



U.S. Department
of Transportation

1200 New Jersey Avenue SE
Washington, DC 20590

**Pipeline and Hazardous
Materials Safety
Administration**

MAY 06 2013

Mr. H. Michael Lord
Chief Operating Officer
Carry and Clean, LLC
6500 S Padre Island Drive, Suite 16D
Corpus Christi, TX 78412-4055

RE: 13-0041

Dear Mr. Lord:

This is in response to your February 8 and 11, 2013 e-mails requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to training requirements. In your letter, you ask whether training your company's workers on the Department of Labor's Occupational Safety and Health Administration (OSHA) bloodborne pathogen regulations prescribed in 29 CFR 1910.1030 is sufficient to satisfy the training requirements specified in the HMR. You also state your company's workers prepare and transport medical waste solely within the state of Texas.

The answer is no. The HMR require each hazardous material (hazmat) employee who engages in activity that affects the safe transport of hazardous material in intrastate, interstate, and foreign commerce to complete a four-part hazardous materials training (see § 171.1 and 49 CFR Part 172, Subparts H and I). This training is to be administered by the employer, or if self-employed, by the individual, and must include general awareness, function-specific, safety, and security awareness training as specified in § 172.704(a) of the HMR, as well as driver training in the applicable requirements of the Federal Motor Carrier Safety Regulations (49 CFR Parts 390 through 397) and the procedures necessary for the safe operation of that motor vehicle. The OSHA, Environmental Protection Agency, Federal Motor Carrier Safety Administration's Commercial Driver's License, or other mandated training requirements may be used to the extent that they satisfy the HMR's general awareness, function specific, and safety training and testing requirements. Where this training does not satisfy the HMR, the employer or self-employed person performing these tasks must provide additional training that satisfies these requirements (see § 177.816(c) and (d)).

You also ask if crime scene cleaning debris that is subject to OSHA bloodborne pathogen regulations but not considered "UN 3291, Regulated medical waste, n.o.s., 6.2, PG II" (RMW) by the State of Texas is subject to the HMR. In accordance with § 173.22, it is the shipper's responsibility to properly class and describe a hazardous material. This Office does not generally perform that function. Crime scenes and their cleanup operations may include

materials that meet several different HMR hazard classes such as poisonous gases (Division 2.3) or materials (Division 6.1), flammable (Class 3) and corrosive liquids (Class 8), as well as materials known or suspected of containing a pathogen (Division 6.2 infectious substances). A shipper must classify the waste generated from a crime scene as a hazardous material based on its knowledge of the materials present and whether any of them can be classified as meeting the definition of a hazard class under the HMR. For example, a crime scene material that contains blood may be considered a Division 6.2 material if the shipper knows or suspects it contains a Category A or Category B pathogen as defined in § 173.134(a)(1)(i) and (a)(1)(ii). Category A infectious substance pathogenic material is in a form that is capable of causing permanent disability or life-threatening or fatal disease in otherwise healthy humans or animals when exposure to it occurs. Category B infectious substance pathogenic material includes all other infectious substances that do not meet the Category A definition.

The HMR also contains several exceptions for transporting RMW. For example, a material that is not known or suspected to contain an infectious substance and does not meet the definition of another hazardous material is not regulated under the HMR (see §§ 171.2(k) and 173.134(b)(1)-(5)). Also, the HMR except RMW transported by a private or contract carrier from having to bear an “INFECTIOUS SUBSTANCE” label if the outer packaging is marked with the “BIOHAZARD” marking prescribed in 29 CFR 1910.1030, and the specific packaging requirements prescribed in § 173.197 if the material is packaged in a rigid, non-bulk packaging that conforms to the HMR’s general packaging requirements in §§ 173.24 and 173.24a and the packaging requirements specified in 29 CFR 1910.1030. Further, the exception prescribed in § 173.134(c)(2) permits the following materials to be offered for transportation and transported as RMW when packaged in a rigid non-bulk packaging conforming to the general packaging requirements of §§ 173.24 and 173.24a and packaging requirements specified in 29 CFR 1910.1030, and transported by a private or contract carrier in a vehicle used exclusively to transport RMW:

- 1) Waste stock or culture of a Category B infectious substance;
- 2) Plant and animal waste regulated by the Animal Plant Health Inspection Service;
- 3) Waste pharmaceutical materials;
- 4) Laboratory and recyclable wastes;
- 5) Infectious substances that have been treated to eliminate or neutralize pathogens;
- 6) Forensic materials being transported for final destruction;
- 7) Rejected or recalled health care products;
- 8) Documents intended for destruction in accordance with the Health Insurance Portability and Accountability Act of 1996 requirements; and

- 9) Medical or clinical equipment and laboratory products provided they are properly packaged and secured against exposure or contamination (see Docket No. PHMSA-2009-0151 (HM-218F), July 20, 2011 (76 FR 43530)).

I hope this satisfies your request.

Sincerely,



T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

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Drakeford, Carolyn (PHMSA)

Edmonson
§171.1
§173.134

From: INFOCNTR (PHMSA)
Sent: Friday, February 08, 2013 2:54 PM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Request For Formal Letter of Interpretation

Medical Waste
13-0041

Hi Carolyn,

We received the following request for a formal letter of interpretation.

Thanks,
Victoria

From: H. Michael Lord [<mailto:mike.lord@carryandclean.com>]
Sent: Friday, February 08, 2013 12:04 PM
To: PHMSA HM InfoCenter
Cc: Sean Lord
Subject: Request For Formal Letter of Interpretation

To Whom It May Concern:

I own a Medical Waste Transportation company that operations only within Texas. In other words, we do not operate between a place in the State of Texas and a place outside of the State of Texas, nor do we affect trade or transportation between a place in the State of Texas and a place outside of the State of Texas. All of our Medical Waste is transported via ground transportation (i.e., no registered aircraft). Ref: 49 USC § 5102 – ‘Definitions’.

It’s my understanding that sections **49 CFR §171 - §180** cover Hazardous Materials, which includes infectious substances (e.g., Regulated Medical Waste – 49 CFR §173.134(a)(5)). 49 CFR 171.1 – ‘Applicability of Hazardous Materials Regulations (HMR) to persons and functions’ says: “Applicability of Hazardous Materials Regulations (HMR) to persons and functions. Federal hazardous materials transportation law (49 U.S.C. 5101 et seq.) directs the Secretary of Transportation to establish regulations for the safe and secure transportation of hazardous materials in commerce, as the Secretary considers appropriate.”

Is my company that solely conducts business within the confines of the State of Texas regulated by sections **49 CFR §171 - §180**?

We buy our shipping containers from a vendor that manufactures them in compliance with 49 CFR 178, Subpart J – ‘Specifications for Containers for Motor Vehicle Transportation’. We also label our containers with the appropriate identification numbers: UN 2814, UN 2900, UN 3373 or UN 3291 (49 CFR 173.134 - Class 6, Division 6.2-Definitions and exceptions).

More specifically I’m wondering if our OSHA 29 CR 1910.1030 training is enough, or if we need to augment it with missing topics from 49 CFR Parts 172, Subpart H? How much of 49 CFR 172 – ‘HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE

INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS' applies to Texas-only Medical Waste Transporters like me?

Not that it highly matters, but in August 2012 it was our attorney's opinion that none of these sections applied to us. I know others in the business and they mostly agree with my attorney. I'd appreciate learning what the definitive answer is!

Thanks,
H. Michael Lord, CEO
Carry And Clean, LLC