



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

MAR 13 2019

Mr. Paul A. Perez
Safety Director
MH Group, LLC
3524 US Highway 57
Eagle Pass, TX 78852

Reference No. 18-0075

Dear Mr. Perez:

This letter is in response to your May 10, 2018, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the shipment of Class 9 materials. You describe a scenario in which a bill of lading is presented to a carrier with an "X" marked under the "HM" column. The following information is indicated on the bill of lading.

21 SKIDS UN3268, SAFETY DEVICES CLASS 9, PG III WEIGHT 15,456 LBS

We have paraphrased and answered your questions as follows:

Q1. You ask if the safety devices are considered hazardous materials and subject to the HMR.

A1. The answer is yes. While Class 9 materials are excepted from placarding when being transported domestically in accordance with § 172.504(f)(9), the safety devices are fully regulated hazardous materials and subject to other relevant portions of the HMR, such as classification, packaging, marking, and labeling. For example, as prescribed in § 172.301(a)(3), the transport vehicle may require marking on each side and each end as specified in the § 172.332 or § 172.336, with the identification number specified for the hazardous material in the § 172.101 Hazardous Materials Table (i.e., 3268), subject to the following provisions and limitations:

(i) Each package is marked with the same proper shipping name and identification number;

(ii) The aggregate gross weight of the hazardous material is 4,000 kg (8,820 pounds) or more;

(iii) All of the hazardous material is loaded at one loading facility;

(iv) The transport vehicle or freight container contains no other material, hazardous or otherwise; and

(v) The identification number marking requirement of this paragraph (a)(3) does not apply to Class 1, Class 7, or to non-bulk packagings for which identification numbers are not required.

Q2. You ask what placard, marking, or square on point is required on the transport vehicle if the safety devices are considered hazardous materials in Q1.

A2. See A1.

Q3. You ask if the driver of the transport vehicle must have a hazardous materials endorsement on a commercial driver's license (CDL) to transport the safety devices.

A3. The answer is no. Section 383.93 of the Federal Motor Carrier Safety Regulations (FMCSR) states that all persons who operate or expect to operate the type(s) of motor vehicles used to transport hazardous materials as defined in § 383.5 are required to have a hazardous materials endorsement on a CDL. Section 383.5 of the FMCSR defines a hazardous material as any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under Subpart F of 49 CFR Part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR Part 73. Because Class 9 materials are excepted domestically from placarding in § 172.504(f)(9) of the HMR, a hazardous material endorsement on a CDL is not required to transport the safety devices.

Please note that while these Class 9 materials do not require placarding and are not subject to a hazardous materials endorsement on a CDL, as established in Answer A1, they are still considered hazardous materials. As such, they are subject to the Minimum Levels of Financial Responsibility for Motor Carriers as provided in 49 CFR Part 387. In accordance with § 387.9, the transportation of these Class 9 materials requires the motor carrier to have \$ 1,000,000 public liability coverage.

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

Stevens
Placarding
18-0075
05/10/2018



To whom it may concern:

I am writing you, PHMSA, in hopes of receiving guidance and clarification pertaining to this subject.

Let me state that I am a carrier and not the shipper of the material. The shipper has presented me with a "Bill of Lading " mark with X under the HM column, they have described the material as

21 SKIDS UN3268, SAFETY DEVICES CLASS9, PGIII Weight 15,456 LBS

The shipment is for domestic transportation and is a bulk shipment.

The shipper has referred 49CFR172.504(f)(9), stating that this is not a hazardous material and does not require placarding nor a HAZMAT CDL endorsement .

Question 1- Is this material subject to the requirements of the HMR?

Question 2 – is this material hazardous material ?

Question 3 – 172.504(f)(9) appears to address placarding requirements , what is the required placard, marking or square on point needed on outside of the transport vehicle? (If this material is a hazardous material it appears to need to be marked with a white square on point or orange label.)

Question 4 – Is a hazardous material endorsement on a commercial driver's license (CDL) required to transport this material? (FMCSA 49CFR397.1 (a) The rules in this part apply to each motor carrier engaged in transportation of hazardous material by a motor vehicle which must be **MARKED or PLACARDED** in accordance to 177.823 of this title.)

Paul A Perez/ Safety Director


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