



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

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

OCT 19 2003

Mr. Orris Gram
Gram Safety Services
59285 Lotus Court
Montrose, CO 81401

Ref. No.: 03-0299

Dear Mr. Gram:

This is in response to your November 10, 2003 letter regarding the materials of trade exception under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if a medical home health care supplier may transport oxygen cylinders, each weighing less than 100 kg (220 pounds), as a materials of trade in accordance with § 173.6. Please accept my apology for our delay in responding to your letter.

The answer is yes. Based on the information provided, delivery of oxygen cylinders is not the principal business for the home health care supplier and supplying patients with oxygen cylinders is in direct support of its business. Therefore, the oxygen cylinders carried on the health care supplier's vehicle meet the definition of a material of trade in § 171.8 and may be transported under the conditions specified in § 173.6.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,

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



030299

171.8
173.6

Gram Safety Services
59285 Lotus Court
Montrose, CO 81401
970.240.3329
November 10, 2003

Edmondson
§171.8
§173.6
MOT Exception
03-0299

Mr. Edward Mazzullo, Director
Office of Hazardous Materials Standards
U. S. DOT/RSPA (DHM-10)
400 7th Street NW
Washington D. C. 20590-0001

Dear Mr. Mazzullo;

Re: Request for clarification of applicability 171.8 and 173.6 "Materials of Trade Exception"

I represent a private motor carrier engaged in the sale, rental and distribution of materials associated with medical home health care. The main portion of the business is supplying oxygen to persons requiring respiratory care and durable medical equipment (beds, wheelchairs, gloves, masks, ect.).

The oxygen is delivered by our vehicles in permanently mounted bulk refrigerated tanks on one half, three quarter or one-ton capacity vehicles. We are not aware of any problem with the bulk tanks as they are marked and placarded (UN1073) and the driver has in possession a shipping document for "Oxygen, refrigerated liquid, 2.2, UN1073".

The drivers are qualified per FMCSA regulations and licensed CDL with "Haz Mat" endorsement. Additionally the drivers must meet the health, safety, and training requirements of HHS for home health care workers. The drivers service customers at private residences or health care facilities, delivering, servicing and filling oxygen cryogenic dewars, and checking on the proper and safe use of the medical oxygen.

Question: In addition to the placarded bulk refrigerated oxygen the vehicle will have extra cylinders of "Oxygen, compressed, 2.2, UN1072" these small cylinders range from 3.5, 7.5, and 10 pound capacity. On a day in question the vehicle contained 26 of these cylinders having a gross weight under 220 pounds. The driver may either service and replace a cylinder or leave one or more cylinders dependent upon the individual customer needs.

It is my opinion that that the driver is engaged in a MOT activity for the oxygen cylinders as it falls within the scope of private carriage and providing specialized door-to-door service incidental to transportation and excepted from shipping papers.

The State Patrol maintains that the transportation of the cylinders is strictly a transportation activity and not within the scope of MOT exceptions and requires shipping papers.

Your interpretation and clarification on the use of MOT exception will be appreciated.

Sincerely,


Orris Gram