



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

**MAY 31 2018**

Washington State Ferries  
Attn: Manny Perez, Fleet Safety Coordinator  
2901 3rd Avenue, Suite 500  
Seattle, WA 98121-3014

Reference No. 18-0001

Dear Mr. Perez:

This letter is in response to your December 21, 2017, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the transportation of smokeless gunpowder by ferry. You have a patron who rides your ferry to and from his home carrying a 5-pound canister of smokeless gunpowder. You note that there are multiple entries in § 172.101 of the Hazardous Materials Table (HMT) for smokeless powder, including:

- UN0160, Powder, smokeless, 1.1C
- UN0161, Powder, smokeless, 1.3C
- UN0509, Powder, smokeless, 1.4C
- NA3178, Smokeless powder for small arms (100 pounds or less), 4.1

You add that UN0160 and UN0161 have a vessel storage code of "04" and therefore are prohibited from carriage on passenger vessels.

We have paraphrased and answered your questions as follows:

**Q1:** You ask if the HMR apply to a private individual transporting smokeless gunpowder by ferry.

**A1:** The answer is yes. As stated in § 171.1(c)(1), the HMR apply to the transportation in commerce of hazardous materials by vessel (except, as delegated at 49 CFR 1.46(t)). The carriage of a motor vehicle (including a personal motor vehicle) containing a hazardous material on board a passenger ferry vessel is transportation in commerce and therefore is subject to the HMR. In addition, § 176.88 of the HMR states, "The requirements in this subpart are applicable to transport vehicles containing hazardous materials being transported on board ferry vessels and are in addition to any prescribed elsewhere in this subchapter." Lastly, § 176.90 states that a private automobile which is carrying any Class 1 (explosive) material (except permitted fireworks or small arms ammunition) may not be transported on a passenger-carrying ferry vessel unless the Class 1 (explosive) material conforms to the packaging, labeling, marking, and certification requirements of

this subchapter. Therefore, as noted in your email, shipments of smokeless powder that carry a vessel storage code of "04" would be prohibited on board vessels unless allowed by special permit.

- Q2: Taking into consideration the above information, you ask who is responsible for ensuring the hazardous material being transported in a private vehicle is properly described, classed, and authorized to be transported by vessel.
- A2: Under the HMR, the offeror is primarily responsible for properly classifying, packaging, marking, and labeling a hazardous material for transportation in commerce. Nevertheless, Washington State Ferries vessel captain is responsible for accepting transport of the material, stowage and segregation.
- Q3: You ask if a hazardous material keeps its original hazard classification once it is sent to a retailer and no longer in a Department of Transportation (DOT) specification packaging.
- A3: The answer is yes. The explosive would still retain the classification associated with its original approval and must be shipped in accordance with its original packaging instructions. However, smokeless powder for small arms that has been originally classified as a Division 1.3 or 1.4 hazardous material may be reclassified as a Division 4.1 hazardous material, for domestic transportation by motor vehicle, rail car, vessel, or cargo-only aircraft, provided all the conditions of § 173.171 are met.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,



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



Andrews  
\$173.171  
Packaging General  
18-0001

**Dodd, Alice (PHMSA)**

**From:** INFOCNTR (PHMSA)  
**Sent:** Wednesday, January 03, 2018 3:11 PM  
**To:** Hazmat Interps  
**Subject:** FW: Request for Interpretation

Hello all,

Please see the letter of interp request below.

Regards,

-Breanna

**From:** Perez, Manny [mailto:PerezMa@wsdot.wa.gov]  
**Sent:** Thursday, December 21, 2017 1:21 PM  
**To:** INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>  
**Subject:** Request for Interpretation

Dear Sirs:

We are requesting a formal interpretation on an issue that come to light regarding the transportation of smokeless gunpowder on board our vessels by a passenger in their private vehicle.

