



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

DEC 30 2005

Mr. Alan I. Roberts
President
Dangerous Goods Advisory Council
1100 H Street, NW, Suite 740
Washington, DC 20005

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

Ref. No. 05-0271

Dear Mr. Roberts,

This responds to your October 5, 2005 letter requesting additional clarification on the applicability of the Materials of Trade (MOTs) exception in § 173.6 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you request that we correct errors and reissue two letters of interpretation regarding the applicability of the MOTs exception.

In the case of the July 9, 2004 letter, addressed to Mr. Steven King of Mobility Products Unlimited (Ref. No.04-0145), Ms. Mitchell's statement that "A private carrier is a carrier who transports the business's own products and does not provide such transportation service to other businesses" is correct. That statement does not contradict the definition in 49 CFR 390.5, stating that a private carrier "means a person who provides transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier." A company transporting a purchased swimming pool system for delivery and installation is a private motor carrier for purposes of the HMR.

In the case of the May 18, 2005 letter, addressed to Mr. Randy Hill of Chemtran Services USA, Inc. (Ref. No. 05-0096), the response by Mr. Gale that, based on the information in Mr. Hill's letter, his company is not a private motor carrier is correct. The company is providing transportation services to a third party. In addition, the MOTs exception is intended for use by highway mode by a private motor vehicle in direct support a principal business that is other than transportation by motor vehicle, not for transportation by aircraft.

I hope this answers your inquiry.

Sincerely,

Susan Gorsky
Acting Director
Office of Hazardous Materials Standards



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Dangerous Goods Advisory Council

Suite 740 ♦ 1100 H Street NW ♦ Washington DC 20005 ♦ 202/289-4550 ♦ Fax 202/289-4074 ♦ www.dgac.org

October 5, 2005

Dr. Robert A. McGuire
Associate Administrator for Hazardous Materials Safety
Pipeline and Hazardous Materials Safety Administration
U. S. Department of Transportation
Washington, DC 20590

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Dear Dr. McGuire:

I request that two letters of interpretation addressing the applicability of 49 CFR 173.6 be reissued to correctly state the applicability of the materials of trade (MOT) exceptions consistent with the definition of "Material of trade" in 49 CFR 171.8.

In a letter dated July 9, 2004, addressed to Mr. Steven King of Mobility Products Unlimited, Ms. Mitchell stated "A private motor carrier is a carrier who transports the business's own products and does not provide such transportation service to other businesses." While this statement has no effect on the outcome of the issue addressed by the letter, it is inconsistent with the definition of "private motor carrier" in 49 CFR 390.5 stating "...means a person who provides transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier." The distinction is important since many private carriers carry the property of others in the conduct of their businesses, such as a swimming pool system bought and paid for and subsequently transported by the seller for installation. I assume the drafters of the MOT definition in Section 171.8, took this definition into account in writing subparagraph (3) stating "By a private motor carrier ~~in~~ direct support of a principal business that is other than transportation by motor vehicle."

In a letter dated May 18, 2005, Mr. Gale stated to an officer of Chemtran Services USA, Inc., "Your company is not a private motor carrier." (after he quoted subparagraph (3) mentioned above). A review of Chemtran's web site at www.chemtranusa.com discloses it to be a company that provides a wide array of business support services that are its principal business activities, not transportation for hire. It should be noted that private carrier delivery charges for recovery of out-of-pocket costs are common. Such charges do not change the character of private motor carriage.

A number of our members are concerned that the two letters mentioned above may be binding, thereby placing some of their business operations in jeopardy. Therefore, we request a correction of the errors in the two letters cited above, and request that we be provided a copy thereof. We appreciate in advance your action on this matter.

Sincerely,

Alan I. Roberts,
President