



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

MAR 16 2001

Ref. No. 00-0036

Trooper William I. Reese
Idaho State Police
Hazardous Materials Specialist
5205 South 5th Avenue
Pocatello, ID 83204

Dear Trooper Reese:

This is in reference to your letter dated January 21, 2000, in which you raised several questions concerning the use of a non-DOT specification cargo tank motor vehicle for the transportation of anhydrous ammonia or liquefied petroleum gas under the provisions in 49 CFR 173.315(a), Note 17, or (k), respectively. I apologize for the delay in responding. Your questions are paraphrased and answered in the order posed in your letter.

Q1. Under the provisions for the transportation of anhydrous ammonia prescribed in § 173.315(a), Note 17, may a nonspecification cargo tank motor vehicle be used in a state that had no specific state laws that allowed or addressed its use prior to January 1, 1981?

A1. The answer is yes. The continued use of a nonspecification cargo tank motor vehicle transporting anhydrous ammonia is permitted under the following conditions: (1) the state had not adopted the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) prior to January 1, 1981; (2) the state's laws that were in effect prior to January 1, 1981, permitted or never prohibited the use of a nonspecification cargo tank motor vehicle for the transportation of anhydrous ammonia, and (3) the conditions prescribed in § 173.315(a), Note 17, are met.

Conversely, the continued use of a cargo tank motor vehicle is not permitted if prior to January 1, 1981, the state had adopted, or had incorporated by reference, the HMR requirements into its own regulations. In this situation, the continued use of the cargo tank is permitted under the conditions prescribed in § 173.315(a), Note 17, only if the state's laws specifically permitted the use of a nonspecification cargo tank for transportation of a hazardous material in intrastate commerce.

Q2. May the nonspecification cargo tank motor vehicle referred to in Q1 be used in interstate commerce or must the cargo tank be used in intrastate only; that is, within a single state only?



000036

173.315

- A2. The nonspecification cargo tank may be used in intrastate commerce only, as stated in paragraph 7 to § 173.315, Note 17.
- Q3. Under the provisions for the transportation of liquefied petroleum gas prescribed in § 173.315(k), can a nonspecification cargo tank motor vehicle be used in a state that had no specific state laws that allowed or addressed its use prior to January 1, 1981?
- A3. Yes, see explanation in A1 above.
- Q4. May the nonspecification cargo tank motor vehicle referred to in Q3 be used in interstate commerce or must the cargo tank be used in intrastate only; that is, within a single state only?
- A4. See A2 above.
- Q5. May a carrier who has operations in more than one state that allows the use of a nonspecification cargo tank motor vehicle under the provisions in § 173.315(a), Note 17, or § 173.315(k), move periodically the cargo tank from state to state as long as it is used specifically for intrastate commerce after it is moved?
- A5. No. Prior to January 1, 1981, certain states permitted the use of these nonspecification cargo tanks under the terms of a state permit only. Some states had stricter operating controls than others. The final rules were adopted on the basis that these cargo tanks when properly maintained could continue to operate exclusively within that same state until taken out of service.
- Q6. Why were these intrastate commerce provisions adopted into the HMR?
- A6. With the passage of the Hazardous Materials Transportation Act of 1974, states were encouraged to adopt the HMR to promote uniformity in safety regulations throughout the nation. As states began adopting the HMR, it was brought to our attention that a number of cargo tanks not subject to the HMR had been constructed in conformance with certain consensus standards and used in intrastate commerce for many years. The situation intensified with the adoption of a rule in 1980 that extended authority over the intrastate shipment of hazardous substances by motor carrier and made the provisions of the HMR apply to the carriage of these substances. Anhydrous ammonia was one of the materials designated as a hazardous substance with a reportable quantity of 100 pounds. We adopted the provisions in § 173.315 (a), Note 17, and (k) to permit the continued use of these nonspecification cargo tanks for the transportation of anhydrous ammonia (Docket HM-166K, 47 FR 7244; February 18, 1982) and liquefied petroleum gas (Docket HM-166I, 47 FR 7242; February 18, 1982). The provisions permit the continued use of these cargo tanks in intrastate commerce until they are taken out of service and replaced with new cargo tanks that meet DOT requirements. These regulatory actions were taken to provide economic relief to the agricultural community and to small business operators.

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

Sincerely,

Hattie L. Mitchell

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards



STATE OF IDAHO
DEPARTMENT OF LAW ENFORCEMENT
IDAHO STATE POLICE DIVISION



E.D. STRICKFADEN
Director
January 21, 2000

DIRK KEMPTHORNE
Governor

Hattie Mitchell
US Department of Transportation
Office of Hazardous Materials Standards
400 7th Street SW, Room 8422
Washington, DC 20590

Ms. Mitchell,

Per on conversation on the phone I would request clarification on the following issue's:

