



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

DEC 2 5 2012

Mr. Don Shearer
Director of Operations
Windward Aviation, Inc.
P.O. Box 596
Pu'unene, HI 96784

Reference No. 12-0192

Dear Mr. Shearer:

This is in response to your August 30, 2012 e-mail requesting clarification on § 175.9(b)(4), titled "Special Aircraft Operations," and § 175.310(a), titled "Transportation of flammable liquid fuel; aircraft only means of transportation," of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask whether "UN 1863, Fuel aviation, turbine, Class 3 (flammable liquid), Packing Group (PG) II or III," also described as Jet A fuel, is regulated under §§ 175.9(b)(4) of the HMR when transported by helicopter (rotorcraft) in support of firefighting and search and rescue operations.

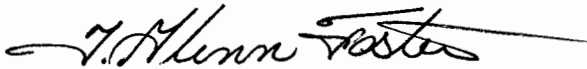
In your letter, you state the fuel is transported over water and uncongested land areas in conformance with 14 CFR § 133.33 (d) and (e) of the Federal Aviation Regulations from Maui to the neighboring islands of Lanai, Kahoolawe, and Molokai in two 55-gallon drums in a sling load suspended externally under the helicopter. You also state these locations have no other way to receive this fuel, this material is considered airline company material (COMAT), which is material that belongs to the airline and is not manifested as freight, and that the Federal Aviation Administration's (FAA's) Honolulu Flight Standards District Office (FSDO) has asked your company to obtain a special permit from the Pipeline and Hazardous Materials Safety Administration (PHMSA) to perform this operation.

The HMR apply to the transportation of hazardous materials in commerce. Routine transport of hazardous materials by rotorcraft must be approved in accordance with § 175.9(a) and (b). Note that § 175.9(b)(4) excepts from regulation under the HMR the transportation, including training on proper handling and stowage, and use of hazardous materials by aircraft during dedicated air ambulance, firefighting, or search and rescue operations when applicable FAA operator requirements have been met, including training operator personnel on the proper handling and stowage of the hazardous materials carried. If these conditions are not met, rotorcraft operations are fully subject to applicable FAA regulations and the HMR prescribed in 14 CFR and 49 CFR, respectively.

You also ask how § 175.310(a) of the HMR applies to Jet A fuel when transported by helicopter (rotorcraft) in support of firefighting and search and rescue operations. Section 175.310(a) permits PG II and III flammable liquid fuels to be transported aboard passenger and cargo aircraft without regard to the required packaging and quantity limits prescribed in Columns 7, 8, and 9 of the Hazardous Materials Table (§ 172.101 Table) by aircraft if other means of transportation are not physically possible (impracticable) or cannot be performed by routine and frequent means of transportation due to extenuating circumstances. Section 175.310(a) of the HMR does not apply to the routine transport of hazardous materials and cannot be invoked due to a desire for expedience of a shipper, carrier, or consignor.

I hope this satisfies your request.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Glenn Foster", with a long horizontal flourish extending to the right.

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

Drakeford, Carolyn (PHMSA)

Edmonson
§ 175.9 (b)(4)
§ 175.310 (a)

From: INFOCNTR (PHMSA)
Sent: Friday, August 31, 2012 2:22 PM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Letter of interpretation

Aircraft
12-0192

Carolyn,

We received the following request for a formal letter of interpretation.

Thanks,
Victoria

From: Windward Aviation [<mailto:windward@mauigateway.com>]
Sent: Thursday, August 30, 2012 9:52 PM
To: INFOCNTR (PHMSA)
Cc: 'Windward Aviation'
Subject: Letter of interpretation

Attention: Standards and Rule making

I would like to request a formal letter of interpretation for FAR 175.9(b)(4) and 175.310(a)

We have carried two 55 gallon drums suspended in a net below our helicopters in a sling load while supporting fire fighting and search and rescue operations on the neighboring islands of Lanai, Kahoolawe and Molokai. There is no Jet A fuel available on these islands. These flights are conducted over water and over uncongested areas in accordance with FAR Part 133.33(d) and (e)

Our interpretation of the above regulations is that we are exempt from the HAZMAT requirements for these operations. We also perform civil/commercial operations for a variety of customers on the neighboring islands. We understand that the HAZMAT regulations apply to these operations.

We are currently being requested by the Honolulu FSDO that we obtain a special permit from the PHMSA, our interpretation is that no special permit is required due to the fact that we will not be operating outside of the current regulations. All we want to do is haul two 55 gallon drums of Jet A to the neighboring islands, this is COMAT We have NO intention of hauling any other HAZMAT or COMAT materials.

If your determination is such that a special permit is required, please provide a sample of that permit to support our above mentioned operations

Thank you for your attention.

Don Shearer
Director of Operations

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