



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

AUG 20 2018

Dr. Jack Shere
Deputy Administrator
United States Department of Agriculture
Animal and Plant Health Inspection Service
Veterinary Services
Jamie L. Whitten Building, Room 317E
1400 Independence Ave, SW
Washington, DC 20250

Reference No. 18-0071

Dear Dr. Shere:

This letter is in response to your April 20, 2018, letter and May 14, 2018, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to animal waste. You explain that the Animal and Plant Health Inspection Service (APHIS) is the lead Federal agency responsible for animal disease response in the United States. You note that the remains of diseased animals occasionally cannot be managed onsite and must be transported under APHIS control and authority to an offsite disposal or treatment facility. Therefore, you seek clarification that the requirements found in § 173.134(b)(13)(iv) would except APHIS operations when managing animal waste at animal husbandry sites.

Your understanding is correct. According to § 173.134(b)(13)(iv), animal waste generated in animal husbandry or food production that meets the definition of a Division 6.2 hazardous material is not subject to the HMR as a Division 6.2 infectious material, unless it is regulated medical waste. Furthermore, if these materials do not meet any other hazard classification, they are not subject to the HMR. Please note that hazardous materials transported by a government entity in vehicles operated by government personnel for noncommercial purposes are not subject to the HMR (see § 171.1(d)(5)). However, if a government entity (e.g., APHIS) contracts a third party to transport a hazardous material on their behalf, the government exception would no longer apply and government operations would be categorized as transportation for commercial purposes and subject to the HMR.

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

Sincerely,

Dirk Der Kinderen
Chief, Standards Development Branch
Standards and Rulemaking Division

Baker
Exempt
18-0071

January, Ikeya CTR (PHMSA)

From: Baker, Yul (PHMSA)
Sent: Monday, May 14, 2018 12:05 PM
To: January, Ikeya CTR (PHMSA)
Subject: FW: REQUEST FOR SIGNATURE: DOT exemption letter
Attachments: Mr. Shane Kelley.pdf

Ikeya,

Can you please log this in as a letter of interp and assign it to me please. This is the letter from USDA that I mentioned.

V/r

Mr. Yul Brenner Baker Jr.

Transportation Specialist (Standards and Rulemaking Division)

Office of Hazardous Materials Safety (OHMS)

Pipeline and Hazardous Materials Safety Administration (PHMSA)

E21-351

Office number: 202-493-0867

From: Miller, Lori P - APHIS [mailto:Lori.P.Miller@aphis.usda.gov]
Sent: Monday, May 14, 2018 11:43 AM
To: Baker, Yul (PHMSA) <yul.baker@dot.gov>
Cc: McKenna, Thomas S - APHIS <Thomas.S.McKenna@aphis.usda.gov>; Johnson, Todd E - APHIS <Todd.E.Johnson@aphis.usda.gov>
Subject: FW: REQUEST FOR SIGNATURE: DOT exemption letter

Hi, Yul.

Attached is the signed letter that was sent. Please let me know if you need anything. Thanks for all your help!

Lori

Lori P. Miller, PE
Senior Staff Officer/Environmental Engineer

United States Department of Agriculture
Animal and Plant Health Inspection Service
Veterinary Services
Science, Technology and Analysis Services

4700 River Road, Unit 41, Room 5D-03.2
Riverdale, MD 20737

Phone: 301 851 3512

FAX: 301 734 7817

E-mail: lori.p.miller@aphis.usda.gov <mailto:lori.p.miller@aphis.usda.gov>

<image002.jpg><https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/topics?qsp=USDAAPHIS_1>Click here to subscribe to the VS Animal Health Stakeholder Registry<https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/topics?qsp=USDAAPHIS_1>

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From: Lee, Paula J - APHIS
Sent: Monday, May 14, 2018 11:40 AM
To: Miller, Lori P - APHIS <Lori.P.Miller@aphis.usda.gov>
Cc: Levesque, Ashley - APHIS <Ashley.Levesque@aphis.usda.gov>
Subject: RE: REQUEST FOR SIGNATURE: DOT exemption letter

Lori,

Please see attached letter.

Sincerely,

Paula

Paula Lee
Executive Administrative Assistant
Office of the Deputy Administrator
Animal Plant Health Inspection Service, Veterinary Services
US Department of Agriculture
1400 Independence Ave, SW, Room 318E
Washington DC 20250
Phone: 202-799-7150
Email: Paula.J.Lee@aphis.usda.gov

From: Levesque, Ashley - APHIS
Sent: Monday, May 14, 2018 11:10 AM
To: Lee, Paula J - APHIS <Paula.J.Lee@aphis.usda.gov>
Subject: FW: REQUEST FOR SIGNATURE: DOT exemption letter

Paula –

Can you please send Lori a scanned copy of the letter?