- 1) In 173.315(a), Note 17, there is a specific exception for the use of non-specification cargo tanks used to transport anhydrous ammonia. There are eight specific requirement's listed for these tanks. Number seven states, "Is operated exclusively in intrastate commerce (including its operation by a motor carrier otherwise engaged in interstate commerce) in a state where its operation was permitted by the laws of that state (not including incorporation of this subchapter) prior to January 1, 1981". Can these tanks be used in a state that had no specific state laws that allowed or addressed their use prior to January 1, 1981?
- 2) Can the tanks referred to in question #1 be used in interstate commerce or must the tanks only be used intrastate in the state where they are being operated?
- 3) In 173.315(k) there is a specific exception for the use of non-specification cargo tanks used to transport liquefied petroleum gas. There are eight specific requirement's listed for these tanks. Number six states, "Is operated exclusively in intrastate commerce (including its operation by a motor carrier otherwise engaged in interstate commerce) in a state where its operation was permitted by the laws of that state (not including the incorporation of this subchapter) prior to January 1, 1981". Can these tanks be used in a state that had no specific state laws that allowed or addressed their use prior to January 1, 1981?
- 4) Can the tanks referred to in question #3 be used in interstate commerce or must the tanks only be used intrastate in the state where they are being operated?
- 5) Can a carrier, who has operations in more than one state that allows the use of these tanks, move any of the tanks mentioned above from state to state as long as they are used specifically for intrastate commerce after they are moved?
- 6) Why was the intrastate commerce provision put into the regulation to begin with?

You asked me on the phone when Idaho first adopted the federal regulations by reference. I am still trying to find the exact date. When I find out the exact date I will let you know. I do know that our state has had no specific state laws that addressed the transportation of anhydrous ammonia or liquefied petroleum gas.

These specific issues have surfaced several times over the last couple of years and several times just in the last month in our state. We would like an official reply for our benefit as well as industries. I would also appreciate it if you would send me copies of the final rule published in the federal register on 02/15/82.

Sincerely,

Trooper William L. Reese
Idaho State Police
Hazardous Materials Specialist

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

MAR 2 2001

Reference No. 00-0218

Mr. Ken Sumner
President, KWS Training, Inc.
P.O. Box 562
Carrboro, NC 27510

Dear Mr. Sumner:

This is in response to your letter concerning the emergency response requirements in 49 CFR Part 172, Subpart G, for a "Consumer commodity, ORM-D." You asked why a consumer commodity is excepted from having to meet the emergency response requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180), but must meet these same requirements under State Variation US 12 of the International Civil Aviation Organization's Technical Instructions for the Transport of Dangerous Goods by Air (the ICAO Technical Instructions).

Materials that are correctly described as consumer commodity and classed as ORM-D, as provided by the HMR, or Class 9, as provided by the ICAO Technical Instructions, are not required to meet the emergency response information requirements. Voluntary compliance with this change was permitted after August 18, 2000 (65 FR 50450, RSPA Docket No. 99-6213, HM-218, copy enclosed). This authorization in the HMR serves as a Competent Authority approval for the ICAO Technical Instructions. Also, State Variation US 12 was revised to include this change, which will appear in the 2001-2002 edition of the ICAO Technical Instructions.

I hope this satisfies your request.

Sincerely,

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards

Enclosure

172.600



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Carrboro NC 27510
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Edmonson
§ 172.600(d)
Emergency Response
Information

00-0218

8/3/00

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
U.S. DOT/RSPA (DHM-10)
400 7th Street S.W.
Washington, D.C. 20590-0001

Dear Mr. Mazzullo,

In January of this year I emailed the question below to the Hazardous Materials Information Center. They acknowledged the issue and thought additional review would be appropriate. On the recommendation of the HMIC I then faxed the question to the attention of Frits Wybenga and Bob Richards. Mr. Wybenga contacted me and suggested I forward the question to you for a more formal response.

It appears the United States has two different positions on providing emergency response information for shipments of consumer commodities. For shipments made under the provisions of 49 CFR emergency response information is not required. For shipments made under the ICAO Technical Instructions it appears emergency response information is required.

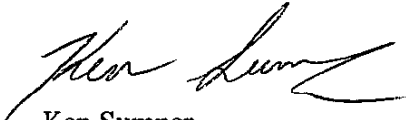
The provisions of 172.600(d) except materials properly classified as an ORM-D (consumer commodities and cartridges, small arms) from the emergency response information requirements of Subpart G of Part 172. This means that shippers of consumer commodities, by any mode of transport within the United States, do not have to provide an emergency phone number or emergency response information.

If shipments of consumer commodities are made under the provisions of 171.11 (ICAO Technical Instructions) this appears to be incorrect. According to ICAO State Variation USG-12 "On shipments to, from, within or transiting through the U.S., emergency response information as described below must be provided for all dangerous goods other than magnetized material and dangerous goods for which no Transport Document is required." Since consumer commodities require a transport document for carriage aboard aircraft, emergency response information requirements appear to apply.

Additionally, consumer commodities are considered Class 9, not ORM-D, under the ICAO Technical Instructions. This means they do not qualify under 172.600(d) as "properly classified as an ORM-D".

Given the exception in 49 CFR for consumer commodities it seems a contradiction to require emergency response information under the ICAO Technical Instructions. Would it be more appropriate to reword 172.600(d) and USG-12 for consistency? Your clarification of this issue would be most appreciated.

Regards,

A handwritten signature in black ink, appearing to read "Ken Sumner", written in a cursive style.

Ken Sumner
President