



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

MAY 01 2018

1200 New Jersey Avenue, SE
Washington, DC 20590

Mr. Rob Scott
P.O. Box 144
Kingsburg, CA 93631

Reference No. 17-0047

Dear Mr. Scott:

This letter is in response to your April 27, 2017, e-mail requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Part 171-180) applicable to the adoption of Department of Transportation Special Permit (DOT-SP) 13544 into § 172.102(c)(5) Special Provision N95 in the final rule issued under Docket No. PHMSA-2013-0042 [HM-233F; 81 FR 3635]. Specifically, you state the new special provision adds the wording “closed motor vehicle,” which is not in DOT-SP 13544. You note that the HMR defines “closed transport vehicle” for radioactive materials in § 173.403. You ask for a definition of “closed motor vehicle” as used in Special Provision N95. We have paraphrased and answered your questions.

A “closed motor vehicle,” as this wording is used in Special Provision N95, means a motor vehicle that has some method of closing. The HMR do not define “closed” or “closed motor vehicle,” but do define “motor vehicle” as: ...a vehicle, machine, tractor, trailer, or semitrailer, or any combination thereof, propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property. It does not include a vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.” (See § 171.8.) Generally, a flatbed trailer or flatbed truck is not a closed vehicle. However, it is the opinion of this Office that when equipped with removable solid sides and back and closed by covering with a tarpaulin or lid, a flatbed truck or trailer is a closed vehicle.

You enclosed one picture each of a curtain-trailer van, stake-bed truck, scrapped cars secured to a flatbed trailer with netting and chains that you described as a tarped load, beverage trailer truck, and cylinder-rack truck. You ask which of these vehicles is a “closed motor vehicle” as this wording is used in Special Provision N95. You state that you want to use these trucks to transport 20 pound cylinders of “UN1978, Propane, 2.1 (flammable gas).”

Please note, the HMR require that any package containing a hazardous material that is not permanently attached to a motor vehicle must be secured within the vehicle in a manner that prevents shifting, including relative motion between packages, under normal transportation

conditions (see § 177.834(a)). Therefore, provided this condition is met, it is the opinion of this Office that the following are closed motor vehicles based on the information you provided:

- Closed curtain trailer van;
- Stake bed truck when covered with a tarpaulin or lid;
- Closed beverage trailer truck; and
- Cylinder rack truck.

It is also the opinion of this Office that the flatbed trailer with the load of scrapped cars secured to it with netting and chains does not meet the requirement of a closed motor vehicle.

You further ask if the intent of requiring the vehicle to be closed in Special Provision N95 is to enclose the markings on the cylinders or to additionally secure, other than through the use of load locks and straps, the cylinders in the vehicle. The intent of Special Provision N95 is to permit DOT Specification 4BA240 cylinders containing liquefied petroleum gas (LPG) and propane, and/or residue of LPG or propane, to be transported without hazard warnings (*i.e.*, hazard communication) provided the materials are secured in a closed and placarded transport vehicle and meet certain conditions. The HM-233F final rule explains this as follows:

“...[DOT-SP 13544] supports the propane cylinder exchange programs that accept expended cylinders in exchange for full cylinders. Cylinders collected during the course of these programs may not always bear the appropriate hazard markings and labels as required by the HMR. [DOT-]SP 13544 prescribes certain operational controls to ensure appropriate hazard communication, driver training, and appropriate securement of the cylinder on the transport vehicle. [¶]In this final rule, PHMSA is adopting SP 13544 as proposed by adding new Special Provision, “N95” to § 172.102(c)(5) that excepts cylinders containing UN1075, Liquefied petroleum gas and UN1978, Propane from marking the identification number and proper shipping name or bear hazard labels provided certain conditions are met....”

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,



T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

Edmonson
§ 172.102(c)(5)
Cylinders
17-6047

Dodd, Alice (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Friday, April 28, 2017 2:16 PM
To: Hazmat Interps
Subject: FW: interpretation Closed Motor Vehicle

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Shante/Alice,

Please submit this as a letter of interpretation. Mr. Scott spoke with Breanna.

Please let me know if you have any questions.

Thanks,
Jordan

From: Rob Scott [mailto:lpghazmat@yahoo.com]
Sent: Thursday, April 27, 2017 11:23 AM
To: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Subject: interpretation Closed Motor Vehicle

Rob Scott
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In January of 2016 under HM223F PHMSA adopting SP 13544 as proposed by adding new Special Provision, "N95" to § 172.102(c)(5) that exempts cylinders containing UN1075, Liquefied petroleum gas and UN1978, Propane from marking the identification number and proper shipping name or bear hazard labels provided certain conditions are met.

N95 added the verbiage **Closed Motor Vehicle** which was not in the original special permit requirements.

I'm in need of the definition of **Closed Motor Vehicle**, I want to use either a stake bed truck or a curtain trailer to transport them to the facility and are unsure which if any would meet the requirement of N95.

Neither in this rulemaking or in the existing regulations is the term "Closed Motor Vehicle" or "closed vehicle" defined. In other letters of interpretation, Closed vehicles have been implied to be dry van, freight container, sift proof container or similar vehicle/container. In 49 CFR 173.403 for radio active materials, *Closed transport vehicle* means a transport vehicle or conveyance equipped with a securely attached exterior enclosure that during normal transportation restricts the access of unauthorized persons to the cargo space containing the Class 7 (radioactive) materials. The enclosure may be either temporary or permanent, and in the case of packaged materials may be of the "see-through" type, and must limit access from top, sides, and bottom.

The following are photos of several of the transport vehicles commonly used to transport 20 lb. BBQ cylinders and forklift cylinders. They include:

- Soft curtain vans,
- Stake bed trucks,
- "Beverage" trucks/trailers
- Cylinder rack trucks and trailer
- A tarped load, a load securement netting as used for scrapped cars

Which of these would meet the term "Closed motor vehicle" as used in Special Provision N95? Is the intent to enclose the marking on the cylinders or as an additional securement of the cylinder other than load locks and straps?



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Rob Scott

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