



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

DEC 03 2013

Mr. Kevin Riley
DOT Compliance/HSE Director
Fowler Transportation Ltd.
PO Box 220
Marshall, TX 75671

Ref. No. 13-0150

Dear Mr. Riley:

This responds to your July 15, 2013 letter regarding the shipping paper requirements of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Your questions are paraphrased and answered as follows:

Q1. Does § 172.200(b)(1) or (b)(2) except transportation of placardable amounts of diesel fuel (NA1993) from the requirement to provide a shipping paper; or from the requirement to provide a hazardous materials description on the shipping paper?

A1. The answer is no. Section 172.200(b) does not except a placarded load of diesel from the shipping paper requirements. Section 172.200(b) states that, unless the material intended for shipment is a hazardous substance, hazardous waste, or marine pollutant, a shipping paper is not required for any material identified by the letter "A" or "W" in column 1 of the § 172.101 hazardous materials table (HMT) except when transported by aircraft (air) or vessel (water), respectively. Diesel fuel is neither identified by the letter "A" nor "W" in column 1 of the § 172.101 HMT and therefore, this exception does not apply.

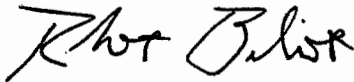
Q2. Is a tank mounted onto a skid equipped with a loading hitch, winched to a flatbed trailer and secured by tie down devices considered a portable tank or a cargo tank? The tank capacity exceeds 119 gallons. Also, as noted in a telephone conversation with a member of my staff on July 25, the diesel fuel contained in the tank is not loaded or unloaded from the tank while on the flatbed trailer.

A2. Based on your description and without further visual evidence, it is the opinion of this Office that the tank you describe is a portable tank. The terms "Cargo tank" and "Portable tank" are defined in § 171.8 of the HMR. Paraphrasing the complete definitions, a cargo tank is a bulk packaging that is permanently attached to or forms part of a motor vehicle, or is not permanently attached but which by reason of its size, construction or attachment to a motor vehicle is loaded or unloaded without being removed from the vehicle; and a portable tank is a bulk packaging designed to be loaded onto or temporarily attached to a transport vehicle and equipped with skids, mountings, or accessories to facilitate handling by mechanical means. Thus,

the tank is a portable tank, and subject to all requirements associated with the use of portable tanks authorized for transportation of diesel fuel.

I hope this information is helpful. If you have further questions, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Benedict". The signature is written in a cursive style with a large initial "R" and "B".

Robert Benedict
Chief, Standards Development Branch
Standards and Rulemaking Division

Mr. Charles E. Betts
Director, Standards and Rulemaking Division
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590

Der kinderen
§172.200(d)
§178.320
§172.101
Shipping Papers

Mr. Betts, I hope this correspondence finds you well. I am writing your office today, to request an interpretation of Title 49 Code of Federal Regulations Part 172, Subpart C. Specifically, §172.200(b), the section addressing the applicability of the *description of hazardous materials on the shipping papers*.

First, let me give you a brief history, and explanation, of this company's involvement with the shipping of hazardous materials. Fowler Transportation is a service company, providing heavy haul services, mainly for the oil and gas industry. The only hazardous material we transport is diesel fuel "NA1993" (aka, fuel oil). The diesel fuel is stored and transported, in a **portable tank**, or **cargo tank** (depending on proper description) that exceeds a capacity of 119 gallons, is mounted onto a skid, which is equipped with a loading hitch. Our equipment is outfitted with a mechanical winch, attached to the power unit, which is used to hook onto, (by means of a winch line) the loading hitch on the tank skid. Once hooked, the tank is then winched onto a flatbed trailer and secured by transport chains, or other tiedown devices, to the trailer in accordance to §393.100.

