



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

December 15, 2022

Mr. Jeff McLaughlin
Pacific Northwest Safety Supervisor
Oak Harbor Freight Lines, Inc.
3720 E. Ohio Match Rd
Hayden, ID 83835

Reference No. 22-0112

Dear Mr. McLaughlin:

This letter is in response to your October 24, 2022, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to reporting incidents of spills of packing group (PG) I and II hazardous materials. In your email, you state that it is your understanding—as currently worded in § 171.16(d)(2)—the four conditions for exception from incident reporting requirements provided for unintentional releases of hazardous materials are stand-alone conditions. You believe that, for example, a PG II material that is not a limited quantity material according to § 171.16(d)(2)(i) may still be excepted if it meets the condition specified in § 171.16(d)(2)(ii), in that the material is released from a package having a capacity of less than 20 liters. Specifically, you ask whether § 171.16(d)(2) requires reporting of PG I and II hazardous materials spills regardless of the amount released.

Your understanding is incorrect. In order to be excepted from reporting in accordance with § 171.16(d)(2), the four conditions of sub-paragraphs (i) through (iv) must all be met. These conditions are conjunctive, indicated by “; and” following § 171.16(d)(2)(iii), meaning all four conditions in § 171.16(d)(2) must be met.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Dirk Der Kinderen".

Dirk Der Kinderen
Chief, Standards Development Branch
Standards and Rulemaking Division

Casey

From: [INFOCNTR \(PHMSA\)](#)
To: [Dodd, Alice \(PHMSA\)](#)
Subject: FW: 171.16
Date: Wednesday, October 26, 2022 1:32:22 PM

22-0112

Hi Alice,

Please see the below interpretation request.

Let me know if you need anything.

Regards,

-Breanna

From: Jeff McLaughlin <Jeff.McLaughlin@oakh.com>
Sent: Monday, October 24, 2022 4:59 PM
To: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Cc: Jeff McLaughlin <Jeff.McLaughlin@oakh.com>
Subject: 171.16

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good morning,

We would request an interpretation of 171.16 concerning hazardous material spill reporting.

During a recent FMCSA audit we were informed that all PG I and II material spills must be reported as per 171.16(d)(2) regardless of amount. After researching the CFR, we interpret the regulation differently than the FMCSA and would request guidance. The CFR lacks the word “and” which leads us to believe that 171.16 (d)(2)(i), (ii), (iii) and (iv) are stand alone requirements for reporting. For example, a Packing Group II material that does not meet the exemption of 171.16 (d)(2)(i) due to not being a LTD QTY or PG III material may still be excepted from reporting under 171.16 (d)(2)(ii) because the package was less than 20 liters.

The FMCSA has offered guidance to reporting which includes the word “and” making all 171.16 (d) (2) entries inclusive, but we do not feel that the law supports it. Interpretation #07-0131 also “lumps” all of the criteria together which is not how the CFR is written. There are multiple CFR entries worded in a similar manner that are not interpreted as inclusive unless the word “and” is included at the end of each entry. 172.200(b)(3) and (4) do not require that a product be a LTD QTY and a Category B substance to be excepted. 17.504(f)(1) through (11) also does not require that a commodity meet all 11 exceptions to be excepted from certain placarding requirements.

Any guidance on this matter would be greatly appreciated.

Thank you,

Jeff

Jeff McLaughlin

Pacific Northwest Safety Supervisor

Jeff.McLaughlin@oakh.com

Phone 509-228-8397/Fax 509-535-0435/Cell 406-899-3085

Oak Harbor Freight Lines, Inc.

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