



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

MAR 19 2003

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

Ms. Diane Kroll
IH/Safety Manager
VA Medical Center
4301 8th Street North
St. Cloud, MN 56303

Ref. No.: 02-0321

Dear Ms. Kroll:

This is in response to your letter and our March 11, 2003 telephone conversation concerning the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to certain hazardous materials transported by the Veteran Affairs Medical Center. Specifically, you inquired whether the HMR apply to the transport of small quantities of hazardous materials on the same government vehicle being used to transport patients receiving health care between the Veteran Affairs Medical Center's facilities. You state the hazardous materials are used for governmental purposes.

The HMR govern the transportation of hazardous materials in commerce. Shipments of hazardous materials transported by a government entity in vehicles operated by government personnel for noncommercial purposes are not "in commerce" and, subsequently, are not subject to requirements in the HMR. The Federal hazardous materials transportation law, at 49 U.S.C. § 5102(9), and the HMR, at § 171.8, define a "person" to whom the regulations prescribed under § 5103(a)(1) apply. However, note that a commercial company contracted by a government entity to transport hazardous materials would be subject to the HMR; see § 171.1(b).

I hope this satisfies your inquiry. Should you have any further questions, please contact this office.

Sincerely,

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards



020321

171-8

memorandum

Edmonson
§ 173.4
§ 173.6
Small Quantities/MOT
DE-0321

Date: 12/12/2002
To: infocntr@rspa.dot.gov
From: Diane Kroll, IH/Safety Mgr.
RE: Transportation of Small Quantities of Hazardous Material With Patients on VAMC Vehicles

To Whom It May Concern:

Please provide a written letter of interpretation addressing the following questions regarding the transportation of small quantities of hazardous materials on the same vehicle transporting patients between Veteran's Affairs Medical Center facilities.

Background:

- 49 CFR 172.504(c)(1): Exempts placarding for less than 454 Kg (1,001 pounds) of class 3 (per Table 2).
- 49 CFR 173.6, Materials of trade exceptions, paragraphs (a)(i) and (ii): list exceptions for class 3 material.
- Our organizational activities are in the provision of health care to the Veteran population.
- In delivering this service of health care the organization provides courtesy transportation between Veteran facilities.
- Transport of patients is not in commerce.
- We are not in the business of commercial transportation.
- The vehicle utilized to transport patients to appointments between organizational facilities range from a minivan to a 16-passenger van to a 32-passenger capacity Blue Bird bus.

QUESTIONS:

1. Are we allowed under the Materials of Trade exemption, 49 CFR 173.6(a)(i) and (ii) to transport quantities of class 3, group II & III, per this standard on these vehicles?
 - If not, PLEASE PROVIDE REFERENCE for your response, e.g. Federal standard, MN Rule, MN Statute, letter of interpretation, etc.
2. Are there requirements (e.g. quantity limitations, etc.) for the transportation of oxygen? Some of our patients are transported with oxygen (E tanks) connected to them.
 - PLEASE PROVIDE REFERENCE for your response, e.g. Federal standard, MN Rule, MN Statute, letter of interpretation, etc.
3. Are there requirements for the carrying of portable fire extinguishers (dry chemical, class ABC) on these vehicles?
 - PLEASE PROVIDE REFERENCE for your response, e.g. Federal standard, MN Rule, MN Statute, letter of interpretation, etc.

12/12/2002

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Interoffice Memo: Transportation of Patients & Small Quantities of Hazardous Material

4. Is the "Minnesota Commercial Driver's Manual" applicable to our operations? If so, how?
- o PLEASE PROVIDE REFERENCE for your response, e.g. Federal standard, MN Rule, MN Statute, letter of interpretation, etc.

For your information I have copied below the response I received from Michael Ritchie, Hazardous Materials Specialist with the Minnesota Department of transportation.

Ms. Kroll,

Thank you for your letter, which has been forwarded to me for response.

The federal hazardous material transportation regulations found in 49 CFR Part 171 through Part 199, have been adopted by the State of Minnesota in Minn. Stat. 221.033. The USDOT has complete jurisdiction over transport of hazardous materials in both interstate and intrastate commerce, and applicability of those regulations to government agencies is determined by the USDOT.

Your questions #1 and #2, should be addressed to the USDOT Office of Hazardous Materials Safety. You can reach them at (800) 467-4922, option#1, during normal business hours. These are federal regulations, and must be interpreted by that federal agency.

Your question # 3 concerns Motor Carrier Safety Regulations, not hazardous materials regulations. The federal MCSR also apply to those "persons" in commerce, and if your vans are government vehicles driven by government employees, they may not be in commerce. Please contact the Federal Motor Carrier Safety Administration office in St. Paul, at (651) 291-6150 for determination of applicability of these rules.

Your question #4 concerning the Minnesota Commercial Drivers Manual. This book is a publication of the Minnesota Department of Public Safety, Driver and Vehicles Services Division. As stated in the "Public Safety Message" found at the beginning of the manual, the manual is intended to help drivers of commercial vehicles to prepare for the knowledge and behind the wheel test for a commercial drivers license. It is NOT intended to serve as a precise statement of Minnesota Statutes pertaining to the operation of motor vehicles. You can get additional information on the manual from the DVS at (651) 296-6911 or on their web site at www.dps.state.mn.us

I hope this helps. If you need to discuss these issues please contact me.

Michael Ritchie
Hazardous Materials Specialist

Interoffice Memo: Transportation of Patients & Small Quantities of Hazardous Material

Minnesota Department of Transportation
Office of Motor Carrier Services
1110 Centre Pointe Curve
Mendota Heights, MN 55120

Thank you.

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