



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

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

DEC 17 2009

Ms. Anna D. Masztalerek
Global Manager
of Regulatory Compliance
14 Albyn Terrace
AB101YP Aberdeen
Scotland

Ref. No. 09-0213

Dear Ms. Masztalerek:

This responds to your e-mail regarding the applicability of the registration requirements in 49 CFR Part 107, Subpart G to a U.S. flag-vessel operator operating solely between locations outside the navigable waters of the United States.

A vessel operator is not required to register as a transporter of hazardous materials under 49 CFR 107.606(a)(7) if it does not engage in the transportation of hazardous materials to, through, or within the navigable waters of the United States.

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Hattie L. Mitchell".

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards

Stevens
 § 171.22
 § 171.23
 § 171.25

Drakeford, Carolyn (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Tuesday, September 22, 2009 9:22 AM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: application of 49 CFR to carriage of radioactive materials on U.S. vessels outside U.S. waters

§ 176.5
 Registration / Vessel
 09-0213

Importance: High

From: Anna Masztaerek [mailto:amasztaerek@tricomarine.com]
Sent: Tuesday, September 22, 2009 6:16 AM
To: INFOCNTR (PHMSA)
Subject: application of 49 CFR to carriage of radioactive materials on U.S. vessels outside U.S. waters
Importance: High

Dear Sirs,

Following up a phone call to your center yesterday, I would kindly ask your written confirmation of the advice I received from you.

My question regards application of 49 CFR, specifically the registration requirements therein, to transportation of class 7 dangerous goods (radioactive material) on U.S. flag vessels entirely outside of U.S. navigable waters. The particular situation pertains to U.S. vessels located in waters under foreign jurisdiction and providing there services to the offshore facilities of a foreign country. The vessels are considered for carriage of radioactive materials between those offshore facilities and the receiving shore-side facilities in the same country. The carriage would be performed completely under the jurisdiction and in accordance with the requirements of that country, and in compliance with the provisions of international maritime conventions applicable to such activity (i.e. International Maritime Dangerous Goods (IMDG) Code).

Kindly confirm (as per advice given verbally yesterday) the registration requirements in subpart G of 49 CFR 107 do not apply to the situation described above. Per 107.601 the subpart applies as follows:

§ 107.601 Applicability.

(a) The registration and fee requirements of this subpart apply to any person who offers for transportation, or transports, in foreign, interstate or intrastate commerce (...)

The term "foreign commerce" is not defined in the whole title 49, however taking into account the wording of parts that would otherwise be applicable to carriage by vessel under provisions of 49 CFR and IMDG Code (see below excerpts of 176.5, 171.22, 171.23 and 171.25), the term should be interpreted as transportation from a port in U.S. to a foreign port or vice versa, but excluding transportation solely between ports outside of U.S.

§ 176.5 Application to vessels.

(a) Except as provided in paragraph (b) of this section, this subchapter applies to each domestic or foreign vessel when in the navigable waters of the United States, regardless of its character, tonnage, size, or service, and whether self-propelled or not, whether arriving or departing, underway, moored, anchored, aground, or while in dry dock.

§ 171.22 Authorization and conditions for the use of international standards and regulations.

(a) *Authorized international standards and regulations* . This subpart authorizes, with certain conditions and limitations, the offering for transportation and the transportation in commerce of hazardous materials to, from, or within the United States in accordance with the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), the International Maritime Dangerous Goods Code (IMDG Code), Transport Canada's Transportation of Dangerous Goods Regulations (Transport Canada TDG Regulations), and the International Atomic Energy Agency Regulations for the Safe Transport of Radioactive Material (IAEA Regulations) (IBR, see §171.7).

(...)

(g) *Additional requirements for the use of international standards and regulations* . All shipments offered for transportation or transported in the United States in accordance with this subpart must conform to the following requirements of this subchapter, as applicable: (...)

§ 171.23 Requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, Transport Canada TDG Regulations, or the IAEA Regulations.

All shipments offered for transportation or transported in the United States under the ICAO Technical Instructions, IMDG Code, Transport Canada TDG Regulations, or the IAEA Regulations (IBR, see §171.7) must conform to the requirements of this section, as applicable.

§ 171.25 Additional requirements for the use of the IMDG Code.

(a) A hazardous material may be offered for transportation or transported to, from or within the United States by vessel, and by motor carrier and rail in accordance with the IMDG Code (IBR, see §171.7), as authorized in §171.22, provided all or part of the movement is by vessel. Such shipments must conform to the requirements in §171.22, as applicable, and this section.

You are kindly asked to confirm the above understanding of applicability of 49 CFR to the situation described above is correct and that in such case there is no requirement for registration of the carrier or obtaining any special permits under the HMR.

Looking forward to your prompt response.

Sincerely,

Anna Masztalerek



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