



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

MAY 27 2010

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

Captain E.M. Steele  
Canadian Material Support Group  
101 Colonel By Drive  
Ottawa, Ontario, Canada K1A0K2

Ref. No. 10-0085

Dear Cpt. Steele:

This responds to your February 15, 2010 letter regarding applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to transportation of hazardous material in the United States by a foreign government (i.e., military). Specifically, you ask for clarification of the applicability of the HMR to the transportation of Class 1 (explosive) materials by Canada's Department of National Defense to U.S. Department of Defense installations for purposes of routine training and field activities.

Your letter includes copies of letters of interpretation concerning the applicability of the HMR to government and military transportation of hazardous material. Your questions are paraphrased and answered as follows:

Q1. Regarding the response, in letters of interpretation 05-0024 (February 18, 2005) and 05-0150 (June 28, 2005), that the transportation of hazardous material in government (military) vehicles operated by government (military) personnel solely for noncommercial purposes is not subject to the HMR, do government vehicles include government-leased vehicles?

A1. Yes. Applicability of the HMR is contingent on the status of the person operating the vehicle as a government employee, not the ownership of the vehicle. Thus, transportation of hazardous material in vehicles operated by a government employee for noncommercial purposes is not subject to the HMR whether or not the vehicle is owned, leased, or rented by the government or an individual.

Q2. Regarding the response to the German military in letter of interpretation 08-0226 (October 21, 2008) that the transportation of hazardous material for noncommercial purposes in foreign military vehicles operated by foreign military personnel is not subject to the HMR, is this accurate for all foreign military transporting hazardous material in the United States so long as the purpose of the transportation is noncommercial?

A2. Yes. The HMR do not apply to transportation of hazardous material in a motor vehicle, aircraft, or vessel operated by Federal, state, or local government solely for noncommercial Federal, state, or local government purposes. See § 171.1(d)(5). It is the opinion of this Office that the HMR also does not apply to a motor vehicle, aircraft, or vessel operated by foreign military solely for noncommercial military purposes.

Q3. Regarding the response in letter of interpretation 99-0053 (March 16, 1999) that “in commerce” includes for-hire carriers transporting hazardous material, is the transportation of Class 1 (explosive) material by Canada’s Department of National Defense to non-government agencies for purposes of repair and overhaul considered “in commerce?”

A3. No. “In commerce” generally means in the furtherance of a commercial enterprise. Transportation of hazardous material in the United States by Canada’s Department of National Defense using their own personnel for government purposes is not subject to the HMR. However, if Canada’s Department of National Defense transports the hazardous material for a commercial purpose or offers the hazardous material for transportation to a commercial carrier, then the HMR apply.

I hope this information is helpful. If you have further questions, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Betts", with a large, stylized flourish on the left side.

Charles E. Betts  
Chief, Standards Development  
Office of Hazardous Materials Standards

Der Kinderen  
§171.1  
Applicability  
10-0085

Canadian Materiel  
Support Group  
101 Colonel By Drive  
Ottawa, Ontario K1A 0K2



Groupe de soutien en  
matériel du Canada  
101 promenade Colonel By  
Ottawa, Ontario K1A 0K2

15 February 2010

Mr. Duane Pfund  
United States Department of Transportation  
Research and Special Programs Administration  
Office of Hazardous Materials Standards  
400 7<sup>th</sup> 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](mailto: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



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

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

FEB 16 2005

Shawntez L. Brooks, 2<sup>nd</sup> Lieutenant  
Group Fleet Management Officer  
3<sup>rd</sup> Combat Communications Group (ACC)  
Department of the Air Force  
Building 1002, Suite 102  
4385 South Air Depot Boulevard  
Tinker Air Force Base, OK 73145

Reference No. 05-0024

Dear Ms. Brooks,

This is in response to your January 21, 2005 letter regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to the transport of fuels and other items solely for military purposes in Department of Defense-owned and -operated vehicles.

The transport of hazardous materials in military or government vehicles operated by military or government personnel solely for noncommercial purposes is not subject to the HMR. However, if the purpose is commercial, or if the government entity offers hazardous material for transportation to commercial carriers, then the HMR would apply.

I hope this information is helpful.

Sincerely,

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



050024

171.1



**DEPARTMENT OF THE AIR FORCE  
3d COMBAT COMMUNICATIONS GROUP (ACC)  
TINKER AIR FORCE BASE OKLAHOMA**

*Edmonson*  
*§ 171.1*  
*Applicability*  
*05-0024*

21 Jan 05

**Second Lieutenant Shawntez L. Brooks  
Group Fleet Management Officer  
4385 S. Air Depot Blvd.  
Bldg 1002, Suite 102  
Tinker AFB OK 73145**

**Mr. Edward T. Mazzullo  
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. Mazzullo:**

This letter addresses the applicability of 49 CFR parts 170-180, the Hazardous Materials Regulations (HMR), for DOD-owned and operated vehicles. The 3d Combat Communications Group vehicles are used to transport fuels (Gasoline and Diesel). Military transported items are used solely for military purposes during routine training and field activities.

