



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

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

DEC 23 2002

Mr. Robert Galloway
Aviation Safety Manager
U.S. Department of the Interior
P.O. Box 15428
Boise, ID 83715-5428

Ref. No. 02-0280

Dear Mr. Galloway:

This is in response to your October 9, 2002 letter concerning air transportation for government entities under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171 to 180). Specifically, you ask three questions concerning the use of contract aircraft transporting hazardous materials by contract employees. You included a copy of DOT Exemption 9198 (DOT-E 9198) which provides relief from § 175.5(a)(2). Your questions are repeated and answered below:

Question 1: Can the Department of the Interior (DOI) assume exclusive direction and control of contract aircraft piloted by contract employees, which results in contracted aircraft transporting hazardous materials being exempt from the requirements of the HMR?

Answer 1: No. While DOI could assume exclusive direction and control of the aircraft, the contract employees remain subject to the applicable requirements of the HMR, unless otherwise specifically excepted from the regulations. Both the statute, 49 USC 5126(a), and the regulations, 49 CFR 171.1(b), state that Federal Government contractors must comply with the HMR.

Question 2: Does DOT-E 9198 also provide relief from 49 CFR 171.1(b), exempting contracted aircraft transporting hazardous materials and piloted by contract employees from the requirements of the HMR?

Answer 2: No. DOT-E 9198 only provides an exemption from § 175.5(a)(2), as stated in paragraph four of the document.

Question 3: Are commercial operators responsible for training their employees in accordance with 49 CFR 172.700-172.704 when transporting hazardous materials for governmental purposes?



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175.5(a)(2)
or
172.702

Answer 3: Yes. Commercial operators are only eligible for exception from Part 175 under § 175.5, not from the entire subchapter. Employees of commercial operators are still required to be trained as provided by § 172.704.

I hope this satisfies your request.

Sincerely,



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



United States Department of the Interior
OFFICE OF THE SECRETARY
Office of Aircraft Services
P.O. Box 15428
Boise, ID 83715-5428

Johnson
§ 175.5 (a)(2)
§ 172.702
Aircraft Training
In reply refer to:
October 9, 2002
02-0280

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
U.S. DOT/RSPA (DHM-10)
400 7th Street S.W.
Washington, D.C.

Dear Mr. Mazzullo,

We are requesting clarification of several Hazardous Material Regulations (HMR) and DOT Exemption 9198, Sixth Revision (attached).

The U.S. Department of the Interior (DOI) transports hazardous materials on aircraft while conducting fire suppression and other government missions. The aircraft consist of both government owned and commercial aircraft contracted for various periods ranging from less than a day to several years. Commercial aircraft are generally piloted by contract or other non-government employees. The aircraft may be operating as either civil or public use, depending upon the mission. Several government missions, including fire suppression, require packaging that does not conform to current HMR.

The Department of Transportation has issued several clarification letters indicating that: 1) governments transporting hazardous materials in government aircraft operated by government personnel for non-commercial purposes are not subject to HMR, and 2) contract aircraft transporting hazardous materials and piloted by contractor personnel are subject to HMR, citing 49 CFR 171.1(b) as a reference.

DOI has also been granted DOT Exemption 9198, providing relief from 49 CFR 175.5 (a)(2) which states in part that Section 175 does not apply to "aircraft which are not owned by a government nor engaged in carrying persons or property for commercial purposes but which are under the exclusive direction and control of a government for a period of not less than 90 days." We are currently reviewing internal policy related to this exemption and have the following questions:

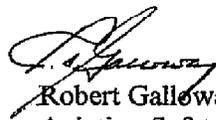
1. Can DOI assume exclusive direction and control of contract aircraft piloted by contract employees, which results in contracted aircraft transporting hazardous materials being exempt from the requirements of HMR?

2. Does Exemption 9198 also provide relief from 49 CFR 171.1(b), exempting contracted aircraft transporting hazardous materials and piloted by contract employees from the requirements of HMR? *NO*

3. Are commercial operators responsible for training their employees in accordance with 49 CFR 172.700-704 when transporting hazardous materials for governmental purposes? *YES*

We would appreciate your comments regarding this matter. Any further questions or clarification may be directed to myself at 208-387-5803 or Larry Brosnan at 208-387-5804. A written reply is requested.

Sincerely,



Robert Galloway
Aviation Safety Manager

Enclosure

