materials integral to their design and manufacture. Some examples of the type and amount of hazardous materials in the motor vehicles would include installed batteries and gasoline or diesel fuel of sufficient quantity so that the vehicle may be loaded and unloaded on and off the trailer. Your questions are paraphrased and answered as follows:

Q1. Is a motor carrier transporting the motor vehicles described above in interstate or intrastate commerce subject to the HMR?

A1. Yes. Note that there are exceptions provided for the highway and rail transportation of self-propelled vehicles under § 173.220(g)(1). These exceptions specify that such vehicles are not subject to any other requirements of the HMR when they conform to all applicable conditions of § 173.220.

Q2. Is a motor carrier transporting the motor vehicles described above and covered under the exceptions in § 173.220(g)(1) of the HMR subject to the minimum financial responsibility requirements specified in 49 CFR Part 387?

A2. Yes. The motor vehicles meet the definition of a hazardous material in §171.8 of the HMR and are considered hazardous materials for the purposes of 49 CFR Part 387. The motor carrier must provide for financial responsibility at the appropriate level for the commodity being transported.

Q3. If motor vehicles being transported are considered to be hazardous materials for purposes of the financial responsibility requirements in 49 CFR Part 387, what minimum level of responsibility is needed?

A3. A motor carrier that transports motor vehicles in commerce must maintain at least \$1,000,000 of public liability insurance. See 49 CFR 387.9.

Q4. Is a motor carrier required to utilize drivers that have a hazardous materials endorsement on a commercial driver's license (CDL) if the hazardous materials are excepted from the placarding requirements of the HMR?

A4. No. There is an exemption for transporting vehicles meeting the requirements of 49 CFR 173.220(g). This exemption excuses the carrier from marking, labeling, and shipping papers. For purposes of the hazardous materials endorsement requirements in 49 CFR Part 383, "hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of Part 172 of the HMR or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

I trust this satisfies your inquiry. This response has been coordinated with the Federal Motor Carrier Safety Administration (FMCSA). Please contact the FMCSA should you have further questions concerning the FMCSRs. Please contact this office if we can be of further assistance concerning the HMR.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hattie L. Mitchell', with a long, sweeping horizontal stroke extending to the right.

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

THE LAW OFFICES
OF
PAUL D. BORGHESANI

Stevens
§ 171.1
§ 171.2
Applicability
09-0074

March 19, 2009

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

RE: Transportation of Passengers/Commercial Motor Vehicles in Interstate Commerce

Dear Ms. Mitchell:

This firm represents numerous motor carriers registered with the Federal Motor Carrier Safety Administration ("Administration") and engaged in the transportation of passenger automobiles and/or commercial motor vehicles ("Vehicles") pursuant to either a certificate or permit to transport Property in interstate commerce. The registered motor carriers are transporting the described Vehicles either on specially designed automobile transporters/trailers or in drive-away service on the Vehicle's own wheels. The smaller Vehicles utilize gasoline for fuel, and the larger Vehicles utilize either gasoline and/or diesel fuel. It is understood that diesel fuel and gasoline are listed as Hazardous Materials in 49 CFR Part 172.101. The Vehicles being transported by the registered motor carriers, new and/or used, have a limited quantity of gasoline or diesel fuel in their tanks primarily to facilitate loading and unloading when transported on trailers designed for the transportation of Vehicles and larger quantities of gasoline/diesel fuel when the Vehicle is transported in drive-away service. All of the Vehicles have fuel tanks with a capacity of less than One Hundred Nineteen (119) gallons.

The issue presented is whether the Hazardous Material Regulations are applicable to the transportation of the described Vehicles having limited quantities of gasoline and/or diesel fuel in the tanks of these vehicles while being moved in interstate commerce.

- More specifically: Is the registered motor carrier required to maintain and file proof of auto liability coverage in the amount of One Million Dollars in compliance with the provisions of 49 CFR Part 387.301(a)?
- Is the registered motor carrier, when transporting the Vehicles subject to the Hazardous Materials Regulations governing placarding and other documentation, i.e. Bill of Lading, commodity description, etc.?

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- Is the registered motor carrier required to utilize drivers that are operating commercial motor vehicles requiring a commercial driver's license ("CDL") to have a Hazardous Material Endorsement in conformity with the provisions of 49 CFR Part 383?

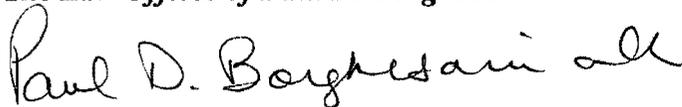
It is noted that the applicability of the Hazardous Materials Regulations as well as exceptions thereto may be different for gasoline versus diesel fuel, the latter having a much higher flash point may be reclassified as a combustible liquid. In this latter context, it is presently understood that when diesel fuel is transported in non-bulk packagings of less than One Hundred Nineteen (119) gallons, it is not subject to the Hazardous Materials Regulations.

The registered motor carriers represented by this firm are committed to safety as well as compliance with all applicable regulations including those governing the transportation of hazardous materials. Each has a "satisfactory" rating and is seeking response to the foregoing questions to ensure that their present status is not adversely impacted by the transportation of the above-described Vehicles.

The circumstances considered, your immediate consideration and response to the foregoing inquiry is respectfully requested. If additional information is required, please direct all the requests to the undersigned.

Very Truly Yours,

The Law Offices of Paul D. Borghesani

A handwritten signature in black ink that reads "Paul D. Borghesani" followed by a stylized flourish.

Paul D. Borghesani

PDB/alh