



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

MAR - 4 1998

Mr. Gene Secor
H.B. Fuller Automotive Company
31601 Research Park Drive
Madison Heights, Michigan 48071

Dear Mr. Secor:

This is in response to your letter of November 12, 1997, requesting clarification of the training requirements of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You question the following scenario:

A company is an end-user of hazardous materials and does not perform any activity affecting the transportation safety of the hazardous materials. As the company is solely an end-user, training is not required. However, if the end-user unloads hazardous materials (e.g., removes their own consignment) and reloads hazardous materials onto the vehicle, the training regulations would be applicable.

Your opinions in the scenario are correct. As provided in § 172.702, a hazmat employer shall ensure that each of its hazmat employees is trained in accordance with the requirements in Subpart H. Furthermore, the definition of a hazmat employee in § 171.8 means a person who is employed by a hazmat employer and who in the course of employment directly affects hazardous materials transportation safety. This term includes an individual, including a self-employed individual, employed by a hazmat employer who, during the course of employment loads, unloads, or handles hazardous materials. By loading or unloading hazardous materials in transportation, the company's employees meet the definition for hazmat employee and are required to receive appropriate training.

I hope this answers your inquiry. If you need additional assistance, do not hesitate to contact us.

Sincerely,

Delmer F. Billings
Chief, Regulations Development
Office of Hazardous Materials Standards



H.B. Fuller Automotive Company

31601 Research Park Drive
Madison Heights, Michigan 48071
(810) 585-2200 • (800) 633-7789
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*Contractors
File: 172,704
SC: 528, 442*

November 12, 1997

US Department of Transportation
Research and Special Programs Administration
Regulations Development, DHM - 11
400 Seventh St, S.W.
Washington D.C. 20590 - 0001
ATTN: Delmer F. Billings
Chief, Regulations Development

Gentlemen:

I have been closely reading the "Letters of Interpretation" on the HMR and one of the answers in the training area bothers me (see the attachment). I have no quibble with the answer, per se, but I believe it may lead to the wrong conclusion. Basically, the interpretation in the letter is that no training is required if employees RECEIVE hazardous materials only.

The reality of every day shipping / receiving is that often a consignee must remove another's material, set it aside somewhere on his dock, remove his own consignment, and then return (RELOAD) the other consignee's material back into the vehicle. If their "returned materials" are hazardous materials, then the shipment is being affected at least peripherally and my interpretation has been that these are hazmat employees even though they may never ship "hazmats" themselves.

The interpretative letter answer, per se, would lead one to conclude they are not. The third answer in the letter ameliorates to some extent the first answer but when it says "loading the transport vehicle" are we including my "reloading" scenario?

Is my interpretation too narrow and conservative and, specifically, how does DOT look at the "reloading" situation.

Regards,

Gene Secor
Environmental Health & Safety Department

Encl



the transportation of hazardous materials receive training applicable to those functions. In your letter you stated that these workers fill the containers with the asbestos and radioactive materials, but do not select nor determine what specification packaging is needed. It is our opinion that workers who fill packages with asbestos or radioactive materials for transportation must receive general awareness/familiarization training to enable recognition and identification of hazardous materials consistent with hazard communication standards, function-specific training for any regulated function performed by these workers, (e.g., including proper filling and closure of packagings), and safety training. Safety training includes measures to protect the employees from the hazards associated with hazardous materials they may be exposed to in the work place, including specific measures you may have implemented to protect the employees from exposure, and methods and procedures for avoiding accident, such as the proper procedures for handling packages containing hazardous materials.

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Delmer F. Billings
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§ 172.702

July 5, 1996

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A hazmat employer is a person who uses more of its employees in connection with transporting hazardous materials or causing hazardous materials to be transported or shipped in commerce. Hazardous materials training is required for those employ-

ees who perform job functions regulated under the HMR. If a company is a receiving end-user of hazardous materials, and their employees do not perform a function covered by the HMR, e.g. unloading a cargo tank when the carrier is present, the training requirements under the HMR do not apply.

I hope this answers your inquiry. If you need additional assistance, do not hesitate to contact us.

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Delmer F. Billings
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Office of Hazardous Materials Standards

Editor's Note: See Following Memorandum

Date: May 16, 1995

Subject

Action: Applicability of Training Rules ~

From: Delmer F. Billings
Chief, Regulations Development,
DHM-11

To: John J. O'Connell, Jr.
Director,
Office of Hazardous Materials
Enforcement, DHM-40

This is in response to your memorandum of May 2, 1995, requesting a response to some questions relating to training issues and requirements. Your questions and our responses are as follows:

- Q. If a company is an end-user of HM and only receives it, does it have any responsibility to comply with the training requirements of the HMR?
- A. No. The purpose of the training requirements is to ensure that each employer trains each of its hazmat employees. These requirements specify that persons who perform functions involving the transportation of hazardous materials receive training concerning requirements applicable to those functions. Therefore, if an employee does not perform any hazmat function, as regulated by the

HMR, training is not required.

- Q. If a company transports HM aboard a vehicle that is not part of the vehicle's equipment, but is also not "offered" to any one, does that company have any responsibility to comply with the training requirements of the HMR?
- A. If a carrier transports its own hazardous materials on a vehicle, they perform both shipper and carrier functions. As provided in § 177.809, carrier equipment and supplies that are being transported by a motor carrier are fully subject to the HMR and carrier hazmat employees must be trained as required.
- Q. In a variation of question 1, if a company rejects a shipment and returns it to the offeror, does it have any responsibility to comply with the training requirements of the HMR?
- A. The answer to this question is the same as the first question. If the consignee's employee does not perform any hazmat function, the training requirements do not apply to them. If they perform hazmat functions, e.g. preparing shipping papers, labeling packaging, loading the transport vehicle, etc., they are considered a hazmat employee and must be trained.
- Q. In addition, there appears to be some confusion regarding the term "causes to be transported." We in OHME believe this refers to offerors and not consignees. I would appreciate your confirmation of this belief.
- A. The term "causes to be transported" is not specifically defined in the HMR. If a person performs a hazmat function, appropriate requirements of the HMR apply. By simply receiving hazardous materials, consignees do not generally "cause" hazardous materials to be transported. If the consignee directs that a shipment be made, prepares shipping papers, unloads a cargo tank when the carrier is pre-



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Contract
file: 102,034
SC: 578, 442

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§ 172.702

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Editor's Note: See Following Memorandum

Date: May 16, 1995

Subject

Action: Applicability of Training Rules ~

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