The vehicles are not limited to transportation on DOD installations; they also travel over public roads/highways in the accomplishment of their mission. Questions have been raised as to whether or not these regulations apply to military entities. Does the HMR regulation apply under these conditions?

Please provide a written response to this question for our records. Your assistance is greatly appreciated.

Sincerely,

**SHAWNTEZ L. BROOKS, 2nd Lt, USAF  
Group Fleet Management Officer**



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

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

JUN 28 2005

Chief Warrant Officer Jeffery J. Zagurski  
Mobile Diving and Salvage Unit TWO  
OIC, Detachment ECHO  
1004 Hermitage RD, Bldg 2052  
Norfolk Virginia 23521-7006

Reference No. 05-0150

Dear Chief Warrant Officer Zagurski:

This is in response to your letter regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to the transport of compressed gases solely for military purposes in Department of Defense-owned and-operated vehicles.

The transport of hazardous materials in military or government vehicles operated by military or government personnel solely for noncommercial purposes is not subject to the HMR. However, if the purpose is commercial, or if the government entity offers hazardous materials for transportation to commercial carriers, then the HMR would apply.

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

Sincerely,

*John A. Gale*  
John A. Gale  
Chief, Standards Development  
Office of Hazardous Materials Standards



050150

171.1  
172-101

DOD/OSPA/HMS  
UNIT

5:20

9 May 2005

Chief Warrant Officer Jeffrey J Zagurski  
Mobile Diving and Salvage Unit TWO  
Officer in Charge, Detachment ECHO  
1004 Hermitage RD, BLDG 2052  
Norfolk Virginia 23521-7006

*Reletford*  
*§ 171.1*  
*§ 172.101*  
*Applicability*  
*05-0150*

00/00/00 00:00:00

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Ms. Jessica Parson,  
United States Department of Transportation  
Research and Special Programs Administration  
Office of Hazardous Materials Standards  
400 7<sup>th</sup> St., S.W., Washington, D.C. 20590

Dear Ms. Parson:

This letter addresses the applicability of 49 CFR parts 170-180, the Hazardous Materials Regulations (HMR), for DOD-owned and operated vehicles. Mobile Diving and Salvage Unit TWO uses government owned or contracted vehicles to transport compressed gases (Oxygen, Helium, and Air). These military transported items are used solely for military purposes during routine training and operational activities.

The vehicles are not limited to transportation on DOD installations; they also travel over public roads/highways in the accomplishment of their mission. Questions have been raised as to whether or not these regulations apply to military entities. Does the HMR regulation apply under these conditions?

Please provide a written response to this question for our records. If there is a requirement for additional information, I may be reached by telephone at (757) 462-4331 or by email at Jeffrey.Zagurski@navy.mil.

*J. Zagurski*  
Jeffrey J. Zagurski





U.S. Department  
of Transportation

Pipeline and Hazardous Materials  
Safety Administration

1200 New Jersey Ave., SE  
Washington, DC 20590

OCT 21 2008

Rüdiger Peil  
Lieutenant Colonel  
DtLwKdo USA/CAN S4  
P.O. Box 60-1366  
Ft. Bliss, TX 79916-7709

Ref. No.: 08-0226

Dear Lt. Colonel Peil:

This responds to your letter dated September 9, 2008, requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if the HMR apply to transportation of hazardous materials in the United States using German military aircraft, German military motor vehicles or German military vessels operated by German military personnel for non-commercial purposes.

The HMR apply to the transportation of hazardous materials in commerce. The transportation of hazardous materials for non-commercial purposes, in foreign military transport vehicles (i.e., aircraft, vessel, or motor vehicle) operated by foreign military personnel, is not subject to the HMR.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan Gorsky".

Susan Gorsky,  
Acting Chief, Standards Development  
Office of Hazardous Materials Standards

KICHERNUNG

§ 171.1  
Applicability 08-0226

**Betts, Charles <PHMSA>**

**From:** Rüdiger Peil [RuedlgerPeil@bundeswehr.org] on behalf of DtLwKdo USA CAN S4 [DtLwKdoUSCAS4@bundeswehr.org]  
**Sent:** Tuesday, September 09, 2008 5:38 PM  
**To:** Betts, Charles <PHMSA>  
**Subject:** Clarification on the Hazardous Material Regulations (HMR; 49 CFR), Ref.-No 08-0136

Ref.: US DoT from 07/25/2008

Dear Mr Betts,

I am the Senior Logistics Officer and HazMat-Supervisor of the German Air Force Command in USA/CAN, El Paso, TX. Referring to former requests of Mastersergeant Weyel I please you to support our needs one more time.

With the letter dated July 25, 2008, it was confirmed, that the transportation of hazardous materials for non-commercial purpose is not subject to the HMR, if this transport will be executed by military personal in military aircrafts. Unfortunately this statement refers only to transportation in military aircrafts.

