



U.S. Department
of Transportation

1200 New Jersey Ave., S.E.
Washington, D.C. 20590

**Pipeline and Hazardous
Materials Safety Administration**

APR - 2 2010

Office of
Chief Counsel

Mr. Bob Craig
298 Pin Oak Trail
New Caney, Texas 77357

Ref. No. 09-0089

Dear Mr. Craig:

This responds to your January 12, 2009 letter concerning the definition of “person” in the Federal hazardous materials transportation law (Federal hazmat law; 49 USC 5101 *et seq.*) and the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Please accept our apology for our delay in responding. Your questions are paraphrased and answered as follows:

Q1. Does the second use of the term “Government” in the definition of “person” in § 5102(9)(B)(ii) of Federal hazmat law refer only to the U.S. Federal government or to other government entities that offer hazardous materials for transportation in commerce?

A1. As used in § 5102(9)(B)(ii) of Federal hazmat law, the term “Government” means the Federal government.

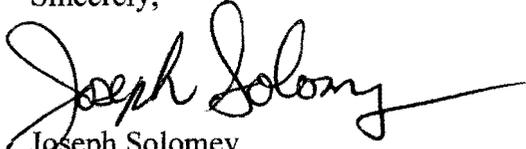
Q2. Does the U.S. Department of Transportation (DOT) have the authority to penalize state, local, tribal, territorial, or foreign governments for violations of the HMR?

A2. The HMR apply to the commercial transportation of hazardous materials. As provided in § 171.1, the HMR apply to any government department, agency, or instrumentality that offers hazardous materials for transportation in commerce or transports hazardous materials in commerce. A government jurisdiction or agency that transports hazardous materials for its own purposes, using its own personnel, is not engaged in transportation in commerce, and thus, the HMR do not apply. However, if the purpose of the transportation is commercial or if the government entity utilizes contract personnel to prepare the hazardous materials for transportation or offers hazardous materials for transportation to commercial carriers, then the HMR apply. DOT has the authority to penalize non-Federal government entities for violations of the HMR.

Q3. Is a government contractor, including a contractor utilized by a Federal department, agency or instrumentality, subject to penalties for violations of the HMR?

A3. Yes.

Sincerely,

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

Joseph Solomey
Assistant Chief Counsel
Hazardous Materials Safety Law Division

January 12, 2009

Office of the Chief Counsel
USDOT PHMSA
Attention: PHC-10
East Building, 1200 New Jersey Avenue, SE
Washington, DC 20590-0001

McIntyre
§ 171.8
§ 171.1
Definitions
09-0089

Greetings,

Please address the following questions dealing with the definition of person found in the Hazardous Materials Transportation Law and the Hazardous Material Transportation Regulations.

In the definition of "person" agencies, departments, and instrumentalities of the government are excluded from penalty provisions of the HMT Law. With this in mind I ask;

1. Numerous PHMSA opinions refer to local, county/parish, state, and Indian tribes as governmental entities. Does the second use of the term "government" in the definition of person (HMT Law Sec. 5102(9)(B)(ii)) refer only the US Federal Government or to other government bodies which offer HM in commerce as well? Please provide citation for reference.
2. If the term "government" refers to only the US Federal Government, does the USDOT have the authority to penalize local, county/parish, state, Indian tribes, territories, and foreign governments if hazardous materials are offered into commerce with HMR violations? Are these governmental bodies subject to penalty as they are subject to the regulations? The question arises as the definition which brings them under regulation could exclude them from penalty.
3. An instrumentality is defined as a means by which an action is accomplished. Therefore, a contractor is an instrumentality. This being the case, is a government contractor subject to penalty if hazardous materials are offered into commerce with HMR violations?

Thank you.

Bob Craig
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