



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

FEB 17 2000

Mr. Rick Reimer
Environmental Engineering AAL-471
Alaskan Region
Federal Aviation Administration
222 West Seventh Avenue
Anchorage, Alaska 99513-7587

Ref. No. 00-0029

Dear Mr. Reimer:

This responds to your facsimile of June 1, 1999, concerning the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to operations conducted by persons under contract to the federal government. Your specific question relates to the applicability of the HMR to FAA-chartered aircraft operations when the pilot is not a government employee.

Your understanding is correct. In general, the HMR apply to any person who transports a hazardous material in commerce or causes a hazardous material to be transported in commerce. A "person" includes "a government, Indian tribe, or authority of a government or tribe offering hazardous material for transportation in commerce or transporting a hazardous material to further a commercial enterprise." (See § 171.8.)

The federal government is not subject to the HMR unless it offers for transportation or transports a hazardous material in commerce or in furtherance of a commercial enterprise. Transportation is not in furtherance of a commercial enterprise if it is carried out by governmental personnel for a governmental purpose. However, contractors are not government personnel. Thus, FAA is subject to the requirements of the HMR when it ships hazardous materials on an airplane chartered by FAA and piloted by contractor personnel (see § 171.1(b)). However, FAA is not subject to the requirements of the HMR when it ships



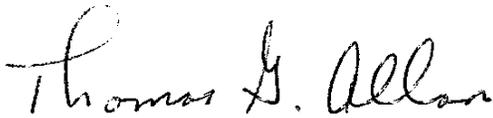
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hazardous materials on an airplane chartered by FAA and piloted by an FAA employee provided the shipment does not further a commercial enterprise.

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 "Thomas G. Allan". The signature is written in black ink and is positioned above the printed name.

Thomas G. Allan
Senior Transportation Regulations Specialist
Office of Hazardous Materials Standards

Facsimile Cover Sheet

GORSICKY

Federal Aviation Administration Alaskan Region
Environmental Engineering AAL-471
From the desk of: Rick Reimer (NISC)
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[Handwritten signature]
\$175.5
\$171.1
00-6029

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From: Rick Reimer
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Date: 6/1/1999
Pages including this cover page: 1

Comments:

Dear Mr. Billings,

I'm requesting some clarification with Hazardous Materials Regulations (HMR) 49 CFR 171.1(4)(b).

49 CFR 171.1(4)(b) states that any person who under contract with the federal government "...transports, or causes to be transported or shipped... shall be subjected to and comply with all provisions of the Federal hazardous materials law, all orders and regulations issued..."

It's my understanding government employees transporting hazardous material in government vehicles are not considered in commerce, therefore not regulated under HMR. I also believe this applies to vehicles which are leased and operated by a government agency or employees as well.

The FAA periodically charters aircraft to transport employees/contractors, maintenance equipment and supplies to remote sites. Typically the pilot of this aircraft is not a government employee. Since the pilot is not a government employee, and the aircraft is chartered, it would be considered in commerce and all applicable HMR including 49 CFR 171.1(4)(b) would apply. Am I correct with my interpretation of the regulation?

Written response would be appreciated via either:

Fax at (907) 271-4470 or E-mail at Rick.CTR.Reimer@FAA.gov

Sincerely,
Rick Reimer