



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

Memorandum

Date: **AUG 18 2000**

Reply to Attn. of: Ref. No. 00-0225

Subject: **INFORMATION:** Applicability of the HMR to Confiscated Materials

From: *for Thomas G. Allan*
Edward T. Mazzullo, Director
Office of Hazardous Materials Standards

To: William Wilkening, Manager
Dangerous Goods and Cargo Security

This is in response to your memorandum dated July 26, 2000, regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to a hazardous material confiscated by an airline. Your questions are listed below for ease of response:

Q1) If AMR (American Airlines) places hazardous materials inside a temporary storage container after confiscating the material from a passenger, are the materials considered in transportation? Does this practice by AMR indirectly make them become a generator of hazardous waste?

A1) The HMR apply to the transportation, including incidental storage thereto, of a hazardous material in commerce. It is the opinion of this Office that a hazardous material that is placed inside a temporary storage container after being confiscated from a passenger is not subject to the HMR because it is neither in transportation or in temporary storage incidental to transportation. The act of confiscation by the airline removes the item from transportation, and thus the applicability of the HMR. Questions regarding the definition of a hazardous waste generator should be directed to the Environmental Protection Agency's Office of Solid Waste, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

Q2) If AMR transports these materials via surface, are the materials regulated under the HMR? If they are regulated, could AMR apply for an exemption to move these items? Does it matter whether or not these materials are contained inside the manufacturers original container?

A2) A hazardous material that has been confiscated by an airline and then subsequently transported by that airline is subject to the HMR, regardless of the mode of transportation. If AMR offers these materials for transportation or transports them, it must conform to all applicable provisions of the HMR. AMR may want to consider employing qualified professionals to transport these materials, such as a hazardous waste transportation company.



000225

1711

The HMR do provide several exceptions from specific requirements for certain hazardous materials, e.g., small quantities, materials of trade, and consumer commodities. It is probable that most of the materials that AMR is confiscating meet the conditions for shipping as consumer commodities. You do not state why an exemption might be necessary. Any person can apply for an exemption from the HMR in accordance with the procedures outlined in 49 CFR 107.105. Generally, an application must demonstrate a level of safety of least equal to that required by regulation.

#

7-7530



U.S. Department
of Transportation
Federal Aviation
Administration

Gale
8171.1
Memorandum

Applicability

00-0225

Subject: **INFORMATION:** American Airlines Safety, Security,
and Environmental Compliance Program

Date: JUL 26 2000

From: Manager, Dangerous Goods and Cargo Security

Reply to: Mark L. Lendvay
Attn. of: 7-9870

To: Acting Associate Administrator, DHM-1

In December of 1999, AMR, the parent company of American Airlines and American Eagle, pleaded to an environmental crime. As part of their court sentencing, AMR entered into a plea agreement, whereby, AMR agreed to carry out the provisions of a jointly developed compliance program established between the United States Attorney for the Southern District of Florida and the United States Department of Justice. The compliance program addresses safety, security, and environmental issues, and requires actions that exceed current federal standards.

The compliance program requires AMR to carry out the required provisions for a period of 3 years, which in most instances, are noted as being above and beyond the current Hazardous Materials Regulations (HMR) and the Federal hazardous materials transportation law (Fhmtl). One example of these procedures is to train pre-board security screeners to locate hazardous materials in passenger baggage.

Currently (see attachment) security screeners are not considered "Hazmat Employees" because their contact with hazardous materials is incidental to their assigned security duties and responsibilities. Pre-board security screening is mandated under aviation legislation and is intended to prevent bombings and air piracy, not to detect unauthorized hazardous materials.

Since April of this year, both American Airlines and American Eagle have been finding hazardous materials contained inside passenger baggage. For example, on one particular day American Airlines in part, using x-ray technology, detected approximately 25 passengers who were all departing on the same international flight with an array of undeclared hazardous materials. The majority of these materials consisted of flammable liquids, corrosives and aerosols both non-flammable and flammable.

As you are aware, the HMRs currently do not require air carriers to search for hazardous materials inside passenger baggage. However, based on the first 3 months of reporting by AMR, we believe that the U.S. Department of Transportation (DOT), specifically the Research and Special Programs Administration (RSPA), should be aware of these findings.

We feel that this information will supplement the Department's Flagship Initiative, which is examining the feasibility of using new noninvasive screening technologies for cargo, mail and baggage screening. It's our understanding that the first step of this initiative is to analyze the logistical difficulties and review applicable legal authorities and precedents involved with generalized hazardous materials searches or screening. We feel that this information will be beneficial to this endeavor, and perhaps assist your office with the development of regulatory proposals.

Other issues that have surfaced since implementation of the AMR compliance program, and which require clarification from RSPA, include the following:

Temporary Storage of Hazardous Materials: As a result of the number and volume of hazardous materials detected by American Airlines and American Eagle at Miami International Airport (MIA), efforts have been underway of establishing a temporary storage area within the passenger terminal building of MIA. However, AMR is concerned that establishing a temporary storage facility, specifically for materials not readily identifiable (i.e. non-manufacturers original container), will present a safety hazard.

Re-Transportation of Hazardous Materials: At locations where hazardous materials are detected and confiscated, AMR is placed in a position where they have to either move such materials to another location, or prepare for proper disposal. Movement of these materials occurs via surface, typically utilizing a company vehicle, or even a contractor. Disposal of these materials typically occurs with a hazardous waste company, who is contracted by AMR. However, some of the materials confiscated consist of household commodities, and AMR is attempting to donate these items to local charitable organizations.

These two above issues present a number of questions that we would like to raise to your attention, and either seek regulatory clarification or perhaps even the issuance of a special exemption.

Question #1: If AMR places hazardous materials inside a temporary storage container after confiscating the material from a passenger, are the materials considered in transportation? Does this practice by AMR indirectly make them become a generator of hazardous waste?

Question #2: If AMR transports these materials via surface, are the materials regulated under the HMR? If they are regulated, could AMR apply for an exemption in order to move these items? Does it matter whether or not these materials are contained inside the manufacturer's original container?

As you may be aware from the attached letter from the United States Attorney, Southern District of Florida, significant attention is being emphasized with respect to undeclared hazardous materials shipments in air transportation. In fact, the recent ONE-DOT Hazardous Materials Program Evaluation (HMPE) cited undeclared hazardous materials as a key issue facing the industry. The court ordered findings to date tend to further support these concerns.

Your timely reply to these issues and questions is appreciated as we would like to offer AMR some guidance.



William G. Wilkening

Attachments

cc: Tony Gagliardi, U.S. Probation Officer
Elosia Fernandez, Assistant United States Attorney
Jeff O'Conner, Managing Director, Safety, Security and
Environmental Compliance