



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

1200 New Jersey Ave., S.E.
Washington, DC 20590

FEB 08 2012

Mr. Jeff Stretton
Defense Ammunition Center
1C Tree Road
McAlester, OK 74501

Reference No. 11-0246

Dear Mr. Stretton:

This is in response to your request for clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to when “in commerce” applies to the movement of hazardous materials from an installation site across a U.S. highway (public road). In your letter, you present a scenario where hazardous materials are loaded on a motor carrier conveyance on one side of the highway, then the vehicle is moved across the highway where “final processing,” including inspection and preparation of shipping papers, is performed. You state that the installation facility believes the HMR do not apply while the motor vehicle is crossing the highway and that the shipment is not in commerce because the carrier has not taken possession of the shipment. You, however, believe that the shipment is in “commerce” when the vehicle crosses the highway and is, therefore, subject to the HMR. You also state that there are no procedures in place to stop traffic while the motor vehicle is crossing the highway; however, there are flashing yellow lights at the intersection/crossing, and the speed limit is 45 miles per hour.

If the shipment is ultimately being moved in commerce (see the definition for “commerce” in § 171.8) after the “final processing” functions are completed, the HMR would apply when crossing the highway. Pre-transportation and transportation functions began before the vehicle crosses the highway (see § 171.1), such as the loading of the hazardous materials. Furthermore, if the installation’s personnel are driving the vehicle, the HMR would apply when crossing the public highway. In your scenario, “in commerce” has

nothing to do with whether a carrier has taken possession. Please note that if access to the public highway is restricted by signals, gates, lights, or similar controls during the time the hazardous materials cross the public highway, the movement is not subject to the HMR (see §171.1(d)(4)).

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

Sincerely,



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

McIntyre
3171.1
Applicability
11-0246

Drakeford, Carolyn (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Wednesday, October 05, 2011 4:35 PM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Hazmat Information Center Feedback: Interpretations (Letters) Issued by PHMSA

Hi Carolyn,

This caller requested his e-mail be forwarded as a formal interp request.

Thanks,
Victoria

-----Original Message-----

From: PHMSA-Feedback [mailto:PHMSA-Feedback]
Sent: Monday, October 03, 2011 2:45 PM
To: PHMSA HM InfoCenter; PHMSA Webmaster
Subject: Hazmat Information Center Feedback: Interpretations (Letters) Issued by PHMSA

Request a written interpretation of when a hazardous material is considered to be officially in commerce.

Situation - An installation is bisected by a US Highway. HAZMAT is loaded on a motor carrier conveyance on one side of this US Highway and then moved across the highway to the other side for final processing (final inspection of the conveyance, driver signing and completion of shipping papers, etc.)

Question -

Is the motor vehicle considered to be in commerce while crossing the US Highway to the other side of the installation? (Traffic on the US Highway is not required to stop at any time. There are however flashing yellow lights at the intersection/crossing and the speed limit is 45 mph)

Installation interprets that the HAZMAT is not in commerce while crossing the US Highway as the carrier does not take possession until the vehicle inspection is complete and the driver is provided the shipping documents. This occurs after the HAZMAT loaded conveyance crosses the US Highway.

My interpretation is that the driver/carrier is in possession once the HAZMAT is loaded on his motor vehicle and that the load is in commerce when crossing the US Highway even if for a very brief period of time.

Thank you,

Jeff Stretton
Defense Ammunition Center
McAlester OK

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