



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

FEB 21 2001

Mr. William Horn
Consultant
17701 Rivendel Road
Lutz, FL 33549

Ref. No. 01-0024

Dear Mr. Horn:

This is in response to your letter dated January 19, 2001, requesting clarification on the definitions of the terms "hazmat employer" and "hazmat employee" in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if a person that prepares drums of hazardous waste for shipment is subject to the training requirements of the HMR.

Generally, the HMR requires a hazmat employee to be trained. For purposes of the HMR, "hazmat employee" means a person who is employed by a hazmat employer and who, in the course of employment, directly affects hazardous materials transportation safety. "Hazmat employer" means a person who uses one or more of its employees in connection with, among other things, causing a hazardous material to be transported or shipped in commerce. See § 171.8. In the scenario you describe, workers at a facility who perform offeror functions, such as preparing a package for shipment, are subject to the training requirements in Subpart H of Part 172 of the HMR.

Under the HMR, there can be more than one offeror for a given shipment. If a hazardous waste generator and a waste hauler split the performance of offeror functions, both the generator and the waste management company are subject to the regulations as offerors. In the scenario you describe, the workers at the generator's facility who prepare a package of hazardous waste for transportation -- such as by selecting a packaging, assuring that the packaging is not overfilled, and securing the closures on the package -- are performing offeror functions that directly affect hazardous materials transportation safety and must be trained, even if the waste hauler assumes responsibility for generating a shipping paper and certifying that the shipment conforms to HMR requirements. In this case, both the generator and the waste hauler are performing offeror functions.

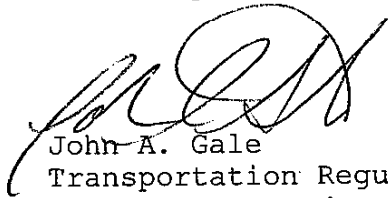


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The generator would not be an offeror if it contracted with a waste hauler to perform all offeror functions associated with the transportation of its hazardous waste. The waste hauler would become the offeror of the hazardous waste and would be responsible for classifying the hazardous waste, selecting appropriate packagings, assuring that packagings are not overfilled, securing the closures on the packagings, marking and labeling the packages as appropriate, generating shipping papers, and training their hazmat employees in accordance with the HMR.

I hope this satisfies your request.

Sincerely,

A handwritten signature in black ink, appearing to read 'John A. Gale', is written over the typed name.

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

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BAH
§171.8
Definitions
01-0024

January 19, 2001

Mr. Edward Mazzuloo
US DOT RFP [MS DHM-10]
400 7th Street, SW
Washington, DC 20590

**RE: Clarification of the terms Hazmat Employer and
Hazmat Employee Under 49 CFR 171.8**

Dear Mr. Mazzuloo:

I am writing this letter as a request for a written response to the above referenced clarification in an effort to determine which employees of what kinds of firms require the training indicated under 49 CFR Subpart H. Please provide a general clarification that will also address the questions below.

Hazmat Employer (49 CFR 171.8)

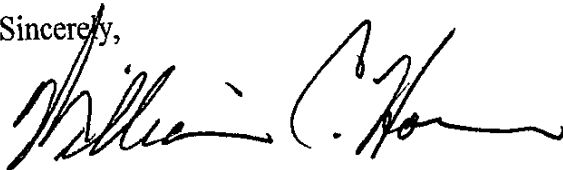
To what activities does the statement "causing hazardous materials to be transported or shipped in commerce" refer? Do you have to be a transporter or be in the business of transporting in some fashion? If a business that generates hazardous waste [i.e. a material that also meets the definition of a DOT hazardous material] puts the waste in drums and hires someone else to ship those drums off-site for disposal, and this is the only hazardous material activity at the business; does this company meet the definition of a hazmat employer?

Hazmat Employee (49 CFR 171.8)

If an employee is not in a decision making roll, but simply consolidates hazardous material [e.g. hazardous waste] in drums and prepares those drums for shipment under the supervision of a properly trained and knowledgeable supervisor, must that employee be trained as described in 49 CFR 172.704?

Should you have questions or need additional information, please do not hesitate to contact me at the above phone or email, or on my cell phone at (813) 335-5064. Your expeditious response would be greatly appreciated.

Sincerely,



William C. Horn