



U.S. Department
of Transportation

1200 New Jersey Avenue SE
Washington, DC 20590

**Pipeline and Hazardous
Materials Safety
Administration**

SEP -7 2011

Mr. Fred Nachman
Thunderbird Cylinder, Inc.
4209 E. University Drive
Phoenix, AZ 85034

Ref. No. 10-0213

Dear Mr. Nachman:

This responds to your e-mail regarding references to functions not subject to the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180), as specified in 49 CFR §171.1(d), as they relate to whether “governments” are exempt from the HMR. You also stated that “Fire Departments that want to protect their personnel have airpaks requalified when dropped, exposed to heat, with abrasive damage, etc., even if new and recently put into service. [Fire Departments] are also free to adhere to best practices of requalifying these cylinders per the CFRs and referenced Special Permits.” Specifically, you ask if “government” entities are not subject to the HMR, based on the following scenarios. The questions are paraphrased and answered as follows:

Q1. Is transport of a hazardous material in a motor vehicle, aircraft or vessel operated by a Federal, state, or local government employee solely for non-commercial Federal, state, or local government purposes subject the HMR?

A1. The answer is no. The transportation of a hazardous material in a transport vehicle operated by government personnel for non-commercial government purposes is an activity to which the HMR do not apply, as specified in 49 CFR §171.1(d)(5).

Q2. Are airpaks used by fire departments that are filled or refilled by the fire departments (and not by a corporate enterprise) in one of the following two manners subject to the requirements of the HMR: (1) filled/refilled by the fire department at a fire scene or (2) filled/refilled by the fire department in a fill room and then transported by fire trucks on highways to a fire scene for use?

A2. The answer is no. As 49 CFR §171.1(d)(5) states, when a local government employee transports a hazardous material solely for non-commercial local

government purposes, the HMR does not apply. Because fire departments are local government entities, when employees of the fire department transport airpaks in fire trucks solely for the non-commercial government purpose of being used at fire scenes, these activities fall under the exemption in 49 CFR §171.1(d)(5).

However, it is important to note that 49 CFR §171.1 (d)(5) does not except all government activities from the requirements of the HMR, but rather only those that fall within the narrow parameters of the exception. Thus, other government activities involving the transportation of hazardous materials may be subject to the HMR. Additionally, even when an activity is excepted from the HMR under 49 CFR §171.1(d)(5), that activity may, nevertheless, be subject to other regulations (e.g., Occupational Safety and Health Administration (OSHA)).

- Q3. Are air cylinders (4500 psi) on a ladder unit that provide breathing air to firefighters at the top of the ladder subject to the requirements of the HMR? A cascade system on a fire vehicle is used to refill airpak bottles at a scene.
- A3. The answer is no. Again, because fire departments are part of local governments and the air cylinders are transported by fire department employees for the sole non-commercial government purpose of providing air to fire fighters at a fire scene, this falls under the government exemption in 49 CFR §171.1 (d)(5).

However, as stated above, 49 CFR §171.1(d)(5) only excepts government entities from the HMR when the hazardous material is being transported by a government employee solely for a non-commercial government purpose. It does not except government activities that do not fall within these parameters and it does not except governments from the requirements of regulations other than the HMR.

I hope this satisfies your inquiry. If we can be of further assistance, please contact us.

Sincerely,



Ben Supko
Acting Chief, Standards Development
Standards and Rulemaking Division

Drakeford, Carolyn (PHMSA)

From: Betts, Charles (PHMSA)
Sent: Wednesday, September 29, 2010 12:40 PM
To: Drakeford, Carolyn (PHMSA)
Cc: Toughiry, Mark (PHMSA)
Subject: NEW REQUEST FOR INTERPRETATION

From: Fred Nachman [mailto:fredn@cylinder.com]
Sent: Wednesday, September 29, 2010 12:00 PM
To: Toughiry, Mark (PHMSA)
Subject:

Engr avrs
§171.1
Applicability
10-0213

Mark,

Do the following references really exempt governments from the HMR's:

49CFR171 General Information, Regulations and Definitions 49CFR171.1(d) Functions not subject to the requirements of the HMR.

49CFR171.1(d)(5) Transportation of a hazardous material in a motor vehicle, aircraft or vessel operated by a Federal, state, or local government employee solely for noncommercial Federal, state or local government purposes.

What about airpaks used by fire departments that are filled/refilled by the departments either in a fill room or at a scene? They are, then, transported by fire trucks on highways to the fire scene for use, where they may be refilled again on sight. They are not in commerce where they had been filled by a corporate enterprise.

What about air cylinders (4500psi) on a ladder unit that provide breathing air to firefighters at the top of the ladder? A cascade system on a fire vehicle to refill airpak bottles at a scene?

Fire Departments that want to protect their personnel have airparks requalified when dropped, exposed to heat, with abrasive damage, etc. even if new and recently put into service. They are also free to adhere to best practices of requalifying these cylinders per the CFRs and referenced Special Permits. It seems odd that DOT would allow this exemption, especially if OSHA or other agencies have different requirements.

Regards,

Fred Nachman
Thunderbird Cylinder, Inc.
4209 E. University Drive
Phoenix, AZ 85034

(Email) fredn@cylinder.com

(P) 602.437.4600

(M) 602.290.8000

(F) 602.437.5052