



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

FEB 11 2016

Mr. Daniel Zirzow
5287 Broad Blvd.
N. Ridgeville, OH 44039

Ref No.: 15-0106

Dear Mr. Zirzow:

This responds to your email request for clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the transportation of display fireworks. Your email describes three different transportation scenarios and you ask whether they are considered in commerce for the purposes of the HMR.

Scenario 1: A licensed individual transports Division 1.3 display fireworks to a private residential property, such as a farm, for non-commercial purposes. You ask whether such transportation is subject to the HMR.

Response 1: The answer is no. As provided by § 171.1(d)(6), the transportation of a hazardous material by an individual for non-commercial purposes in a private motor vehicle, including a leased or rented motor vehicle, is not subject to the HMR.

Scenario 2: A commercial entity, such as a restaurant or winery, compensates a fireworks club monetarily for the staging of a fireworks display on its property. The fireworks club does not compensate the employee who provides the display. Further, the restaurant or winery does not charge admission to view the display.

If a fireworks club or organization stages a fireworks display at a commercial establishment, is transportation of the display considered in commerce for the purposes of the HMR? If so, does transportation of the fireworks display to the property require a driver with a Hazardous Materials Endorsement on a Commercial Driver's License (CDL)? Would it matter if the commercial establishment compensated a club member individually for the display or the fireworks club directly?

Response 2: The answer is yes, the scenario you describe is considered in commerce for the purposes of the HMR. Historically, PHMSA interprets “in commerce” to mean trade or transportation in furtherance of a commercial enterprise. This interpretation is based in part on the Federal hazmat law's definition of “person” as including “a government, Indian tribe, or authority of a government or tribe that (i) offers hazardous material for transportation in commerce; (ii) *transports hazardous material to further a commercial enterprise*; or (iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous materials in commerce...” See 49 U.S.C. 5102(9); see also 49 CFR § 171.8.

Because any amount of a Division 1.3 explosive on a transport vehicle requires placarding, a driver is required to have a Hazardous Materials Endorsement on his or her CDL in accordance with the Federal Motor Carrier Safety Regulations at 49 CFR 383.93. Lastly, the type and level of monetary compensation and to whom it is rendered for services performed in this scenario is irrelevant as the transportation of the display fireworks is ultimately for the furtherance of a business enterprise and not solely for non-commercial purposes.

Scenario 3: A commercial entity such as a sporting event or an RV park/campground compensates a fireworks club monetarily (at cost) for the staging of a fireworks display on its property. The fireworks club does not compensate the employee who stages the display. Further, the sporting event or an RV park/campground may charge admission to view the display.

Under this scenario, if a fireworks club or organization stages a fireworks display at a commercial establishment, is transportation of the display considered in commerce for the purposes of the HMR? If so, does transportation of the fireworks display to the property require a driver with a Hazardous Materials Endorsement on a CDL?

Response 3: See the response for Scenario 2.

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

Stevens
§171.1(d)(6)
Applicability
15-0106

Dodd, Alice (PHMSA)

From: Geller, Shelby CTR (PHMSA)
Sent: Thursday, April 16, 2015 3:38 PM
To: Hazmat Interps
Subject: FW: request for interpretation letter regarding transportation of 1.3 in "non-commerce" situation.

Dear Shante and Alice,

Attached is a formal letter of interpretation. Mr. Zirzow spoke with Adam Lucas on 4/15/2015.

Thanks,
Shelby

From: danzirzow@aol.com [mailto:danzirzow@aol.com]
Sent: Wednesday, April 15, 2015 5:27 PM
To: PHMSA HM InfoCenter
Subject: request for interpretation letter regarding transportation of 1.3 in "non-commerce" situation.

Earlier today I called and spoke to Adam at the Hazardous Materials Information Center and he suggested I request an interpretation on an issue.

The issue deals with jurisdiction or application of DOT Hazmat requirements in transportation of 1.3 fireworks. I was provided 49 CFR 171.1 (d) (6) stating exemption of the rules for individual in private vehicle in non-commercial purposes.

The issue is what constitutes in-commerce versus non-commerce.

If an individual (fully licensed through ATF and local authorities to purchase, is permitted, and display 1.3 fireworks) at a private residential property, like a farm, transports 1.3 they are exempt.

However, there are other scenarios I am specifically aware of.

If a local fireworks club states they are "non-commerce" and do not pay their employees labor to provide a show on commercial property, is this now in-commerce?

For example, "Club Pyro" receives money to purchase 1.3 fireworks and they display at a local restaurant or winery. The winery or restaurant does not charge an admission to view the display, Is this in-commerce and needs the 1.3 to be transported by a licensed Hazmat endorsed CDL driver to the property? Does it matter if the business directly pays a club member for the donation or whether they pay the club directly?

Second scenario, "Club Pyro" receives money ("donation to purchase fireworks, reimburse gas costs, but no labor paid) to display 1.3 fireworks at a commercial establishment which charges admission (sometimes in normal course of business) to view the display as part of entertainment. Two examples would be a sporting event (auto racing facility, minor league baseball, etc) and a RV park/campgrounds? In this scenario would the display now be considered in-commerce and require the a CDL w/ Hazmat rated driver and placards?

Would like clarification of "Commerce". What triggers the classification: zoning of property, an admission charged, whether individuals performing labor of shooting the fireworks are compensated money regardless of shoot site?

The 2 scenarios are real events I know have occurred in the past.

Thank you for your time.

Daniel Zirzow

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