



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

JAN 6 1998

Ms. Patricia A. W. Murphy
Bell Atlantic Network Services, Inc.
1320 North Court House Road
4th Floor West-11G
Arlington, VA 22201

Dear Ms. Murphy:

This is in response to your letter concerning the requirements for shipping "Fusee" under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). I apologize for the delay in responding and hope it has not caused any inconvenience.

Your questions are paraphrased and answered as follows:

- Q1. Would a "liquid-burning flare" be defined under the HMR as a "Fusee?"
- A1. The HMR does not define the term "liquid-burning flare." As you are aware, a "Fusee" is a device designed to burn at a controlled rate and to produce visual effects for signaling purposes. Under the HMR, a "liquid-burning flare" may not be described as a "Fusee."
- However, depending on the flash point of the "liquid" in the flare, it could be described as "flammable liquid, n.o.s.", "Combustible liquid, n.o.s.," or it could be non-regulated if it does not meet any of the hazard class definitions in Part 173.
- Q2. You asked if Bell Atlantic transports, by motor vehicle, a box of 24 "Fusees" from a warehouse to a storeroom and unloads the fusees at the storeroom, are shipping papers, labeling and packaging required under the HMR? Is the weight of the vehicle used in determining whether the shipping paper, labeling, placarding, and packaging requirements apply?
- A2. A box of 24 "Fusees" transported by Bell Atlantic by motor vehicle from a warehouse to a storeroom and unloaded at the storeroom are subject to the requirements of the HMR. In accordance with the HMR, Fusees transported in commerce by highway or railway must be packaged as prescribed in 49 CFR 173.184, and shipping papers, labeling, and placarding requirements apply. However, the weight of the vehicle is not a determining factor in whether shipping papers, labeling, placarding, and packaging requirements apply.

Q3. When six flares are placed in Bell Atlantic commercial motor vehicles and used as emergency warning devices, would packaging and labeling requirements under the HMR apply?

A3. Hazardous materials such as "Fusees" or "liquid-burning flares" required on a commercial motor vehicle for use as warning devices in accordance with 49 CFR 392.22 and 393.95 are not subject to the requirements of the HMR.

For your information, a final rule was published in the **Federal Register** which expanded the scope of the HMR to intrastate transportation of hazardous materials. The final rule included a definition in § 171.8 for "Materials of Trade" (MOTS) and exceptions for certain hazardous materials used as MOTS. [Docket HM-200; 62 FR 1208; 01/08/97; and corrections and responses to petitions for reconsideration, 62 FR 49560; 09/22/97; copies enclosed]

MOTS are hazardous materials, other than hazardous wastes, that are carried on a motor vehicle -- (1) For the purpose of protecting the health and safety of the motor vehicle operator or passengers; (2) For the purpose of supporting the operation or maintenance of a motor vehicle (including its 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.

Certain forms and quantities of hazardous materials, such as "Fusees" in Division 4.1, shipped as MOTS are not subject to any other requirements of the HMR (e.g., shipping papers, labeling and placarding). Therefore, the "Fusees" transported in Bell Atlantic's commercial motor vehicles and used as emergency warning devices meet the MOTS definition and may be shipped as such in accordance with the requirements in § 173.6.

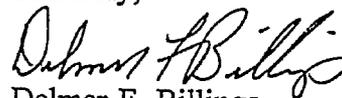
Q4. What factor determines whether the HMR, or the Federal Motor Carrier Safety Regulations (FMCSR), should be used to determine if shipping papers, labeling, placarding and packaging requirements apply?

A4. The HMR prescribe requirements for shipping papers, labeling, placarding and packaging of hazardous materials for transportation in commerce. The Federal Highway Administration is the agency in the Department responsible for compliance with the requirements in the FMCSR, 49 CFR Parts 200-399. The FMCSR, 49 CFR Parts 390 to 397, address requirements such as maintenance and use of motor carrier vehicles, driver qualifications and driving and parking rules.

I hope this information is helpful. If we can be of further assistance, please contact us.

Enclosures

Sincerely,



Delmer F. Billings

Chief, Regulations Development

Office of Hazardous Materials Development

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Patricia A.W. Murphy
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Eng...
File 13.184
SC

November 27, 1996

Mr. Edward Mazzulo
Director Of Hazmat Standards
U.S. D.O.T. RSPA
Mail Drop DHM - 10
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RE: INTERPRETATION OF 49 C.F.R. §173.184

Dear Mr. Mazzulo,

This is a request for an interpretation of 49 C.F.R. §173.184. Following are the questions:

1. What is Fed DOT's definition of a liquid-burning flare? §173.184 states that a fusee is a device designed to burn at a controlled rate and to produce visual effects for signaling purposes. We cannot find a definition for a liquid-burning flare.
2. If Bell Atlantic transports, via a motor vehicle, a box of 24 fusees from a warehouse to a storeroom and unloads the fusees at the storeroom, are shipping papers, labeling and packaging required under the hazardous materials regulations? Is the weight of the vehicle a determining factor in the shipping paper, labeling, placarding and packaging requirement?
3. When six flares are placed in Bell Atlantic commercial motor vehicles and used as emergency warning devices is it necessary to package and label the flares according to the hazardous materials regulations?
4. What is the determining factor in deciding if the Hazardous Materials Regulations, 49 CFR Parts 106 through 180 or the Federal Motor Carrier Safety Regulations, 49 CFR Parts 325 through 399 are to be used in determining if shipping papers, placarding, packaging and labeling apply?

Please forward the interpretation to: - - - - -
Bell Atlantic Network Services, Inc.
Patricia A.W. Murphy, Asst. Mgr.
1320 North Court House Road, 4th Floor. W
Arlington, VA 22201

If you have any questions I can be reached on 703-974-2850. My fax number is 703-974-0313.

Thanking you in advance for your help in this matter.

Sincerely yours,

Patricia A.W. Murphy

cc: Julien Randolph