



U.S. Department  
of Transportation  
**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

Mr. Thomas Wright  
Idaho State Police  
5205 S. 5<sup>th</sup> St.  
Pocatello, ID 83204

Ref. No.: 15-0229R

Dear Mr. Wright,

This is in reference to PHMSA's response to your request for interpretation Ref. No. 15-0229 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) issued on June 6, 2016. PHMSA received a letter in response to the June 6 interpretation from Professional Emergency Resource Services (PERS) noting a previously issued letter of interpretation issued on September 17, 2008 (Ref. No. 08-0080) with alternate guidance. After further consideration, interpretation letter Ref. No. 15-0229 has been superseded by this revised letter.

In your original request, you asked if the term "1CTMV" representing "one cargo tank motor vehicle" may be used on a shipping paper to satisfy indication of the total quantity of hazardous materials and the number and type of packages as required by §§ 172.202(a)(5) and (a)(7) respectively. The scenario described two cargo tanks attached to a motor vehicle. In the June 6, 2016 letter, PHMSA stated that the term "1CTMV" would not satisfy either the requirement in §§ 172.202(a)(5) or (a)(7) on the basis that a "CTMV" does not meet the definition of a package.

Based on a review of interpretation letter Ref. No. 08-0080, PHMSA has reconsidered its position in the June 6, 2016 letter. In the September 17, 2008 letter, PHMSA advised that a CTMV consisting of two separate cargo tanks may be described on a shipping paper with the phrase "cargo tank motor vehicle" indicating the type of package. Consistent with the 2016 letter, PHMSA maintains that the term "cargo tank" most appropriately describes the type of package; however, the term "cargo tank motor vehicle" or "CTMV" is acceptable.

If you need additional assistance, please contact the Standards and Rulemaking Division at (202) 366-8553.

Sincerely,

Ben Supko  
Senior Regulations Officer  
Standards and Rulemaking Division

CC:

Mr. Rick Heylmun  
Operations Manager  
Professional Emergency Resource Services  
P.O. Box 1560, Ogden Utah 84402-1560



Professional Emergency  
Resource Services

Wiener  
172.202  
Shipping Papers  
15-0229R

24-Hour Hazmat Emergency  
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July 1, 2016

Standards and Rulemaking Division  
Pipeline and Hazardous Materials Safety Administration  
Attn: PHH-10, U.S. Department of Transportation  
East Building, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001

Greetings,

Two formal interpretations have been recently published that appear to be at variance with the language of the law, as well as, with long standing previously published interpretations. These recent interpretations are entirely unexpected and if sustained represent a substantial compliance problem for shippers and carriers.

#### Interpretation # 15-0229

The above referenced interpretation dated June 6, 2016 is contrary to a previous interpretation 08-0080 dated September 17, 2008 which continues to be posted on the PHMSA website. Interpretation 15-0229 appears to be arbitrary and not based on any rulemakings that have occurred since interpretation 08-0080 was issued. Interpretation 15-0229 fails to mention that this provision has been interpreted differently in a previous interpretation and fails to acknowledge the existence of interpretation 08-0080.

Interpretation 15-0229 creates a significant compliance problem for numerous companies that produce shipping papers that are generated based upon current regulations and previous interpretations, particularly 08-0080. Interpretation 08-0080 plainly recognizes a "cargo tank motor vehicle" as a type of package. Interpretation 08-0080 includes language stating "if there is some indication of the type of package on each shipping paper (e.g., **"cargo tank motor vehicle"**, "cargo tank", or "cargo tank compartment"). Interpretation 08-0080 has clearly indicated that 1 "cargo tank motor vehicle" sufficiently describes the number and type of packaging when appropriate. Other interpretations have verified that "CTMV" is an appropriate abbreviation for "cargo tank motor vehicle".

We request that interpretation 15-0229 be removed due to misinterpretation of long standing regulations and previous interpretations that satisfactorily provide for safety. We support interpretation 08-0080 and agree that identifying a "cargo tank motor vehicle" as a package type is not confusing or ambiguous and meets the letter and intent of the current regulation. We contend that if PHMSA, at this point in time, intends to have the regulation mean something other than what interpretation 08-0080 has long maintained that it would constitute a regulatory change and would be subject to the publication of an NPRM that would provide an opportunity for comments by interested parties, and further, if a final rule was later published that effectively changed the rule that an appropriate period of time to comply with the new requirement would be provided.

### Interpretation # 15-0187

On 2/25/2016 our office emailed a request for clarification of interpretation 15-0187. We submitted, that contrary to what is indicated in the interpretation, we contended that **NA1993, Diesel fuel, Combustible liquid, PG III** is an appropriate description for diesel fuel transported by highway and rail domestically. We had several calls from your office to verify that this issue was being examined. We later received a call that verified that your office agreed that "NA1993, Diesel fuel, Combustible liquid, PG III" is appropriate and authorized for use as applicable. It was also stated that a new interpretation would be provided in the future although some time will be needed. Unfortunately, Interpretation 15-0187 continues to be posted on the PHMSA website in spite of it containing incorrect and misleading information. Our request for the document's removal have up to now been unsuccessful. (See attached letter dated Feb 26, 2016)

Subsequent to the above verification, we're receiving reports that there has been an increase in the number of citations issued by local and State law enforcement officials and that penalties are being assessed for using the description, "**NA1993, Diesel fuel, Combustible liquid, PG III**" on shipping papers. We believe that this increase is a result of the continued posting of interpretation 15-0187. It seems to be virtually impossible to develop an effective legal defense for the use of this description while interpretation 15-0187 is posted on the PHMSA website. Numerous offerors, including refineries and terminals nationwide, are using the description NA1993, Diesel fuel, Combustible liquid, PG III and the continued publication of interpretation 15-0187 is causing a difficult legal problem for shippers and carriers and interfering with commerce. We are aware of companies that are paying fines for the alleged violation, while being in compliance all along. Once again, we appeal that interpretation 15-0187 be removed from the PHMSA website immediately and that a new interpretation be published as soon as possible in order to correct the misinterpretation of the regulations that apply to the reclassifying of a class 3 to a combustible liquid and shipping paper descriptions.

Thank you, we appreciate your assistance and hope for your help in resolving this problem.

Sincerely,



Rick Heylmun  
Operations Manager  
PERS