§172.200 Applicability

- (a) Description of hazardous materials required. Except as otherwise provided in this subpart, each person who offers a hazardous material for transportation shall describe the hazardous material in the shipping paper in the manner required by this subpart.
- (b) **This subpart does not apply to any material, other than a hazardous substance, hazardous waste or marine pollutant that is-**
 - 1. Identified by the letter "A" in column 1 of the §172.101 table...
 - 2. Identified by the letter "W" in column 1 of the §172.101 table...
 - 3. An ORM-D, ...
 - 4. Category B infectious material...

Although Fowler Transportation does provide a description on the shipping paper (weigh bill) in accordance to §172.201, I question the wording versus intent in the above highlighted section. This came to my attention while designing an outline for instruction on the hazardous materials guidelines in conformance with Part 177. It is my understanding and belief, that shipping papers are required in our circumstance. However, one could easily interpret the above highlighted section to exclude any hazardous materials not specifically listed in §172.100 (b).

Question 1.

Does §172.100(b) intend to exempt shipments of placardable amounts of diesel fuel “NA1993” from the requirements of;

- (a) providing shipping papers in accordance to §172.201, *or*
- (b) providing a description of the hazardous material in accordance to §172.202?

§172.101 (Diesel Fuel)

Symbols / Proper Name / Hazard Class / I.D. # / PG / Label Codes /

D / Diesel Fuel / 3 / NA1993 / III / None /

I had the opportunity to sit down and discuss this with a local TXDPS Trooper within my area, which we agreed that, the way the law reads, versus “what we believe” the laws intent is, seems to differ.

- (a) By stating “*this sub-part*” one could interpret that to mean (Sub-part C –Shipping Papers) as a whole, “*would not apply*” unless the materials being shipped were classified as, a hazardous substance, hazardous waste or a marine pollutant identified in the hazmat table with the letter(s) “A” or “W” in column 1. (*which diesel does not*)

Diesel Fuel, shown above, as it appears in the Hazmat table (§172.101) does not match the classification of any material described in §172.201(b). Therefore would be exempt from either the requirement of providing any shipping paper(s), or at the very least be exempt from the requirement of providing a basic description of the hazardous material being shipped on any shipping paper(s).

As stated above, I do not think that it is/was the intention of §172.100(b) to exclude “1993” or many other hazardous materials from the requirements set forth in §172 sub-part C, and will continue to instruct Fowler’s employees to adhere to the requirements of shipping papers and to provide a basic description of the material(s) in accordance to §172.202. However, I believe it is in the best interest of the FMCSA to clarify this particular section, as it is very ambiguous, and could be misconstrued, possibly placing the general public and this nations first responders in harms way.

Secondly, I would like some clarification as to the proper legal name, of the device (Container), used by drilling contractors to store diesel fuel while on location, as well as transport that fuel from one location to another, when the contractor has completed its task at the first well site.

Under the rules for transporting a “**portable tank**”, a driver would be required to have a tanker endorsement in addition to his hazardous materials endorsement. “Portable tanks” would also require additional markings on the tank itself by identifying the owner or lessee on two opposing sides.

§171.8 Definitions;

Portable Tank; Means a bulk packaging (except for a cylinder having a water capacity of 1000 pounds or less) designed primarily to be loaded onto, or on, or temporarily attached to a transport vehicle or ship and equipped with skids, mountings, or accessories to facilitate handling of the tank by mechanical means. It does not include a cargo tank, tank car, multi-unit tank or trailer carrying 3AX, 3AAX, or 3T cylinders.

Cargo Tank; Means a bulk packaging that;

- (1) Is a tank intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings, and closures.

§178.320

Tank; Means a container, consisting of a shell and heads, that forms a pressure tight vessel having openings designed to accept pressure tight fittings or closures, but excludes any appurtenances, reinforcements, fittings, or closures.

Question 2.

Is the container, described above (in the 2nd paragraph), considered by The Department of Transportation, Federal Motor Carrier Safety Administration or PHMSA to be a **portable tank**, or **Cargo Tank**?

I appreciate your attention and consideration in this matter. It is always Fowler Transportation’s intention to comply by the regulations set forth by the FMCSA, TXDPS, or any other National, State or local agency.


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