



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

1200 New Jersey Avenue, SE
Washington, DC 20590

August 19, 2021

Mr. Christopher Caldwell
Wisconsin State Patrol
911 W. North Street
DeForest, WI 53532

Reference No. 21-0049

Dear Mr. Caldwell:

This letter is in response to your May 3, 2021, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to a driver transporting small quantities of gasoline for personal use in an employer's commercial vehicle. Specifically, you ask for clarification on several past letters of interpretation (LOI) that you believe are in conflict with one another, including LOI No. 03-0223, LOI No. 11-0007, and LOI No. 11-0306.

The Pipeline and Hazardous Materials Safety Administration (PHMSA) has reviewed LOI No. 03-0223, LOI No. 11-0007, and LOI No. 11-0306. We confirm the answer provided in LOI No. 11-0007, which states that non-commercial transportation of hazardous materials is not subject to the HMR. Furthermore, in a final rule titled "Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage"—which was published on October 30, 2003, and had a delayed effective date of June 1, 2005 [HM-223; 68 FR 61905; 69 FR 70902]—we revised § 171.1 to clarify the applicability of the HMR to transportation functions and added a definition for "commerce" in § 171.8. PHMSA believes that the LOIs issued after publication of the HM-223 final rule better clarify the meaning of the term "non-commercial" transportation under the HMR.

Finally, the transportation of a hazardous material by motor vehicle for personal use of the driver is generally not subject to requirements in the HMR. Please note that such transportation may be subject to other Federal, State, or local requirements, which include the requirements of the Federal Motor Carrier Safety Administration (FMCSA).

PHMSA will consider rescinding LOI No. 03-0223.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in blue ink that reads "T. Glenn Foster". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

Wolcott

21-0049

From: [Foster, Glenn \(PHMSA\)](#)
To: [Dodd, Alice \(PHMSA\)](#); [Hillman, Kenetha CTR \(PHMSA\)](#)
Subject: Request for Clarification
Date: Monday, May 10, 2021 9:50:38 AM

Good morning, Alice and Kenetha.

Please check in the below as a request for a LOI and assign it to the next Specialist in the rotation.

Thanks,
Glenn

From: Foster, Glenn (PHMSA)
Sent: Monday, May 10, 2021 9:48 AM
To: Caldwell, Christopher M - DOT <Christopher.Caldwell@dot.wi.gov>
Subject: RE: Request for Clarification

Good morning, Mr. Caldwell.

We looked into this issue and determined your particular scenario requires a formal response through an Interp. Don't worry about submitting an additional request as I can use your email to start the process. Please feel free to send me any other information you want to add.

Thanks,
Glenn

From: Caldwell, Christopher M - DOT [<mailto:Christopher.Caldwell@dot.wi.gov>]
Sent: Monday, May 3, 2021 3:40 PM
To: Foster, Glenn (PHMSA) <Glenn.Foster@dot.gov>
Subject: Request for Clarification

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Mr. Foster,

So, we recently had an inquiry related to the applicability of the HMRs when it comes to transporting personal property. In this case, a company driver is transporting a small gas container with gasoline in it. He has purchased this gasoline for his personal use in a state in which it costs less than the state in which he lives. He then transports it in/on the commercial vehicle he is operating to the location where he stores his vehicle. He transfers it from the CMV to his personal vehicle and takes it home to fill up his personal equipment. The question is: Is this movement/transportation subject to the HMRs while be transported using the commercial motor vehicle?

Looking over the Interps, I found 03-0223 which seems to indicate that his transportation in/on the CMV constitutes commerce. However, I cannot find how to get him into the regs since PHMSA has

stated additionally that commerce has to be in furtherance of a commercial enterprise as noted in Interp 09-0220. While there is trade or transportation between states, I cannot say that this movement affects trade or transportation between states therefore not meeting the definition of commerce as defined in 171.8.

I then found Interp 11-0007 and Interp 11-0306 which seem to reinforce that this type of transportation, even though on/in a CMV, is not subject to the HMRs. They both go on to state "Any hazardous materials that the driver is transporting on behalf of the motor carrier is subject to the HMR."

There is some debate as to whether this type of movement under these circumstances would be regulated. I say No but there are plenty that say Yes and would require shipping papers, ERGs, etc that may come along with it. My argument is that if it is subject to the HMR then it would meet the qualifications for an Undeclared HM shipment and would therefore be subject to the reporting requirements listed in Inspection Bulletin 2020-03.

If I need to submit a formal letter, please advise of the proper address to submit this request. I did make my initial inquiry with Jessica Stiles from the Midwest Service Center and she referred me to you.

Thanks.

Insp. CM Caldwell

WI State Patrol

Motor Carrier Investigation Unit

608-846-8500x 3382