Thank you!

Ashley Levesque
Deputy Chief of Staff

Veterinary Services
USDA – Animal Plant Health Inspection Service
1400 Independence Ave, SW, 320-E Whitten
Washington, DC 20250
Ashley.Levesque@aphis.usda.gov
Office: 202-799-7151
Cell: 202-868-3777

From: Miller, Lori P - APHIS
Sent: Monday, May 14, 2018 10:46 AM
To: Levesque, Ashley - APHIS <Ashley.Levesque@aphis.usda.gov>
Cc: Romano, Maria G - APHIS <Maria.G.Romano@aphis.usda.gov>; Teachman, Mark E - APHIS <Mark.E.Teachman@aphis.usda.gov>
Subject: REQUEST FOR SIGNATURE: DOT exemption letter

Hi, Ashley.

Regarding the DOT exemption letter that Dr. Shere signed several weeks ago, DOT has not yet received it. Could you kindly send me a scan of the signed letter? Thanks very much.

Lori

Lori P. Miller, PE
Senior Staff Officer/Environmental Engineer

United States Department of Agriculture
Animal and Plant Health Inspection Service
Veterinary Services
Science, Technology and Analysis Services

4700 River Road, Unit 41, Room 5D-03.2
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Phone: 301 851 3512
FAX: 301 734 7817
E-mail: lori.p.miller@aphis.usda.gov<<mailto:lori.p.miller@aphis.usda.gov>>

<image002.jpg><https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/topics?qsp=USDAAPHIS_1>Click here to subscribe to the VS Animal Health Stakeholder Registry<https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/topics?qsp=USDAAPHIS_1>

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From: Levesque, Ashley - APHIS
Sent: Monday, April 23, 2018 11:35 AM
To: Romano, Maria G - APHIS <Maria.G.Romano@aphis.usda.gov>
Subject: FW: REQUEST FOR SIGNATURE: DOT exemption letter

Paula has sent the letter. ☺

Ashley Levesque
Deputy Chief of Staff
Veterinary Services
USDA – Animal Plant Health Inspection Service
1400 Independence Ave, SW, 320-E Whitten
Washington, DC 20250
Ashley.Levesque@aphis.usda.gov
Office: 202-799-7151
Cell: 202-868-3777

From: Lee, Paula J - APHIS
Sent: Monday, April 23, 2018 11:30 AM
To: Levesque, Ashley - APHIS <Ashley.Levesque@aphis.usda.gov>
Subject: RE: REQUEST FOR SIGNATURE: DOT exemption letter

Ok. This letter has just went out in the mail.

Paula

From: Levesque, Ashley - APHIS
Sent: Monday, April 23, 2018 10:31 AM
To: Lee, Paula J - APHIS <Paula.J.Lee@aphis.usda.gov>
Subject: FW: REQUEST FOR SIGNATURE: DOT exemption letter

Hey can you send that letter out hard copy please?

Thank you!!!

Ashley Levesque
Deputy Chief of Staff
Veterinary Services
USDA – Animal Plant Health Inspection Service
1400 Independence Ave, SW, 320-E Whitten
Washington, DC 20250
Ashley.Levesque@aphis.usda.gov
Office: 202-799-7151
Cell: 202-868-3777

From: Romano, Maria G - APHIS
Sent: Monday, April 23, 2018 8:57 AM
To: Levesque, Ashley - APHIS <Ashley.Levesque@aphis.usda.gov>
Cc: Lautner, Elizabeth A - APHIS <Elizabeth.A.Lautner@aphis.usda.gov>; Tomlinson, Sarah M - APHIS <Sarah.M.Tomlinson@aphis.usda.gov>
Subject: RE: REQUEST FOR SIGNATURE: DOT exemption letter

Hi Ashley – thank you for the update! I think that it's fine for your office to send the hard copy. If you could, please let us know when you send.

Thanks again,
Maria

From: Levesque, Ashley - APHIS
Sent: Monday, April 23, 2018 8:22 AM
To: Romano, Maria G - APHIS <Maria.G.Romano@aphis.usda.gov>
Subject: Re: REQUEST FOR SIGNATURE: DOT exemption letter

Hey Maria -

Jack signed it and I sent the mini memo to OA. I was waiting to see if we received any feedback from OA prior to sending the signed letter. However, since we've not heard anything we can go ahead send this. Do you want our office to send it hard copy or do you want us to just forward you the scanned signed copy?

