



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

1200 New Jersey Avenue, SE
Washington, DC 20590

MAY 25 2017

Richard Norl Jr.
Distribution Safety Analyst
Chevron Phillips Chemical Company LP
10001 Six Pines Drive
The Woodlands, TX 77380

Reference No. 17-0014

Dear Mr. Norl Jr.:

This letter is in response to your February 2, 2017, email and letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the Materials of Trade (MOTs) exception. Specifically, you present two scenarios where companies transport small quantities of samples to laboratories for analysis using company owned/leased vehicles.

- Scenario 1: A company transports small quantities of samples for analysis to the sample collector's laboratory while using a company owned/leased vehicle. You believe this is acceptable under the definition of MOTs in § 171.8.
- Scenario 2: A company transports small quantities of samples for analysis to a "client's" laboratory or another company's laboratory. You believe this is not authorized for the MOTs exception and, therefore, that these samples are considered fully regulated in accordance with the HMR.

To meet the MOTs definition, the material must be carried on a motor vehicle by a private motor carrier (including vehicles operated by a rail carrier) in direct support of a principal business that is other than transportation by motor vehicle. If a company's principal business is collecting and analyzing samples and it's in direct support of their business as per the definition of MOTs in § 171.8, then a company is eligible for the MOTs exception, provided the samples meet the requirements in § 173.6.

See the following two examples for applicability of the MOTs exception:

Example 1: The principal business of "Company A" is the collection and analysis of samples for testing purposes. "Company A" collects the samples and has their employees transport those samples to either their own facility or a third-party facility for testing while using a company owned/leased vehicle. This shipment of samples would be authorized under the MOTs exception in § 173.6.

Example 2: The principal business of "Company A" is the collection and analysis of samples for testing purposes. "Company A" collects the samples but hires a carrier to transport those samples to either "Company A's" facility or a third-party facility for

testing. "Company A" would not be able to use the MOTs exception because hiring a third-party carrier is not considered a private motor carrier. The motor carrier must transport the samples in compliance with the HMR.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Dirk Der Kinderen", written in a cursive style.

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

Edmonson
\$173.6 BAKER
MOT
17-0014

Dodd, Alice (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Thursday, February 02, 2017 5:10 PM
To: Hazmat Interps
Subject: FW: Request for Materials of Trade Interpretation
Attachments: RNorl.PHMSA MOT Interpretation Request.02Feb2017.docx

Hi Shante/Alice,

Please submit this as a letter of interpretation. Mr. Norl spoke with Jodi.

Please let me know if you have any questions.


Thanks,
Jordan

From: Norl Jr., Richard [mailto:NORLR@cpchem.com]
Sent: Thursday, February 02, 2017 1:01 PM
To: PHMSA HM InfoCenter <PHMSAHMInfoCenter@dot.gov>
Subject: Request for Materials of Trade Interpretation

Richard Norl Jr.

Distribution Safety Analyst

Chevron Phillips Chemical Company LP
10001 Six Pines Drive | The Woodlands, TX 77380

☎ Office: 832.813.4277  norlr@cpchem.com  Business Cell: 832.571.7851



February 3, 2017

Sent via email: phmsa.hm-infocenter@dot.gov

United States Department of Transportation
PHMSA Office of Hazardous Materials Standards
Attn: PHH-10
East Building
1200 New Jersey Avenue, SE.
Washington, DC 20590-0001

Richard Norl Jr.

Distribution Safety Analyst
10001 Six Pines Drive
The Woodlands, TX 77380

Telephone: 832-813-4277
Cell: 832-571-7851
norlr@cpchem.com

www.cpchem.com

Re: Request for Materials of Trade Interpretation

Dear Sir/Madam:

There are numerous PHMSA interpretations regarding 49 CFR §173.6 - Materials of Trade. It appears that the majority of questions referred for interpretation are related to the transport of hazardous materials by "a private motor carrier" in "direct support of a principal business".

The Hazardous Materials Regulations (HMR) do not define "private motor carrier" or "direct support of a principle business" that is other than transportation. 49 U.S. Code § 13102 defines the term "motor private carrier" as "a person, other than a motor carrier, transporting property by motor vehicle" when— (a) the transportation experienced is as provided in section 13501 of this title; (b) the person is the owner, lessee, or bailee of the property being transported; and (c) the property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise. The term "motor carrier" is defined as "a person providing motor vehicle transportation for compensation".

The Federal Motor Carrier Safety Administration (FMCSA) defines private motor carrier as: "A company that provides truck transportation of its own cargo, usually as part of a business that produces, uses, sells and/or buys the cargo being hauled" (<https://www.fmcsa.dot.gov/protect-your-move/glossary>). The agency states on its Q&A site: "A private motor carrier transports its own cargo, usually as a part of a business that produces, uses, sells and/or buys the cargo that is being hauled". (https://ask.fmcsa.dot.gov/app/answers/detail/a_id/247)

PHMSA states the following in a MOT interpretation (Reference No. 13-0051) dated 18 February 2014 – "The intent of the MOT exception is to provide relief for a "private carrier" that permits him or her to transport by motor vehicle certain hazardous materials, other than hazardous waste, that are used in direct support of the carrier's principle business "other than transportation". Although the HMR do not specifically define "direct support of a principle business that is other than transportation", Quote --- it is this office's intent that this phrase means the company is transporting its own business products for the purpose of carrying out the activities

of its business and **not to offer these materials for transportation**" unquote.

PHMSA has given examples on its website and in a brochure for service providers that the MOT exception is intended to give some regulatory relief, namely to, landscaping, pest control, painting, plumbing, or welding type services. The applicability of the MOT exception seems to be straight forward regarding door-to-door sales and/or service, including the transport of hazardous materials and/or samples in their own company vehicles to their own specific company owned laboratories, but "not to laboratories owned by other companies".

There are companies whose principal business is cargo inspection, gauging, sample collection and/or analysis of their clients' products. These companies have their own laboratories. It seems clear to me that the transport of small quantities of samples from chemical companies and/or refineries, marine terminals and/or marines vessels, etc., in the sampling companies' vehicles, to their own laboratories and/or retention facilities, meets the definition of private carrier in 49 U.S. Code § 13102 and the FMCSA regulations, as well as PHMSA's intent with respect to the meaning of "direct support of a principle business," therefore the **MOT exception would apply**.

However, if the samples **are not being transported** to the sample collectors' **own laboratories for subsequent analysis and/or retention**, but are being **transported** to their "**clients' laboratories** or **to other companies laboratories**", then they "**do not meet the definition of private carrier**" or the "**intent to directly support their principle businesses**," "**therefore the MOT exception does not apply**." They would be considered a motor carrier as defined by the FMCSA and are subject to full compliance with the HMR.

Please clarify whether or not my statements herein are correct.

Thank you in advance for your assistance in this matter.