



U.S. Department of Transportation
**Pipeline and Hazardous Materials
Safety Administration**

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

OCT 29 2010

Captain E.M. Steele
Commander, Canadian Materiel
Support Group
Department of National Defence
101 Colonel By Drive
Ottawa, Ontario K1A 0K2
CANADA

Reference No. 10-0048

Dear Captain Steele:

This is in response to your February 15, 2010 letter to Mr. Duane Pfund, Acting Director, Office of Hazardous Materials Technology, Pipeline and Hazardous Materials Safety Administration (PHMSA), United States (U.S.) Department of Transportation, and Mr. Gerald Weir's May 26 and 28, 2010 e-mails to a member of my staff. You state these shipments will be escorted by a Canadian civilian employee or a member of your country's Armed Forces under a Canadian provision that defines the type of carriage as being contracted carriage "Under Direct Control of the Minister of National Defence." You ask if the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) apply to Canadian Department of National Defence (CDND) shipments of equipment and explosives transported by contract carriers in motor vehicles to and from the United States. Your letter was forwarded to the Office of Hazardous Material Safety for response. We apologize for the delay in responding and any inconvenience this may have caused.

You enclosed letters of clarification this office wrote on March 16, 1999 (Reference No. 99-0053), February 16, 2005 (Reference No. 05-0024), June 28, 2005 (Reference No. 10-0150), and October 21, 2008 (Reference No. 08-0226), concerning the applicability of the HMR to hazardous materials transported non-commercially by the military. The October 21, 2008 letter specifically states the HMR except from regulation the transportation of hazardous materials for non-commercial purposes in foreign military transport vehicles operated by foreign military personnel.

Based on the information you provided, the answer is yes, shipments of hazardous materials, such as explosives, transported by commercial motor carriers to and from Canada into the U.S. and through U.S. to Canada or another foreign country, are subject to the HMR. The HMR do not apply to the transportation of hazardous materials in foreign military or government vehicles operated by military or government personnel solely for non-commercial purposes. However, if the purpose is commercial, or if the government entity offers hazardous material for transportation to commercial carriers, the HMR would apply. See § 171.1. The HMR do not contain a provision that permits a hazardous material transported by a contract carrier and escorted by a federal government employee to be considered "under the direct control" of the federal employee. However, the HMR do permit

hazardous materials offered for or transported in commerce by motor vehicle or railcar from Canada into the U.S., from the U.S. into Canada, or transiting the U.S. to Canada or a foreign country to conform with the Transport Canada's Transport of Dangerous Goods Regulations (TDR) as authorized in 49 CFR § 171.22 provided the requirements of §§ 171.12, 171.22 and 171.23 are met (see § 171.22(a)). The HMR also contain exceptions that permit certain hazardous materials to be shipped under specific circumstances when "under the direction of" the U.S. Department of Defense or U.S. Department of Energy (see 49 CFR § 173.7), but these regulations do not apply to the Canadian Department of National Defence or to contractors to the U.S. federal government.

To facilitate the transportation of your materials using contractors with a CDND escort, you may wish to request a special permit. Your application should be directed to the Office of Hazardous Materials Special Permits and Approvals and should include specific and detailed information concerning how you propose to package and transport the materials. The procedures for applying for a special permit are found in 49 CFR Part 107, Subpart B. You may also obtain this information at our website at "<http://www.phmsa.dot.gov/hazmat/regs/sp-a>." You also state if the method of transport you propose is not possible under the HMR, the CDND would transport its explosive shipments in CDND-owned or leased vehicles operated by its employees or members of Canada's Armed Forces. This shipping method fully complies with the HMR eliminating the need for a special permit.

I hope this satisfies your request.

Sincerely,



T. Glenn Foster
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards

cc: Mr. Gerald Weir
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Edmonson

§171.1
Applicability
10-0048

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15 February 2010

Mr. Duane Pfund
United States Department of Transportation
Research and Special Programs Administration
Office of Hazardous Materials Standards
400 7th St., S.W., Washington, D.C. 20590

Dear Mr. Pfund:

- References: A. PHMSA Interpretation 05-0024 dated 18 February 2005 (enclosed)
B. PHMSA Interpretation 05-0150 dated 28 June 2005 (enclosed)
C. PHMSA Interpretation 08-0226 dated 21 October 2008 (enclosed)
D. PHMSA Interpretation 99-0053 dated 16 March 1999 (enclosed)

1. This letter addresses the applicability of 49 CFR parts 170-180, the Hazardous Materials Regulations (HMR), for Canada's Department of National Defence owned and operated vehicles. The Canadian Forces controlled vehicles are used to transport Class 1 Hazmat materials. Military transported items are used for military purposes during routine training and field activities. The vehicles will be travelling to DOD installations over public roads/highways in the accomplishment of their missions.
2. References A and B state "The transport of hazardous materials in military or government vehicles operated by military or government personnel solely for non-commercial purposes is not subject to HMR." We would like to confirm that "military or government vehicles" means government-owned and government-leased vehicles as long as the vehicle is operated by a military or government civilian employee.
3. In a query by the German military at Reference C, it is stated that, "The transportation of hazardous materials for non-commercial purposes, in foreign military transport vehicles (i.e. aircraft, vessels, or motor vehicle) operated by foreign military personnel, is not subject to the HMR." Is this interpretation applicable to all countries as long as the purpose of the movement of the hazmat material is for its own purposes?
4. Reference D states that "*In commerce* means transportation for commercial purposes or the use of for-hire interstate carriers by a state agency or local jurisdiction to transport hazardous materials." We would like to confirm that the requirements of Canada's Department of National Defence to transport Class 1 material for repair and overhaul, as per conditions of the purchasing agreements and ITAR regulations, to non-government agencies is not considered to be "in commerce".

5. Thank you for your assistance in clarifying these matters. If there is a requirement for additional information, you may contact Mr Gerry Weir, my staff officer in charge of this issue by telephone at (613) 992-7179 or by email at gerald.weir@forces.gc.ca.

A handwritten signature in black ink, appearing to be 'E.M. Steele', written over a horizontal line.

E.M. Steele
Captain(Navy)
Commander

Enclosures: 4