Ashley Levesque
Deputy Chief of Staff
Veterinary Services
USDA – Animal Plant Health Inspection Service
1400 Independence Ave, SW, 320-E Whitten
Washington, DC 20250
Ashley.Levesque@aphis.usda.gov
Office: 202-799-7151
Cell: 202-868-3777

On Apr 20, 2018, at 10:36 AM, Romano, Maria G - APHIS <Maria.G.Romano@aphis.usda.gov> wrote:

Hi Ashley – do you have an update on the DOT letter discussed during STAS time this week?

Thank you!
Maria

From: Levesque, Ashley - APHIS
Sent: Wednesday, April 18, 2018 9:05 AM
To: Romano, Maria G - APHIS <Maria.G.Romano@aphis.usda.gov>
Subject: Re: REQUEST FOR SIGNATURE: DOT exemption letter

Got it! I'll let you know if we need to do more coordinating on this one or not.

Thank you.

Ashley Levesque
Deputy Chief of Staff

Veterinary Services
USDA – Animal Plant Health Inspection Service
1400 Independence Ave, SW, 320-E Whitten
Washington, DC 20250
Ashley.Levesque@aphis.usda.gov
Office: 202-799-7151
Cell: 202-868-3777

On Apr 18, 2018, at 8:39 AM, Romano, Maria G - APHIS <Maria.G.Romano@aphis.usda.gov> wrote:

Hi Ashley – as discussed during STAS time yesterday, below is a copy of the mini memo and attached is the letter requiring Dr. Shere's signature. Do you recommend that this letter also go through LPA?

Let me know if you need anything additional from us.

Thank you in advance,
Maria

Information from Veterinary Services
Dr. Jack Shere, Deputy Administrator
April 18, 2018

Veterinary Services seeking exemption from the Department of Transportation
Action: None

In 2015, the Department of Transportation (DOT) contacted Veterinary Services (VS) regarding a report that the Animal and Plant Health Inspection Service (APHIS) allegedly illegally transported infected carcasses. DOT did not reveal who reported it, but suggested we submit a request for a special permit so they could officially rule on our procedures.

VS submitted the request, and in response, DOT determined that the hazardous material transport rules did not apply to APHIS' response operations because 49 CFR 173.134 (b)(13)(iv) exempts animal waste generated by animal husbandry or food production unless it's regulated medical waste; and according to 49 CFR 173.134 (a)(5), APHIS-generated waste does not meet the definition of medical waste in this context.

In order to document the exemption, the DOT lawyers recommended we write a letter requesting interpretation so they could formally respond to it and publically post the interpretation. As a result, VS has written a letter to the DOT to request an official interpretation of DOT's regulation on shipping and packaging requirements. The exemption includes placarding of trucks during transport of infected carcasses for disposal during an APHIS emergency response. Once DOT responds to APHIS' letter requesting interpretation and verification that APHIS is exempt from the regulation, DOT will post the interpretation on the DOT public website.

The publically available exemption will enable APHIS to safely and efficiently respond to animal health outbreaks (under USDA authority) without questions over the activity's legality and clarify any concerns over APHIS' response activities in the future.

<DOT_Exemption_letterhead.doc>



United States Department of Agriculture

Animal and Plant
Health Inspection
Service

Veterinary Services

Jamie L. Whitten
Building, Room
317E

1400 Independence
Ave, SW

Washington, DC
20250

(202) 799-7146

Mr. Shane Kelley
Director, Standards and Rulemaking Division
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590

APR 20 2018

Dear Mr. Kelley,

This letter is to request verification that 49 CFR 173 requirements do not apply to the Animal and Plant Health Inspection Service's (APHIS) response operations. 49 CFR 173.134 (b)(13)(iv) exempts animal waste generated by animal husbandry or food production unless it's regulated medical waste; and according to 49 CFR 173.134 (a)(5), APHIS-generated waste does not meet the definition of medical waste in this context.

APHIS is the lead federal agency for animal disease response in the U.S. One response strategy is to euthanize affected animals and dispose of the remains, in accordance with APHIS standards. In some instances, the remains cannot be managed onsite. In those situations, the remains are transported under APHIS control and authority to an offsite disposal or treatment facility. Based on APHIS' interpretation of 49 CFR 173, the response activities are a result of animal husbandry; and therefore, APHIS is exempt from the regulation.

Sincerely,

Jack Shere, DVM, PhD
Deputy Administrator
United States Department of Agriculture
Animal and Plant Health Inspection Service
Veterinary Services