



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

1200 New Jersey Avenue, SE
Washington, DC 20590

JUN 01 2017

Ms. Vianna Zimbel
Vianna Zimbel Consulting
97 Foote Road
South Glastonbury, CT 06073

Reference No. 17-0027

Dear Ms. Zimbel:

This letter is in response to your March 16, 2017, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the Materials of Trade (MOTs) exceptions. Specifically, you ask whether your client, Home Medical Equipment Suppliers, is eligible for MOTs exceptions under the HMR when transporting and delivering medical oxygen cylinders to customer residences. You describe a scenario in which your client delivers the medical oxygen in cylinders weighing less than 100 kg (220 lbs) each and transports no more than 200 kg (440 lbs) of hazardous materials on each motor vehicle. Based on this transportation scenario, you ask whether your client meets the definition of a private carrier under MOTs and if shipping paper requirements apply.

It is the opinion of this Office that your client is eligible for the MOTs exceptions under the scenario described in your email. Section 171.8 defines MOTs to include a private motor carrier transporting hazardous materials in direct support of a principal business that is other than transportation by motor vehicle. A private motor carrier is a carrier who transports the business's own products and does not provide such transportation service to other businesses.

In addition to meeting the definition of MOTs in § 171.8, the applicable requirements in § 173.6 must be met. For example—

- Paragraph (b)(5) states a cylinder must conform to the packaging, qualification, maintenance, and use requirements under the HMR and must be leak tight, securely closed, secured against movement, and protected against damage.
- Paragraph (c)(3) states a DOT specification cylinder must be marked and labeled in accordance with the HMR.
- Paragraph (c)(4) states the operator of the motor vehicle must be informed of the presence of the hazardous material.
- Paragraph (a)(2) limits a Division 2.2 material in a cylinder to a gross weight not over 100 kg (220 lbs).
- Paragraph (d) limits the aggregate gross weight of all hazardous materials on one motor vehicle to not more than 200 kg (440 lbs).

- Paragraph (a) states that a hazardous material meeting the MOTs definition in § 171.8 is subject only to the applicable shipping paper requirements in § 173.6; therefore, such shipments are excepted from the shipping paper requirements of the HMR.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "T. Glenn Foster". The signature is written in black ink and is positioned above the typed name.

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

Goodall, Shante CTR (PHMSA)

Stevens
173.6
Materials of Trade
17-0027

From: INFOCNTR (PHMSA)
Sent: Monday, March 20, 2017 9:42 AM
To: Hazmat Interps
Subject: FW: Request for Materials of Trade Interpretation

Hi Shante/Alice,

Please submit this as a letter of interpretation. I spoke with Ms. Zimbel.

Please let me know if you have any questions.

Thanks,
Jordan

From: Vianna Zimbel [mailto:vzimbel@vzimbel.com]
Sent: Thursday, March 16, 2017 4:06 PM
To: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Subject: Request for Materials of Trade Interpretation

Office of the Chief Counsel

Pipeline and Hazardous Materials Safety Administration

Attn: PHC-10, U.S. Department of Transportation

East Building, 1200 New Jersey Avenue, SE.

Washington, DC 20590-0001

I am requesting a formal letter of interpretation regarding the Materials of Trade exemption for shipping papers (hazardous manifest) when quantities of oxygen that are less than a total of 440 lbs and no containers greater than 220 lbs. are transported. Specifically, the regulation in question is HMR; 49 CFR Parts 171-180.

I am writing on behalf of many Home Medical Equipment Suppliers that I work with as a consultant. Do these businesses fall within the scope of private carriage and providing specialized door-to-door service incidental to transportation and thus exempted from shipping papers?

These companies transports medical devices to the patient's residence. The medical equipment on the van or small truck typically includes hospital beds, wheelchairs, oxygen concentrator machines, and small amounts of compressed oxygen gas cylinders (less than a total of 440 lbs and no containers greater than 220 lbs, in accordance with §173.6). These smaller oxygen tanks are provided to the patient as backup systems in case the oxygen concentrator machine fails or there is a power outage.

Please clarify whether this statement is correct or incorrect: the driver is engaged in a Materials of the exception activity for these oxygen cylinders.

The Joint Commission for Accreditation of Healthcare Organizations maintains that the transportation of cylinders in any quantity requires shipping papers and is not within the scope of MOT exemption.

Your interpretation and clarification on the use of MOT exceptions will be appreciated.

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"It is not the strongest of the species that survive, nor the most intelligent, but the one most responsive to change." **Charles Darwin**