



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

1200 New Jersey Avenue, SE
Washington, DC 20590

APR 29 2010

Mr. Steven Lindblom
Airspeed Press
79 Old Denny Hill Road
Warner, NH 03278

Reference No. 09-0220

Dear Mr. Lindblom:

This is in response to your September 25, 2009 e-mail to the Hazardous Materials Information Center of the Pipeline and Hazardous Materials Safety Administration (PHMSA). You ask PHMSA to clarify the definitions of “commerce” and “transport” or “transportation” under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You state you believe them to mean the same thing. You also state you are working on a book about scuba tanks and are requesting this clarification to assist you with explaining to your readers when these tanks are and are not subject to the HMR in transportation.

Under Federal hazardous materials transportation law (Federal hazmat law), “transports” or “transportation” is defined as “the movement of property and loading, unloading, or storage incidental to the movement.” Federal hazmat law also defines “commerce” as “trade or transportation in the jurisdiction of the United States between a place in a State and a place outside of the State; that affects trade or transportation between a place in a State and a place outside of the State; or on a United States-registered aircraft.” See 49 U.S.C. 5102(1) and (13). PHMSA also interprets “in commerce” to mean trade or transportation in furtherance of a commercial enterprise. This interpretation is based in part on the Federal hazmat law’s definition of “person” as including “a government, Indian tribe, or authority of a government or tribe that—(i) offers hazardous material for transportation in commerce; (ii) transports hazardous material to further a commercial enterprise; or (iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous materials in commerce.” See 49 U.S.C. 5102(9); see also 49 CFR § 171.8.

Therefore, (1) an individual who transports his/her own scuba tank for personal, non-commercial use (e.g., recreation, sport fishing) is not subject to the HMR; (2) a scuba

instructor who transports scuba tanks for use by his students as part of their instruction is subject to the HMR; and (3) a boat repair facility that uses scuba tanks as part of its examination of a boat's hull and repair operations is subject to the HMR when it transports the scuba tanks.

I hope this satisfies your request.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Gorsky". The signature is written in a cursive style with a large, looping "S" and "G".

Susan Gorsky
Regulations Officer
Office of Hazardous Materials Standards

Drakeford, Carolyn (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Friday, September 25, 2009 9:09 AM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: 48 CFR 171 Questions

Edmonson

§ 171.1
 § 171.8
 Applicability
 09-0220

From: Airspeed Press [mailto:airspeedpress@airspeedpress.com]
Sent: Thursday, September 24, 2009 4:20 PM
To: PHMSA HM InfoCenter
Subject: 48 CFR 171 Questions

Office of Hazardous Materials Standards
 U.S. DOT/PHMSA (PHH-10)
 1200 New Jersey Avenue, SE East Building, 2nd Floor
 Washington, DC 20590

Dear Sirs:

We are working on a book on scuba tanks, and find there is a lot of confusion about when a cylinder comes under DOT jurisdiction, that we would like to be able to clear up in the book as authoritively as possible so we would appreciate a Letter of Interpretation if possible.

Our understanding is that a cylinder only falls under DOT jurisdiction when it is both being "transported" and "in commerce". 171.1 says quite clearly *(d) Functions not subject to the requirements of the HMR. The following are examples of activities to which the HMR do not apply:*

(6) Transportation of a hazardous material by an individual for non-commercial purposes in a private motor vehicle, including a leased or rented motor vehicle.

A number of letters of interpretation echo this, as in *"The HMR govern the safe transportation of hazardous materials in intrastate, interstate and foreign commerce. "In commerce" excludes from regulation the transportation of hazardous materials in a private vehicle where the material is for personal use. Thus, a cylinder utilized by a non-commercial customer for personal use is not governed by the HMR."*

However, 49CFR171.8 however defines commerce as *"trade or transportation in the jurisdiction of the United States within a single state; between a place in a state and a place outside of the state; or that affects trade or transportation between a place in a state and place outside of the state"*.

This would seem to negate the previous quotes, as it in essence says commerce and transport are the same thing, so that anything being transported is automatically "in commerce". Can these be reconciled?

Sincerely,

Steven Lindblom
 Airspeed Press
 79 Old Denny Hill Rd
 Warner NH 03278