

Pipeline and Hazardous Materials Safety Administration

SEP 2 5 2013

Mr. Brandon K. Wiseman Attorney for Rotel North American Tours, LLC Scopelitis, Garvin, Light, Hanson & Feary, P.C. 10 West Market Street, Suite 1500 Indianapolis, IN 46204

Ref. No. 13-0174

Dear Mr. Wiseman:

This responds to your August 21, 2013, letter regarding the applicability of the materials of trade exception under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically you ask if the small propane tank (i.e., less than 20 pounds) used to power a stove that is stowed on a tour bus in an exterior built-in kitchenette would meet the definition of a "material of trade" as specified in § 171.8. Furthermore, you ask if this propane stove would qualify for the materials of trade exception in § 173.6 and would exempt your client from the hazardous materials training and shipping paper requirements set forth in parts 172 and 177.

The answer is no. As defined in § 171.8, material of trade means "a hazardous material, other than a hazardous waste, that is carried on a motor vehicle—(1) For the purpose of protecting the health and safety of the motor vehicle operator or passengers; (2) For the purpose of supporting the operation or maintenance of a motor vehicle (including its auxiliary equipment); or (3) By a private motor carrier (including vehicles operated by a rail carrier) in direct support of a principal business that is other than transportation by motor vehicle." The stove does not satisfy the requirements of the material of trade definition in § 171.8 for the following reasons:

- 1. The propane stove does not protect the health and safety of the motor vehicle operator or passengers;
- 2. The stove and its respective propane tank is not considered "auxiliary equipment" in that "auxiliary equipment" in this definition means that the equipment must provide supplementary or additional help and support to operate or maintain the motor vehicle itself, not equipment for the purpose of heating food for passengers on the motor vehicle; and
- 3. Your client is not a private motor carrier.

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

Sincerely,

Robert Benedict

The Blot

Chief, Standards Development

Standards and Rulemaking Division



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\$ 173.6 \$ 171.8 Materials of Trade Exceptions 13-0174

U.S. DOT

PHMSA Office of Hazardous Materials Standards

Attn: PHH-10 East Building 1200 New Jersey Avenue, SE Washington, DC 20590-0001

> Request for Official Interpretation Re:

Dear Sir/Madam:

My firm represents Rotel North American Tours, LLC ("Rotel"), which is the North American affiliate of an international cooperation that offers bus tours in over 110 countries including the United States. Rotel offers a unique touring experience to German citizens interested in visiting North America. customers fly from Germany to the United States or Canada and travel for two or more weeks in customized tour buses that include accommodations for dining and sleeping. Rotel prides itself on offering the highest quality service to its customers, including preparing and serving German meals while in transit.

Rotel's fleet of tour buses is specially designed and manufactured in Europe to meet these needs. Each bus is equipped with interior sleeping compartments and an exterior built-in kitchenette. The kitchenette includes a pull-out stove, which is powered by a small (i.e., less than 20 lbs.) propane tank, which is stored alongside the kitchenette and away from the passengers. Photographs of Rotel's kitchenette and stove are attached hereto as Exhibit A.

Rotel seeks clarification from PHMSA as to whether its transportation of limited quantities of propane, as described above, qualifies for the "materials of trade" exception, 49 C.F.R. §§ 171.8 and 173.6, to the Hazardous Materials Regulations ("HMRs"), such that Rotel would be exempt from the employee training and shipping paper requirements of Subpart H of 49 C.F.R. Part 172 and Subpart A of 49 C.F.R. Part 177, respectively.

49 C.F.R. § 173.6 provides that "[w]hen transported by motor vehicle in conformance with this section, a material of trade (see § 171.8 of this subchapter) is not subject to any other requirements of this subchapter besides those set forth or referenced in this section." For purposes of this section, a material of trade is limited to ". . . [a] Division 2.1 or 2.2 material in a cylinder with a gross weight not over 100 kg (220 pounds)." 49 C.F.R. § 173.6(a)(2). Further, 49 C.F.R. § 171.8 defines "material of trade" as "a hazardous material, other than a hazardous waste, that is carried on a motor vehicle . . . For the purpose of supporting the operation or maintenance of a motor vehicle (including its auxiliary equipment). . . ."

Rotel believes that the limited quantity of propane it transports during its tours constitutes a "material of trade" because it is a hazardous material that is carried on a motor vehicle for the purpose of supporting the operation of the motor vehicles auxiliary equipment – in this case, the built-in stoves. The propane it transports is a Division 2.1 material in a cylinder with a gross weight significantly less than 220 lbs. (typically less than 20 lbs). Accordingly, Rotel seeks confirmation from PHMSA that its understanding in this regard is correct.

If you have any questions or need any additional information, please do not hesitate to contact me.

Very truly yours,

Brandon K. Wiseman Attorney for Rotel North American Tours, LLC

/BKW Enclosures

cc.

Joe Solomey (via E-mail) Joe Morrison (via E-mail) Walter McHenry (via E-mail) Michael Oertel (via E-mail)

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