Could you clarify, that every mean of transportation (rail, street, ship, air) is not subject to the HMR, if a military transport (non-commercial purpose) will be executed by foreign military personal in any kind of military vehicle (car, ship, train, aircraft)?

Such a confirmation would enable the German Forces to transport special spare parts (e.g. Emergency Oxygen Bottles, Lithium Batteries, wich are not certified as required by 49 CFR) to support excercises and deployments within the US. At the moment this is only possible, if there are german military airlift capabilities available. This requires a long-time planing and causes high costs.

Additional to this clarification I please you to give some advise concerning declaration and documentation:  
Is there any special declaration / documentation for the non-commercial military transport required?  
How can be ensured, that police, sheriff or Highway patrol don't require the fullfillment of HMR in case of controll?  
Is it enough to fullfill the international as well as special german military regulations in executing such a transport?

It would be kind to provide us with an additional statement.

Yours sincerely

Rüdiger Peil  
Lieutenant Colonel

---

DtLwKdo USA/CAN  
S4  
P.O. Box 60-1366  
Ft. Bliss, TX 79916- 7709  
Tel.: (915) 568 8985 / 8916 / 6559 / 6812  
Fax: (915) 568 0271



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

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

MAR 16 1999

Mr. Bunker Hill  
Javelin Maintenance Support Center  
5845 C/D Yadkin Road  
Fayetteville, NC 28303

Ref. No. 99-0053

Dear Mr. Hill:

This is in response to your letter dated March 2, 1999, regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to government shipments by commercial aircraft. Specifically, you ask whether a military shipment of Helium, compressed, 2.2, UN1046 transported by commercial aircraft is subject to the HMR.

The answer is yes. As provided in § 171.1, the HMR apply to any department, agency, or instrumentality that transports or causes to be transported or shipped hazardous materials in commerce. "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. Your shipment of Helium, compressed by commercial aircraft would be considered in commerce.

I hope this satisfies your request.

Sincerely,



John A. Gale

Transportation Regulations Specialist  
Office of Hazardous Materials Standards

171.1



# FAX COVER SHEET

BAT  
§ 171.1  
99-0053

JAVELIN MAINTENANCE SUPPORT CENTER  
5845 C/D YADKIN ROAD  
FAYETTEVILLE, NC 28303

PHONE (910) 860-3554  
FAX (910) 860-2701

*Very Important  
Required for  
US Military Shipment*

DATE: 3-2-99

TO: ED MAZZULLO, US DOT, RSPA

PHONE:

FAX:

FROM: BUNKER HILL

SUBJECT: CLAIRIFICATION AND WRITTEN RESPONSE REQUESTED

NUMBER OF PAGES INCLUDING COVER SHEET: 0

COMMENTS/NOTES/DIRECTION: (Could you please call to confirm receipt?)

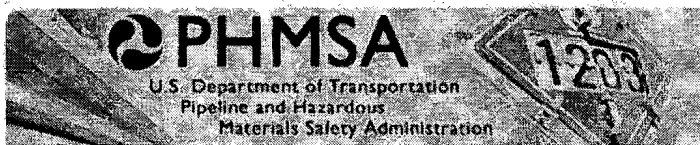
Mr. Mazzullo, I have a HAZARDOUS MATERIAL that I NEED understanding AND CLAIRIFICATION ON.

I HAVE A REGULATED HELIUM COMPRESSED, CLASS 2.2, UN 1046, 110 P6 REQUIRED. MY MATERIAL IS 3.5 cubic mts, 5 Kg AT 500 psi. IT IS MY understanding that I don't MEET ANY EXCLUSIONS under 173.306 AND THIS MATERIAL IS TO BE SHIPPED FULLY REGULATED under 49 CFR AND DOT REQUIREMENTS AND REGULATIONS.

IF AT ALL POSSIBLE I NEED A RESPONSE AS QUICKLY AS POSSIBLE. I understand that you ARE ALSO BUSY.

Air transport always.

Thank you Bunker Hill



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## PHMSA Interpretation #08-0226

Oct 21, 2008

### PHMSA Response Letter

October 21, 2008

Rüdiger Peil  
 Lieutenant Colonel  
 DtLwKdo USA/CAN S4  
 P.O. Box 60-1366  
 Ft. Bliss, TX 79916-7709

Ref. No.: 08-0226

Dear Lt. Colonel Peil:

This responds to your letter dated September 9, 2008, requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if the HMR apply to transportation of hazardous materials in the United States using German military aircraft, German military motor vehicles or German military vessels operated by German military personnel for non-commercial purposes.

The HMR apply to the transportation of hazardous materials in commerce. The transportation of hazardous materials for non-commercial purposes, in foreign military transport vehicles (i.e., aircraft, vessel, or motor vehicle) operated by foreign military personnel, is not subject to the HMR.

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

Sincerely,

Susan Gorsky,  
 Acting Chief, Standards Development  
 Office of Hazardous Materials Standards

171.1

DMS ID# 08-0226

PDF Version

#### Regulation References:

**49 CFR 171.1**

More Interpretations on this topic

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