



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

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

JAN 21 2011

Mr. Mohamed Abdel Aal  
DEP HazMat Specialist  
NYC-DEP  
96-05 Horace Harding Expressway  
HazMat Unit  
Corona, NY 11368

Ref. No. 11-0001

Dear Mr. Abdel Aal:

This responds to your email of December 30, 2010 requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you question the applicability of the HMR to shipments of hazardous waste by New York City employees. You also request clarification of the definitions for certain terms used in the HMR and elsewhere. Your questions are paraphrased and answered as follows:

Q1.) Are shipments of hazardous waste by New York City Department of Environmental Protection (NYC-DEP) subject to the HMR?

A1.) The answer to your question is no. As specified in § 171.1, the HMR govern the safe transportation of hazardous materials in commerce. A state agency or local jurisdiction that transports hazardous materials for governmental purposes using its own personnel is not engaged in transportation in commerce and, therefore, is not subject to the HMR. However, if the state agency or local jurisdiction transports hazardous materials for a commercial purpose, utilizes contract personnel to transport the materials, or offers a hazardous material for transportation to a commercial carrier, then the HMR apply.

Q2.) What are the definitions of *commerce*, *transfer facility*, *transport vehicle* and *hazardous material*?

A2.) The definitions of *commerce*, *hazardous material* and *transport vehicle*, as found in §171.8, are shown below.

- *Commerce* means 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; that affects trade or transportation between a place in a state and place outside of the state; or on a United States-registered aircraft.
- *Hazardous Material* means a substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when

transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see § 172.101), and materials that meet the defining criteria for hazard classes and divisions in Part 173.

- *Transport vehicle* means a cargo-carrying vehicle such as an automobile, van, tractor, truck, semitrailer, tank car or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, rail car, etc.) is a separate transport vehicle.

The HMR do not define the term *transfer facility*. For a definition of transfer facility, please see 40 CFR § 260.10.

I hope this answers your inquiry. If you need additional assistance, please contact this office at 202-366-8553.

Sincerely,

A handwritten signature in black ink that reads "Ben Supko". The signature is written in a cursive style with a long, sweeping underline.

Ben Supko  
Acting Chief, Standards Development Branch  
Standards and Rulemaking Division

**Drakeford, Carolyn (PHMSA)**

Winter  
371.1!  
Applicability

**From:** INFOCNTR (PHMSA)  
**Sent:** Thursday, December 30, 2010 12:03 PM  
**To:** Drakeford, Carolyn (PHMSA)  
**Subject:** FW: Formal Letter of interpretation

11-0001

Hi Carolyn,

We received the following request for a formal letter of interpretation at the Info Center. Mr. Abdel-Aal previously spoke with Adam Lucas in the HMIC.

Thanks,  
Victoria Lehman  
Hazmat Info Center  
202-366-1035

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**From:** Abdel-Aal, Mohamed [<mailto:MohamedA@dep.nyc.gov>]  
**Sent:** Thursday, December 30, 2010 10:49 AM  
**To:** INFOCNTR (PHMSA)  
**Subject:** Formal Letter of interpretation

Greetings,

NYC-DEP Hazmat division is looking forward to transport hazardous materials found abandoned in the streets of NY city and storage the materials in a city's transfer facility(T. F) for proper disposal by certified contractors or transport the materials to a permitted TDSF .The whole process of chemical Identification , transport and storage in (T. F) is done by city employees.

So Please address the following questions dealing with HMR found in the hazardous materials transportation law and the hazardous materials transportation regulations.

- 1- Does NYC-DEP " as local government" is subject to the requirements of HMR found in 49 CFR part 171 through 180 ?
- 2- What are the definitions of commerce, Transfer facility , Transfer Vehicle and Hazardous Materials ?

Thank you

*Mohamed Abdel Aal*  
*DEP HazMat Specialist*

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