



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

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***Hazardous Materials Safety Law  
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**LETTER OF INTERPRETATION**

September 2, 2015

Bruce D. Green, P.A.  
1313 South Andrews Avenue  
Fort Lauderdale, Florida 33316

Reference No.: 15-0167

Dear Mr. Green:

This responds to your letter of January 26, 2015 requesting clarification on the jurisdiction of 49 CFR Part 175, Hazardous Materials Regulations (HMR), Carriage by Aircraft, under various factual scenarios. In a response letter of April 27, 2015, the Federal Aviation Administration (FAA) informed you that our office, the Pipeline and Hazardous Materials Safety Administration (PHMSA) would address your letter since your request raises a question of legal interpretation regarding the HMR that are promulgated under PHMSA's delegated authority. In your letter, you specifically ask whether certain aircraft can carry hazardous materials without complying with the provisions of 49 CFR Part 175.

Under 49 CFR § 171.1, "Federal hazardous materials transportation law (49 U.S.C. §5101 *et seq.*) directs the Secretary of Transportation to establish regulations for the safe and secure transportation of hazardous materials in commerce, as the Secretary considers appropriate. The Secretary is authorized to apply these regulations to persons who transport hazardous materials (and who cause hazardous materials to be transported) in commerce." *Commerce* is defined under 49 CFR § 171.8 as "trade or transportation in the jurisdiction of the United States within a single state; between a place in a state and a place outside of the state; that affects trade or transportation between a place in a state and place outside of the state; or on a United States-registered aircraft."

In your letter, you request clarification as to whether a U.S. registered aircraft, under six different scenarios, may carry hazardous materials without complying with the provisions of 49 CFR Part 175. Specifically, 49 CFR § 175.1(b) notes that "this part applies to the offering, acceptance, and transportation of hazardous materials in commerce by aircraft to, from, or within

the United States, and to any aircraft of United States registry anywhere in air commerce.” Further, 49 CFR § 175.1(a) notes that “the requirements in this part are in addition to other requirements contained in parts 171, 172, 173, 178, and 180 of this subchapter.” Therefore, any U.S. registered aircraft carrying hazardous materials must comply with 49 CFR Part 175 as well as the other applicable parts of the HMR.

Finally, in paragraph seven (7) of your letter, you ask:

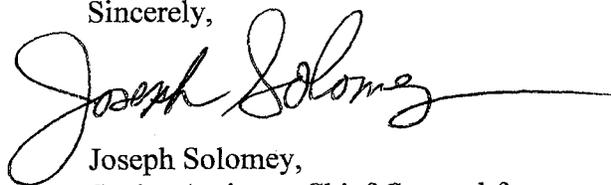
“May a privately owned foreign registered aircraft operated pursuant to the provisions of 14 CFR Part 91 and not for compensation or hire, which is being managed by a U.S. management company, is piloted by a current and qualified pilot for that management company, in which the pilot is being compensated by that management company, carry Hazardous Materials without complying with the provisions of 49 CFR Part 175?”<sup>1</sup>

The foreign registration of the aircraft in this scenario is not determinative of whether the HMR applies. Rather, applicability of the HMR depends on whether the operator – a U.S. management company – “cause[s] hazardous materials to be transported in commerce.” See 49 CFR §§ 171.1 and 175.1(b). Given the breadth of the definitions of “commerce” and “transportation” in 49 CFR § 171.8, the U.S. management company operating the flight would be subject to the requirements of the HMR as it would be causing the transportation of hazardous materials from one place to another within the U.S. See 49 CFR § 171.1.

Accordingly, under 49 CFR §§ 171.8, and 175.1(b), if the aircraft is carrying hazardous materials “in the jurisdiction of the United States” or “to, from, or within the United States” respectively, it must comply with 49 CFR Part 175 as well as the other applicable parts of the HMR. As we have previously clarified in letters of interpretation Ref. No. 14-0021 and Ref. No. 14-0212, the jurisdiction of the United States includes the airspace.

I trust this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,



Joseph Solomey,  
Senior Assistant Chief Counsel for  
Hazardous Materials Safety

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<sup>1</sup> We note your assertions that the described operation is conducted in accordance with 14 CFR Part 91, and is purportedly “not [operated] for compensation or hire.” Yet, the pilot of the aircraft is employed and compensated by a U.S. management company, and the operator seeks to transport property (*i.e.* hazardous materials). Without additional detail regarding the intended operation or the U.S. management company, we assume for purposes of responding to this question that the foreign registered aircraft in your example would be operated within the U.S. and that the U.S. management company complies fully with applicable FAA regulations.