



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

AUG 06 2014

Mr. Andrew E. Buchan
Radiation Safety Specialist
The University of New Mexico
Health Sciences Center, MSC 08 4560
1 University of New Mexico
Albuquerque, NM 87131-0001

Reference No. 14-0101

Dear Mr. Buchan:

This is in response to your May 21, 2014 letter requesting clarification of how the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) apply to the transport of Class 7 (radioactive) materials by a university that is a state agency. Specifically, you state your university employees transport packages containing radioactive materials and radioactive waste throughout the university's campus and to its outlying facilities. You ask if your understanding is correct that these packages are not subject to the HMR when transported by university employees because they are not transported in commerce, and that they are subject to the HMR when offered to, or transported by, a commercial third party, such as a waste broker or carrier.

Your understanding is correct. 49 CFR 171.1(d)(5) states that a state agency, such as a state university, that transports hazardous materials for its own use, using its own personnel and vehicles, and is not engaged in transportation in commerce is not subject to the HMR. However, if the university transports hazardous materials using a commercial carrier, such as a contractor or a contract or common carrier, it is subject to the requirements of the HMR. I hope this satisfies your request.

Sincerely,

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

OFFICE OF RESEARCH

*Clinical and Translational Science Center
Clinical Trials Center
Animal Resource Facility
Biomedical Research Education Program
Biohazard Compliance
Conflict of Interest
Export Control
Radiation Safety*

DATE: May 21, 2014

Mr. Charles Betts, Director
US Department of Transportation
Office of Hazardous Materials Standards
PHH-10
400 7th St. S.W.
Washington, DC 20590-0001

Edmonson
§ 171.1
§ 173.6
Applicability
14-0101

Dear Mr. Betts:

I am writing on behalf of the University of New Mexico. We have been transporting radioactive materials packages and radioactive waste throughout our campus and to our outlying facilities based on your letter of interpretation #07-0043 (attached) to Western Kentucky University and numerous other letters like it, issued to other Universities. We understand from your letters that as a State Agency, operating State vehicles, we are not considered "in commerce;" and as such are not subject to the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). However, if our waste or other radioactive materials was to be offered for transport by a third party, such as a waste broker or commercial carrier, the items are subject to HMR regulations.

Recently our regulators have requested that we obtain a letter of interpretation from US DOT of our own, and I am writing to request that you provide this letter. If you have any questions please call or email me; otherwise, we look forward for your prompt return of this clarification to us on your letterhead.

Thank you,



Andrew E. Buchan
Radiation Safety Specialist
abuchan@salud.unm.edu
Phone: 505-925-0743
Fax: 505-272-8738



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

MAR 26 2007

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

Reference No. 07-0043

Mr. Gary M. Spichiger
Radiation Safety Officer
Department of Environmental Health and Safety
Western Kentucky University
1906 College Heights Boulevard, #11046
Bowling Green, KY 42101-1046

Dear Mr. Spichiger:

This is in response to your February 15, 2007 letter requesting clarification on how the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) apply to the transport of radioactive materials by a university that is a state agency. Specifically, you state your university employees transport packaged instruments and articles containing excepted quantities of Class 7 (radioactive) material appropriately labeled "RADIOACTIVE WHITE-I" OR "RADIOACTIVE YELLOW-II" in university-owned vehicles, and ask if the employees are required to receive the hazardous material training for drivers prescribed in § 177.816.

The answer is no. A state agency, such as a state university, that transports hazardous materials for its own use, using its own personnel and vehicles is not engaged in transportation in commerce and, therefore, is not subject to the HMR. However, if the university transports hazardous materials using a commercial carrier, such as a contractor or a contract or common carrier, it is subject to the requirements of the HMR, including those prescribed in § 177.816. See § 171.1(introductory paragraph) and (c).

I hope this satisfies your request.

Sincerely,

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



070043

177.816

Department of Environmental
Health and Safety
270-745-5825
FAX: 270-745-5037



The Spirit Makes the Master

Edmonson
§177.816
Highway / Training
07-0043

Western Kentucky University
1906 College Heights Blvd. #11046
Bowling Green, KY 42101-1046

February 15, 2007

Mr. Edward T. Mazzullo, Director
US Department of Transportation
Office of Hazardous Materials Standards
PHH-10
400 7th St., S.W.
Washington, DC 20590-0001

Dear Mr. Mazzullo:

SUBJECT: APPLICABILITY OF 49 CFR 177.816

There are occasions that packages of radioactive material (i.e., excepted package-instruments or articles, RADIOACTIVE WHITE-I or RADIOACTIVE YELLOW-II) need to be transported in University vehicles by University personnel as a private carrier. The vehicles used do not meet the definition of a commercial motor vehicle as described in the Federal Motor Carrier Safety Regulations. The applicability of hazmat training requirements for the personnel that might drive these vehicles is very clear (e.g. General Awareness, Function Specific, Security Awareness, and Safety Training).

I am seeking clarification on the applicability of the driver training requirements of 49 CFR 177.816 for this type of transportation. It seems that the driver training requirements apply to drivers only of commercial motor vehicles. The available hazmat driver training packages that I have been able to locate also seem to focus entirely on commercial motor vehicles.

If you have any questions for me regarding my inquiry, I can be contacted at 270-745-7095 or gary.spichiger@wku.edu. Thank you for your time.

Sincerely,

Gary M. Spichiger
Radiation Safety Officer