



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

AUG 25 2005

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

Mr. Michael Ritchie
Hazardous Materials Specialist
Minnesota Department of Transportation
Office of Freight and Commercial Vehicle Operations, Mail Stop 420
1110 Centre Pointe Curve
Mendota Heights, MN 55120-4152

Ref. No.: 05-0186

Dear Mr. Ritchie:

This is in response to your July 28, 2005 letter regarding carrier requirements and applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Your questions are paraphrased and answered as follows:

- Q1. Under the HMR, may a carrier halt a transport vehicle at its facility for the purpose of commercial gain or operational purposes (e.g., waiting for additional cargo to fill a trailer or to accommodate a delayed delivery request by a consignee)?
- A1. In accordance with § 177.800(d) all shipments must be transported without unnecessary delay. Delays that are part of normal commercial operations, regulatory compliance, and general safety are not considered "unnecessary" delays. Consolidating shipments, brief delays to accommodate consignee delivery schedules, and compliance with the HMR or other regulations (e.g., the Federal Motor Carrier Safety Regulations (FMCSR; 49 CFR Parts 350-399)) are not unnecessary delays.
- Q2. If a driver must rest to comply with FMCSR requirements for hours of service, is this an "unnecessary" delay?
- A2. No. See A1.
- Q3. If a carrier stores hazardous materials prior to delivery to the consignee is this considered "storage incidental to movement" (e.g., the consignee is unable to accept the shipment and request that the carrier hold the shipment at their facility)?
- A3. Yes. Storage incidental to movement is defined in § 171.8 as storage by any person between the times that a carrier takes physical possession of the hazardous material for the purpose of transporting it until it is physically delivered to the destination on the shipping document.



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171.1(d)
172.800

Q4. If a driver stops a transport vehicle containing hazardous materials at a rest area to await instructions from the consignee or a dispatcher is this “storage incidental to movement?”

A4. Yes. See A3.

Question 5 in your letter pertains to the FMCSR; we have not addressed this question in our response as it pertains to regulations outside the purview of this office. It appears that you have already sent a copy of your request to the Federal Motor Carrier Safety Administration’s field office in Olympia Fields, Illinois.

In your letter, you also express an interest in a preemption determination. You may apply for a preemption determination in accordance with 49 CFR Part 107, Subpart C. Your application may be submitted:

By mail:

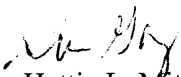
Associate Administrator for Hazardous Materials Safety
(Attn: Hazardous Materials Preemption Docket)
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
400 Seventh Street, SW
Washington, DC 20590-0001

By Fax:

Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), at 202-366-5713

I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,


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

Cc: Mr. Joe DeLorenzo, USDOT/FMCSA, 19900 Governors Drive, Suite 210, Olympia Fields, IL 60461



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July 28, 2005

Mr. Edward Mazzullo
USDOT/PHMSA
DHM-10
400 Seventh St. S.W.
Washington, D.C. 20590

Mr. Joe DeLorenzo
USDOT/ FMCSA
19900 Governors Drive
Suite 210
Olympia Fields, IL 60461

Gentlemen:

A county in this state has issued a county ordinance that controls storage, and parking of trucks containing hazardous wastes. The ordinance requires any facility that stores hazardous waste on or off a vehicle for more than 24 hours, to obtain a transfer facility permit. The county ordinance references State laws and rules, which in turn reference USEPA regulations in 40 CFR 263.12.

Some of these vehicles require hazmat placarding pursuant to 49 CFR part 172, subpart F. Many of the vehicles are in interstate commerce, as the carrier involved indicates they haul hazardous waste in 40 states. The carrier has its headquarters in this county. It is registered with both the USDOT and Mn/DOT as a hazmat carrier. The carrier is concerned with local ordinances like this one around the country. If a vehicle with hazardous waste is stopped more than 24 hours, for repairs, to await additional cargo or to let a driver catch up on hours of service, they could be required to have local permits to park or store hazmat or hazardous waste. They ask if this is consistent with federal law or rules.

Staff from the county and the carrier, have asked for Minnesota DOT's assistance in clearing up this matter. In our opinion, this situation calls for interpretation or clarification of both the Federal Hazardous Materials Regulations (HMR) and the Federal Motor Carrier Safety Regulations (FMCSR). I believe this ordinance and its application bring up issues that are addressed in the HMR and the FMCSR and so I have addressed this letter to both PHMSA and FMCSA and we are requesting that both administrations in the USDOT review and comment. Applicability of USEPA and local environmental laws concerning transport of hazardous waste is an additional issue.

Pollack
§ 171.1(d)
§ 172.800
Security Plans
Applicability
05-0186



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49 CFR 177.800(d) states "All shipments of hazardous materials must be transported without unnecessary delay, from and including the time of commencement of the loading of the hazardous materials until its final unloading at destination." On March 28, 2002, FMCSA issued a bulletin "HM Issues #2 HM Safety & Security Regulations" that cited a shipment of ammonium nitrate fertilizers that was delivered more than 10 days after it was accepted for shipment as a violation of this section.

1. What is "unnecessary delay" per this regulation? If a hazmat load comes to rest at the carrier facility or other location for business reasons (seeking additional cargo to fill the trailer, or because the receiver or consignee can't accept it until a specified date) does this constitute unnecessary delay?
2. If a hazmat driver stops at a rest area or truck stop for 6 or 8 hours to comply with the hours of service regulations, is this stop an unnecessary delay per 49 CFR 177.800(d)? If the driver stops for 34 hours pursuant to 49 CFR 395.1 (o) and 395.3 (c)?

Docket HM -223 was issued by USDOT as a final rule on October 30, 2003. This rulemaking was issued to clarify the applicability of the HMR. In 49 CFR 171.1 (d), it identifies functions not subject to the requirements of the HMR. In the preamble to HM-223, on page 61929, it addresses the relationship between EPA and EPA authorized state programs and the HMR and notes that the authority of EPA state authorized program to enact requirements that are more stringent than federal requirements is limited in the area of hazardous waste transportation. The preamble language also notes that RCRA state programs must be consistent with federal hazmat law and regulations, or they may be subject to preemption.

3. If a carrier picks up a load of hazardous waste, and brings it to the carrier's facility, while waiting for the consignees OK to deliver, or for drivers to become available, without repackaging the hazmat, is this storage incidental to transportation, or unregulated by the HMR per 171.1 (d)?
4. If the carrier noted in question 3 is parked and waiting at a highway rest area or at a truck stop, rather than at the carrier facility, do the same requirements apply?
5. If the unit is placarded or marked, making the carrier subject to 49 CFR part 397, do the attendance (397.5) and parking (397.7) regulations apply at a highway rest area or truck stop?
6. Can a State or Local government require a carrier with hazardous waste in storage incidental to transport, to obtain a local government hazmat or hazardous waste storage or facility permit?

Thank you for your consideration of these issues. Both the carrier and the county have indicated a willingness to settle this issue based on your guidance.

Michael Ritchie
Hazardous Materials Specialist
Minnesota DOT