



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

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

JUL 24 2002

Ms. Rebecca M. Spaulding
Senior Consultant
Environmental Resource Center
101 Center Pointe Drive
Cary, North Carolina 27513-5706

Ref No.: 02-0178

Dear Ms. Spaulding:

This is in response to your June 12, 2002, letter requesting clarification of the definition of "in commerce" under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically you asked if hazardous materials transported between your company's facilities is considered "in commerce" and subject to the HMR.

Your scenario is paraphrased and answered as follows:

A company purchases consumer commodities and stores them in a warehouse. Company employees pick up hazardous materials for use in other buildings owned by the same company. Company employees transports this hazardous material to other buildings (along a public highway), and uses the material according to its intended purpose. Is this considered "in commerce?"

Yes, the hazardous materials transported by your company between your facilities is in support of your business. Therefore, transportation of hazardous material in your scenario is "in commerce." The HMR provides certain exceptions for the transportation of hazardous materials identified as Materials of Trade (MOTs). A MOT is defined in §171.8, as 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.



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171.8

Based on your scenario it appears that your company meets the third criteria. Provided that all conditions in §171.6 are met, your company can take advantage of the MOTs exception.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,



Delmer F. Billings
Chief, Standards Development
Office of Hazardous Materials Standards



ENVIRONMENTAL RESOURCE CENTER

101 Center Pointe Drive, Cary, North Carolina 27513 (919)469-1585

June 12, 2002

DOT / RSPA
Office of Hazmat Standards
400 Seventh Street, SW
Washington, DC 20590
Attention: Edward Mazzullo

Dear Mr. Mazzullo,

49 CFR Part 171.1 states that hazardous materials are regulated only if they are transported "in commerce." I understand that DOT's definition of "in commerce" (as taken from an interpretation letter dated July 28, 1999) means the furtherance of a commercial enterprise.

I would like to request an interpretation on the following scenario: A company purchases consumer commodities and houses them in one warehouse, and a company employee picks up, for example, window cleaner or a tube of adhesive to repair a pipe in another building owned by the same company, and transports the material to the other building (along a public highway), and uses the material according to its intended purpose. The transportation of said material would not further the company's commercial enterprise; it would be used only for routine maintenance and according to its intended purpose.

Is the material considered "in commerce" and therefore subject to the HMR?

Thank you for your response.

Best regards,

Rebecca Spaulding
Consultant

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§ 171.8

Definitions
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