



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

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

FEB 15 2001

Mr. Tom Sever
Iowa Department of Transportation
Motor Vehicle Enforcement
P.O. Box 10473
Des Moines, Iowa 50306-0473

Ref. No.: 00-0323

Dear Mr. Sever:

This responds to your November 17, 2000 letter concerning the applicability of the placarding requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to domestic shipments of Class 9 materials. Specifically, you disagree with our determination that a Class 9 placard is not required for shipments traveling through the United States that may be intended for destinations outside the United States.

The CLASS 9 placard was included in the HMR to assure consistency with international hazardous materials transportation regulations. We provided an exception from placarding for shipments of Class 9 materials in domestic transportation because the risks associated with their transportation are relatively low as compared with other classes of hazardous materials, and the communication of the hazard using a placard is not cost-effective. As stated in a February 25, 1997 letter of clarification on this subject, an international shipment of hazardous material traveling through the United States may benefit from the domestic transportation placarding exception in § 172.504(f)(9) while the material is in the United States. For safety and hazard communication purposes, there is no difference between a shipment of a Class 9 material being transported entirely within the United States and a shipment of a Class 9 material being transported through the United States to a foreign destination. Thus, we do not agree that the February 25, 1997 letter of clarification should be rescinded. Further, because of the need to maintain consistency between the HMR and international standards, we do not agree that the CLASS 9 placard should be eliminated.

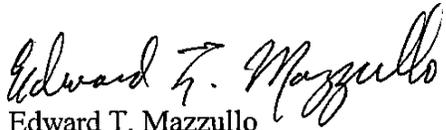
You also suggest that we use the same criteria for determining whether a shipment is being transported in interstate or international commerce for purposes of the HMR as the Federal Motor Carrier Safety Administration does in applying the Federal Motor Carrier Safety Regulations (FMCSR). Determinations as to the applicability of the HMR and FMCSR differ because of differences in the authorizing statutes that form the bases for the hazardous materials and motor carrier safety programs.



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I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Edward T. Mazzullo". The signature is written in black ink and is positioned above the printed name.

Edward T. Mazzullo

Director, Office of Hazardous Materials Standards



Iowa Department of Transportation

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515-237-3278
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Engrum
§ 172.504
Placarding
00-0323

November 17, 2000

Edward Mazzullo, Director
Research and Special Programs Administration
Office of Hazardous Materials Standards DHM-10
U.S. Department of Transportation
400 Seventh Street, SW
Washington, D.C. 20590-0001

Dear Mr. Mazzullo:

I request the Research and Special Programs Administration rescind their interpretation dated February 25, 1997 (copy enclosed) pertaining to domestic transportation of Class 9 material, or change the definition of domestic transportation listed in 171.8, or eliminate the Class 9 placard requirements in 172.504(f)(9) and 172.560.

First, we must look at the intent of a shipment. A shipment originates in Des Moines, Iowa and is destined for a foreign country. The intent of the shipment is international and not domestic. To be a domestic shipment, it must originate in the United States and destined to be delivered in the United States. The Federal Motor Carrier Safety Administration has guidance on intra/interstate commerce, which could be extended to domestic and international transportation.

Interstate commerce is determined by the essential character of the movement manifested by the shippers fixed and persistent intent at the time of shipment; and is ascertained from all of the facts and circumstances surrounding transportation. When the intent of transportation being performed is interstate in nature, even when the route is within the boundaries of a single state, the driver and commercial motor vehicle are subject to the Federal Motor Carrier Safety Regulations.

Edward Mazzullo, Director
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With the concept of "one DOT," it would be great if RSPA and modal administrations could write regulations that have uniform intent.

Thank you in advance for considering this matter.

Sincerely,

A handwritten signature in cursive script that reads "Tom Sever". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Tom Sever
Hazardous Materials Coordinator
Motor Vehicle Enforcement

TS:jdl

Enclosure

cc: Art Fleener
Federal Motor Carrier Safety Administration

MLW:jdl