



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

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Washington, D.C. 20590

Mr. Michael Ritchie  
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Minnesota Department of Transportation  
Office of Freight and Commercial  
Vehicle Operations  
1110 Centre Pointe Curve  
MS 420  
Mendota Heights, MN 55120

Ref. No. 03-0220

Dear Mr. Ritchie:

This responds to your letter requesting clarification of the agricultural exceptions under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). I apologize for the delay in responding. Your questions are answered as follows:

Q1. May an intrastate farmer use the exception in 49 CFR 173.5(a) and transport agricultural products, as defined in § 171.8, on local roads around his or her farm, if there was no conforming state law or rule authorizing these exceptions before October 1, 1998?

A1. No. As specified in § 173.5(a)(2), the movement of the agricultural product (other than Class 2 materials) must conform to requirements of the State and be specifically authorized by the State prior to October 1, 1998.

Q2. If state laws or rules in force before October 1, 1998 provided limited exceptions to the HMR, such as Minnesota's exception from shipping papers, are intrastate farmers entitled only to those limited exceptions authorized by State laws or rules?

A2. Yes, intrastate farmers may only use those exceptions authorized by the state that are also authorized under § 173.5.

Q3. If a Minnesota farmer is excepted from shipping papers, subject to the limitations in state law, is that farmer excepted from subpart G of part 172 since the farmer does not need a shipping paper?



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A3. Yes, under certain conditions. Under § 172.600(d), the requirements of subpart G of part 172 do not apply to a hazardous material that is excepted from the shipping paper requirements of the HMR. A shipping paper is, however, required for Class 2 materials transported under § 173.5(a) and always required under § 173.5(b) regardless of the material transported. Because the shipping paper exception for the intrastate farmers of Minnesota was in place prior to October 1, 1998, they are eligible for the exception from subpart G of part 172, when appropriate. However, a state may amend its statutes and mandate that intrastate farmers comply with the emergency response information requirements of the HMR regardless of whether a shipping paper is needed or not.

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,



Edward T. Mazziello  
Director, Office of Hazardous  
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Stevens  
§173.5  
Agricultural Exceptions  
03-0220

August 25, 2003

Mr. Edward Mazzulo  
Director, Office of Hazardous Materials Standards  
Research and Special Programs Administration  
USDOT  
DHM-10  
400 Seventh St. S.W.  
Washington, D.C. 20590-0001

Re: Agricultural Operations for Intrastate Farmers- 49 CFR 173.5

Dear Mr. Mazzulo,

The Office of Freight and Commercial Vehicle Operations is working with our partners at the Federal Motor Carrier Safety Administration on identifying State law or rules that are possibly inconsistent with federal transportation regulations. This process may lead to proposals to our state legislature to change or modify state laws.

In 1983, the State of Minnesota adopted by statutory reference, in Minn. Stat. 221.033, the federal hazardous materials regulations (HMR) in 49 CFR parts 171 to 199. Subdivision 2 of Minn. Stat. 221.033 granted exceptions to intrastate farmers from the hazardous materials shipping paper requirements in 49 CFR §§ 172.200 and 177.817, and from some limited provisions of the motor carrier safety regulations in 49 CFR parts 391 and 397. The exceptions provided in this statute apply to fuels and agricultural chemicals that meet the definition of agricultural products in 49 CFR 171.8, that are being transported for use on the transporters farm. No other exceptions from the HMR were provided.

49 CFR 173.5 (a) excepts farmers hauling agricultural products, other than class 2 materials, from the subchapter if the farmer is an intrastate private carrier, and the movement of the agricultural product conforms to State laws or rules in effect before October 1, 1998. Paragraph (b) of that section grants exceptions from hazmat training and emergency response information requirements for intrastate farmers for agricultural products carried in a single vehicle with restrictions on quantity, if the movement conforms to state laws in effect before October 1, 1998.

May an intrastate farmer use the exception in 49 CFR 173.5 (a) and transport agricultural products, as defined in § 171.8, on local roads around their farm and be excepted from the provisions of the subchapter, if there was no conforming State law or rule authorizing these exceptions before October 1, 1998?

If State laws or rules in force before October 1, 1998, provided limited exceptions to the HMR, such as Minnesota's exception from shipping papers, are intrastate farmers entitled only to those limited exceptions authorized by State laws or rules?

If the Minnesota farmer is excepted from shipping papers, subject to the limitations in state law, is that farmer excepted from Subpart G of Part 172, since the farmer does not need a shipping paper?

Thank you for your consideration of these issues. I have attached a copy of Minn.Stat. § 221.033 for your review. If you or your staff has any questions, please contact me.

