



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

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

**AUG 20 2012**

Charles (Chuck) S. Denny, CHMM  
Duke Energy Corporation  
DOT Hazardous Material SME  
EHS Waste and Remediation

Reference No. 12-0062

Dear Mr. Denny:

This is in response to your e-mail requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR, Parts 171-180) applicable to the transportation of a product called StatX that your company is considering using. In your letter, you state this product is transported under "UN0431, Articles, pyrotechnic, 1.4G, II, EX -2006100012," and would be issued to your crews who work with underground vault transformers. The product would be issued to each work vehicle, used to extinguish fires in cases of an emergency related to your crews' jobs, and could be transported for years without use. You ask whether the HMR is applicable to your product when it is transported.

The answer is yes. As specified in § 171.1, the HMR govern the transportation of hazardous materials in intrastate, interstate, and foreign commerce. The term "in commerce" means in furtherance of a commercial enterprise. As you note in your letter, the product would be utilized by work crews at a job site. A hazardous material that is transported to support a commercial enterprise, such as a job site, is fully subject to the HMR.

You also ask, if your product is in commerce, whether a shipping paper must be generated daily or can a permanent shipping paper be used. Section 172.201 (e) provides for the use of a permanent shipping paper when shipping the same material (same shipping name and identification number) for multiple shipments, instead of a separate shipping paper for each shipment made, if the carrier also retains a record of each shipment made, to include shipping name, identification number, quantity transported, and date of the shipment. Therefore, if you choose to use a permanent shipping paper instead of a shipping paper for each daily delivery, you must also retain copies of your delivery or billing receipts that include the shipping name, identification number, quantity transported, and date of shipment.

I hope this information is helpful. Please contact this office should you have additional questions.

Sincerely,

T. Glenn Foster  
Chief, Regulatory Review and Reinvention Branch  
Standards and Rulemaking Division

McIntyre  
§ 172.101  
§ 173.6

**Drakeford, Carolyn (PHMSA)**

MOT  
12-0062

**From:** INFOCNTR (PHMSA)  
**Sent:** Monday, February 27, 2012 1:50 PM  
**To:** Drakeford, Carolyn (PHMSA)  
**Subject:** FW: DOT Commerce Question - Assistance and Letter of Interpretation Requested  
**Attachments:** Bulletin\_FR in Use.pdf

Hi Carolyn,

We received the following request for a letter of interpretation.

Thanks,  
Victoria

Victoria Lehman  
Hazmat Information Center (HMIC)  
<http://phmsa.dot.gov/hazmat/info-center>  
(202) 366-1035

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**From:** Denny, Chuck [<mailto:Chuck.Denny@duke-energy.com>]  
**Sent:** Monday, February 27, 2012 1:31 PM  
**To:** PHMSA HM InfoCenter  
**Cc:** Denny, Chuck  
**Subject:** DOT Commerce Question - Assistance and Letter of Interpretation Requested

PHMSA,

Last week when I called the DOT helpline, I discussed the situation regarding a product that we wish to use. The attached guidance from the manufacturer differs from the guidance that DOT's Information Helpline provided. Therefore, I am hoping that you will provide a formal interpretation on this subject and let me know which guidance is accurate so that both of us are in agreement as to what is required.

**Previously sent Information:**

We want to use a product called StatX, which has the shipping description "UN0431, Articles, pyrotechnic, 1.4G, II, EX-2006100012". This product is to be issued to our crews that work with underground vault transformers. This product is able to put out fires in the underground vaults and our vault crews want to use it to potentially save lives if the need ever arose. Each of the vehicles would be permanently issued this product to transport in case of an emergency. Since we hope that this product will never be used, a vehicle could be transporting this product for a number of years without ever being used. Since this material has the hazard class of 1.4G, it cannot be transported under the Materials of Trade exception, 49 CFR 173.6.

Our questions pertain to commerce and shipping paper requirements. We are the shipper and the carrier. This material is not being transported to a site, until it is to be used in an emergency. Per 49 CFR 172.201 (e), the shipper is to maintain a copy of the shipping papers for two years from the date it was accepted by the carrier and the carrier is to maintain a copy of the shipping paper for one year after accepting the material.

- 1) When crews have this product on their vehicles in case of an emergency, is this considered commerce? Yes, unless it fits under FMCSA required material (49 CFR 393.95) (DOT Hazardous Material Information Center's Response)
- 2) Rather than issuing a bill of lading each day the truck is out in the field or using the log method and listing each day the vehicle goes out in the field, can we generate a permanent shipping paper with the initial date of issue and use this same bill of lading until the material is removed from the vehicle, even though this material could be on the vehicle for several years? No, a BOL for each day/project or log is required (DOT Hazardous Material Information Center's Response).
- 3) If we are able to use the initial dated shipping paper for several years, what do you recommend regarding keeping a copy of the shipping paper for two years by the shipper and one year by the carrier if the same bill of lading is being used if the originally issued shipping

paper exceeds this time period? A BOL is required for each day/project or BOL log is required (DOT Hazardous Material Information Center's Response).

When DOT returned my call, I was informed that carrying this product on our vehicles would be considered in commerce and that full regulations would be required. DOT also pointed out that if FMCSA allowed this product to be transported under their emergency equipment identified under 49 CFR 392.9 and 49 CFR 393.95, this would not be considered commerce. As far as I can tell, this product does not meet the FMCSA's description for a fire extinguisher.

As can be seen in the attached bulletin, the manufacturer does not consider their product being transported in our vehicles as being in commerce. Please give me a call to indicate as to whether their guidance is accurate. I would also like a formal letter of interpretation on this since it would be beneficial to both parties to better understand the issue of whether the movement of this material is in commerce or not. We want to use the product, but we want to make sure that it is done correctly.

Thanks,  
Charles (Chuck) S. Denny, CHMM  
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