**Background**

Washington State Ferries (WSF) is a division of the Washington State Department of Transportation (WSDOT) and operates passenger carrying vessels that are inspected and certificated by the United States Coast Guard. The vessels operate on various routes in Puget Sound from Point Defiance, WA, to Sydney, British Columbia (BC). With the exception of the Seattle to Bremerton run and the run from Anacortes to Sydney, BC, all of our transits can be completed in 45 minutes or less. The transit time on the Seattle to Bremerton run is approximately 55 to 60 minutes, and the Anacortes to Sydney, BC run takes about 2 hours to complete with a stop enroute at Friday Harbor, San Juan, Island, WA, which averages about 1 hour and 15 minutes after departure from Anacortes. Anyone being transported on one of our vessels in a vehicle (regardless of the type of vehicle in which they are riding), or as a walk-on passenger, must provide consideration as a condition of carriage. This includes all federal, state, and local government agency vehicles. ("Consideration", as defined in 46 United States Code (USC) 2101(5a) "means an economic benefit, inducement, right, or profit including pecuniary payment accruing to an individual, person, or entity, but not including a voluntary sharing of the actual expenses of the voyage, by monetary contribution or donation of fuel, food, beverage, or other supplies.") Accordingly, anyone riding on a WSF vessel meets the definition for engaging in commerce.

One of the patrons who rides our vessels to and from his home, inquired about carrying a five-pound canister of smokeless gunpowder on one of our vessels. The inquiry was general in nature and he did not indicate the hazard class of the gunpowder he was seeking to carry. There are several entries in the 49 CFR 172.101 Table for "smokeless powder", as noted below:

Hazardous Materials Descriptions and Proper Shipping Names	Hazard Class or Division	Identification Number	Vessel Stowage/10A
Powder, smokeless	1.1C	UN0160	04

Powder, smokeless	1.3C	UN0161	04
Powder, smokeless	1.4C	UN0509	02
Smokeless powder for small arms (100 pounds or less)	4.1	NA3178	A

I note that those commodities with Column 10(A) stowage category "A" or "02" can be transported on a passenger vessel, but those with a stowage category of "04" are prohibited from carriage on passenger vessels.

As stated above, a patron has inquired as to whether they can transport a five-pound canister of smokeless gunpowder on one of our vessels. The patron will most likely have purchased the canister from a retailer and then will be transporting the gunpowder in his private vehicle on one of our vessels to his home. The retailer most likely will have received the gunpowder from a distributor, which most likely was shipped to them in DOT specification packaging. However, the retailer will open the DOT specification packaging and sell individual canisters to the consumer. The individual canisters will be sold in one, four, or eight pound sizes.

The individual canisters are not required to be marked or labeled in accordance with the HMR indicating the hazard class of the material contained therein. Accordingly, when the patron drives their private vehicle onto one of our vessels there is no way for WSF to determine the hazard class of the material; it could very well be a material that because of the hazard class of the material is prohibited from carriage on a passenger vessel.

Given the above, clarification is requested for the following:

- Q1: In the scenario described above, does the HMR apply?
- Q2: Taking into consideration the above information, who is responsible for ensuring the material (smokeless gunpowder) being transported in the patron's private vehicle is properly described and classed authorizing it to be transported on one of our vessels?
- Q3: Again taking into consideration the above information, once a hazardous material is classed and sent to a retailer and is no longer contained in a DOT specification packaging as in the instant case, does it keep the original classification? Additionally, since there is no requirement for classification labeling and marking of consumer-sized canisters containing gunpowder, how is WSF to know the classification of the material being offered for transport on one of our vessels?

The situation described above presents a regulatory compliance problem for WSF. One possible solution would be to require smokeless gunpowder contained in consumer-sized canisters to be labeled and marked with the original hazardous material classification it had when it was shipped to a retailer.

I look forward to your response. Please send the response to the name and address below:

Washington State Ferries  
Attn: Manny Perez, Fleet Safety Coordinator  
2901 3<sup>rd</sup> Avenue, Suite 500  
Seattle, WA 98121-3014

If there are any questions, please contact me at the number below, or via e-mail.

*Manny Perez*  
*Fleet Safety Coordinator*  
*Washington State Ferries*  
*e-mail: [perezma@wsdot.wa.gov](mailto:perezma@wsdot.wa.gov)*  
*Ph: 206-515-3976*  
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