



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

JUL 28 1999

400 Seventh Street, S.W.
Washington, D.C. 20590

Mr. Joseph K. Arsenault
Primedica Corporation
57 Union Street
Worcester, MA 01608

Ref. No. 99-0158

Dear Mr. Arsenault:

This is in response to your letter dated June 9, 1999, concerning the definition of commerce as specified in § 171.1 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) as it pertains to transporting infectious substances.

As specified in § 171.1, the HMR govern the safe transportation of hazardous materials in intrastate, interstate and foreign commerce. The term "in commerce" means the furtherance of a commercial enterprise. 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, not subject to the HMR. In addition, "in commerce" excludes from regulation the transportation of hazardous materials in a private vehicle where the material is for personal use.

Based upon the scenario that you provided, if Beth Israel Hospital is a non-governmental hospital, the physician is transporting infectious substances in commerce, and therefore, is subject to the HMR. This includes, but is not limited to, the training requirements under Part 172, Subpart H.

I hope this satisfies your request.

Sincerely,

John A. Gale
Transportation Regulations Specialist
Office of Hazardous Materials Standards



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PRIMEDICA

57 Union Street | Worcester, MA 01608

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June 9, 1999

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Michael Johnson
DOT
Hazardous Materials Hotline

Joseph K. Arsenault
Primedica
57 Union Street
Worcester, MA 01608
(508) 890-0127
(508) 795-7752 (FAX)

SIR:

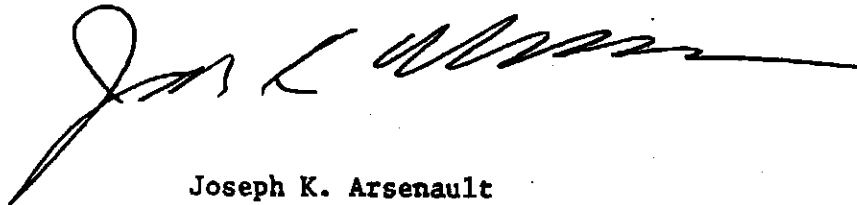
As per our conversation of 6/8/99 I still have questions as to the situation I described. Once again We have a Dr. who is acting as an agent of Beth Israel Hospital in Boston, MA. He is not certified to transport Infectious materials as he has never been trained pursuant to 49 CFR 172 Subpart H. There is disagreement in my company as to whether he needs to be certified, and although you provided me with letters on government agencies being exempt it still does not answer my specific question.

The argument is that he is not in commerce because he is not a commercial carrier. My questions to be precise are as follows:

- (1) What constitutes "IN COMMERCE" ?
- (2) Does a physician if he is deemed to be "IN COMMERCE" need to be certified Pursuant to the above stated regulations if he is carrying infectious materials on public roadways ?
- (3) Specifically, who is exempt from 49 CFR regulations ?

I would appreciate if you could answer these specific questions as they apply to our situation, so we can come to a factually supported position on this issue.

Thank you very much for all your help in this very confusing matter.



Joseph K. Arsenault
Shipping coordinator for PRIMEDICA