



U.S. Department  
of Transportation

1200 New Jersey Avenue, SE  
Washington, DC 20590

**Pipeline and Hazardous  
Materials Safety  
Administration**

February 6, 2019

Steven Parrish  
Senior Supply Chain Specialist  
Ascent Resources Utica, LLC  
3501 NW 63rd Street  
Oklahoma City, OK 73116

Reference No. 18-0110

Dear Mr. Parrish:

This letter is in response to your July 16, 2018, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the transport of dyed diesel fuel in bulk quantities. Specifically, you explain that your company is interested in hauling dyed diesel fuel in either a light-duty pickup truck with a 500-gallon tank and equipment installed on a flatbed or a mini-transport truck with a capacity of 500–1,000 gallons for use in off-road equipment at multiple remote locations.

We have paraphrased and answered your questions as follows:

- Q1. You ask if the transportation scenario you describe is an activity to which the HMR do not apply in accordance with § 171.1(d)(6).
- A1. The answer is no. The transportation scenario you describe is considered in commerce for the purposes of the HMR. Historically, the Pipeline and Hazardous Materials Safety Administration (PHMSA) interprets “in commerce” to mean trade or transportation in furtherance of a commercial enterprise.
- Q2. You ask if the driver of the truck is considered a carrier of hazardous materials in commerce.
- A2. The answer is yes. Section 171.8 of the HMR defines a “carrier” as a person who transports passengers or property in commerce by rail car, aircraft, motor vehicle, or vessel.

Dyed diesel fuel is subject to the HMR as either a Class 3 flammable or a combustible liquid per §§ 173.120 and 173.121. Bulk packages of Class 3 flammable liquids are fully subject to the requirements of the HMR. See bulk packaging provisions in §§ 173.241 and 173.242; hazard communication requirements in 49 CFR Part 172, Subparts C through H; and registration requirements in 49 CFR Part 107, Subpart G.

For domestic transportation, a flammable liquid with a flash point at or above 38 °C (100 °F) that does not meet the definition of any other hazard class may be reclassified as a combustible liquid. The HMR except combustible liquids from certain requirements, as described in § 173.150(f). However, a combustible liquid that is in a bulk packaging is subject to requirements pertaining to the following:

- Shipping papers, waybills, switching orders, and hazardous waste manifests;
- Marking of packages;
- Display of identification numbers on bulk packages;
- Placarding requirements of 49 CFR Part 172, Subpart F;
- Reporting incidents as prescribed by §§ 171.15 and 171.16;
- The requirements of §§ 173.1, 173.21, 173.24, 173.24a, 173.24b, 174.1, 177.804, 177.817, 177.834(j), and 177.837(d);
- Training requirements of 49 CFR Part 172, Subpart H;
- Emergency response information requirements of 49 CFR Part 172, Subpart G; and
- Registration requirements of 49 CFR Part 107, Subpart G.

- Q3. You ask if the driver of the truck must have a Commercial Driver's License (CDL).
- A3. In accordance with the Federal Motor Carrier Safety Administration (FMCSA) regulations, drivers of vehicles transporting hazardous materials that are required to be placarded in accordance with 49 CFR Part 172, Subpart F must have a CDL with a hazardous materials endorsement. See 49 CFR Part 383.
- Q4. You ask if each delivery in the transportation scenario requires shipping papers given that each movement is done by and for the same entity.
- A4. The answer is yes; each shipment requires shipping papers. There is no requirement in the HMR to denote the quantity dispensed on a shipping paper that is used for multiple deliveries. However, if a driver picks up additional quantities of hazardous materials, which were not previously indicated on the shipping paper, the additional quantities must be added if the total quantity on the vehicle exceeds that indicated on the shipping papers.

Q5. You ask if having a secondary containment system on the vehicle would exclude it as a bulk packaging.

A5. The answer is no. A “bulk packaging” is defined in § 171.8 as a packaging in which hazardous materials are loaded with no intermediate form of containment. In your transportation scenario, the tank itself is considered the bulk packaging; any additional safety measures installed on the truck do not change the definition.

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

Sincerely,

A handwritten signature in black ink, appearing to read "T. Glenn Foster". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

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



Ascent Resources Utica, LLC

Ballengee  
§ 171.1  
Applicability  
18-0110

July 16, 2018

U.S. DOT  
PHMSA Office of Hazardous Materials Standards  
Standards and Rulemaking Division  
Attn: PHH-10  
East Building  
1200 New Jersey Avenue, SE  
Washington, DC 20590-0001

Dear Office of Hazardous Materials Standards,

I would like to request an interpretation regarding the requirements under HMR (Hazardous Materials Regulations) for our company's potential fueling project. We have multiple remote locations in Ohio that require deliveries of small amounts of dyed diesel fuel on a daily basis for use in off-road equipment (generators, light towers, etc.). In an effort to ensure adequate supply and to pursue possible cost savings, we are investigating the possibility of purchasing our own fuel truck capable of hauling diesel fuel from a tank storage facility to our remote locations. The fuel will have been paid for when delivered to the tank storage facility so the truck will be hauling fuel that Ascent has already paid for.

The truck will either be a light duty pickup truck (ex. Ford F-250) with a 500 gallon tank and equipment installed on a flat bed or a mini-transport with 500-1,000 gallons capacity (ex. F-350 or F-550 cab & chassis with baffled tank system). This truck will be driven on public roads and highways to get to/from our locations.

I have been researching 49 CFR parts 171 through 395 to determine the applicability of these regulations to the project. I would appreciate an interpretation of the following questions as it relates to Ascent's project.

1. According to Section 171.1(d)(6) "Transportation of a hazardous material by an individual for non-commercial purposes in a private motor vehicle..." is not subject to the requirements of the HMR. Would the activity described above fit this description and qualify for an exemption from the HMR?
2. Does the activity described above qualify the truck as a carrier of hazardous material in commerce?
3. Does the activity described above mandate that the driver possess a commercial driver's license (CDL)?
4. Given that the activity described above is a movement by and for the same entity, does each movement or delivery require shipping papers?
5. If the truck had a secondary containment system on the vehicle would that exclude it as a "bulk packaging"?

Sincerely,

Steven Parrish  
Senior Supply Chain Specialist