Yours truly,



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Minnesota Statutes 2002, Table of ChaptersTable of contents for Chapter 221**221.033 Regulation of hazardous materials.**

Subdivision 1. **Requirements.** Except as provided in subdivisions 2 to 3, no person may transport or offer or accept for transportation within the state of Minnesota a hazardous material, hazardous substance, or hazardous waste except in compliance with United States Code, title 49, sections 1801 to 1811 and the provisions of Code of Federal Regulations, title 49, parts 171 to 199. Those provisions apply to transportation in intrastate commerce to the same extent they apply to transportation in interstate commerce.

Subd. 2. **Exemption for farmer.** (a) This subdivision applies to persons engaged in intrastate commerce.

(b) Farmers or their employees transporting diesel fuel, gasoline, agricultural chemicals, or agricultural fertilizers for use on the transporter's farm are not required to comply with the rules adopted in section 221.0314, subdivisions 2 to 5, for driver qualifications or with the shipping paper requirements of the Code of Federal Regulations, title 49, sections 172.200 and 177.817 or with section 397.7(B) or 397.9(A) of the Federal Motor Carrier Safety Regulations when:

(1) transporting diesel fuel or gasoline in motorized tank truck vehicles of less than 1,500-gallon capacity owned by the transporter, or in tanks securely mounted in other motor vehicles with a gross vehicle weight of less than 10,000 pounds and owned by the transporter; or

(2) transporting agricultural chemicals and agricultural fertilizers.

Subd. 2a. **Agriculturally related exemption.** (a) This subdivision applies to persons engaged in intrastate commerce.

(b) Fertilizer and agricultural chemical retailers or their employees are exempt from the rule in section 221.0314, subdivision 4, requiring that drivers must be at least 21 years of age when:

(1) the retailer or its employee is transporting fertilizer or agricultural chemicals directly to a farm for on-farm use within a radius of 50 miles of the retailer's business location; and

(2) the driver employed by the retailer is at least 18 years of age.

Subd. 2b. **Cargo tank.** (a) The requirements in Code of Federal Regulations, title 49, sections 180.405, paragraphs (b), (c), (g), (h), and (j) and 180.407, paragraphs (c), (d), clause (1), (e), (f), (g), (h), and (i) do not apply to cargo tanks of up to 3,500 gallons capacity that transport gasoline in intrastate commerce if before providing transportation under this subdivision:

(1) the owner or operator of the cargo tank provides the commissioner with evidence that the cargo tank was manufactured according to the cargo tank specification regulations in Code of Federal Regulations, title 49, sections 178.340 to 178.341-7, as amended through November 1, 1985;

(2) a copy of the evidence described in clause (1) is kept in the vehicle to which the cargo tank is attached; and

(3) the manufacturer's metal certification plate is removed from the cargo tank or covered.

(b) A cargo tank operated under this subdivision must:

(1) be visually inspected annually by a person authorized to perform such inspections under Code of Federal Regulations, title 49, section 180.409, and a copy of the annual inspection must be kept in the vehicle; and

(2) be visually inspected monthly by the operator in a manner prescribed by the commissioner, and a copy of each monthly inspection must be kept at the operator's principal place of business for at least one year beyond the date of the inspection.

(c) No person may operate a cargo tank described in this subdivision that (1) violates paragraph (a) or (b), or (2) leaks gasoline from any portion of the tank that regularly contains gasoline.

(d) The commissioner shall keep a record of persons who provide the evidence described in this subdivision.

Subd. 2c. **Age of petroleum tank truck driver.** A driver of a motorized tank truck vehicle having a capacity of less than 3,500 gallons, who is engaged in the intrastate transportation of petroleum products, must be at least 18 years of age.

Subd. 3. **Variance, rules.** The commissioner shall adopt rules which provide a procedure for granting a variance from those rules adopted under subdivision 1 which prescribe specifications for tank motor vehicles used to transport gasoline. The variance may be granted only for tank motor vehicles with a capacity of 3,000 gallons or less that are used to transport gasoline and which were designed and manufactured between 1950 and 1975 to transport petroleum products. The commissioner shall prescribe alternative requirements to assure the safety of the tank motor vehicles operated under the variance, and shall register each tank motor vehicle operated under the variance.

Subd. 4. MS 1992 Repealed, 1994 c 589 s 8

Subd. 4. MS 1996 Repealed, 1998 c 310 s 8

HIST: 1983 c 371 s 22; 1985 c 248 s 70; 1985 c 299 s 20; 1986 c 398 art 24 s 1; 1986 c 454 s 27; 1990 c 588 s 2; 1991 c 298 art 4 s 10; 1991 c 333 s 34; 1992 c 578 s 29-32; 1993 c 117 s 22,23; 1994 c 589 s 3,4; 1996 c 387 s 4; 1996 c 456 s 23; 1999 c 230 s 26

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