



U.S. Department  
of Transportation  
**Research and  
Special Programs  
Administration**

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

NOV - 8 2002

Mr. Larry Riestenberg  
Safety Director  
Royalty Trucking, Inc.  
588 W. Seymour Ave.  
Cincinnati, Ohio 45216

Ref No.: 02-0250

Dear Mr. Riestenberg

This is in response to your September 11, 2002, letter requesting clarification of the emergency response information requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically you ask whether the Emergency Response Guidebook (ERG) could be stored in a compartment behind the driver seat, within the driver's immediate reach while restrained by his seatbelt.

Your answer is no. In accordance with § 172.602(c)(1), each carrier who transports a hazardous material shall maintain the information specified in paragraph (a) of this section and § 172.606 of this part in the same manner as prescribed for shipping papers. Section 177.817 addresses shipping papers and emergency response information accessibility for highway shipments.

In § 177.817(e) a driver of a motor vehicle containing hazardous material, and each carrier using such a vehicle, shall ensure that the shipping paper required by this section is readily available to, and recognizable by, authorities in the event of accident or inspection.

Specifically, the driver and the carrier shall:

- (1) Clearly distinguish the shipping paper, if it is carried with other shipping papers or other papers of any kind, by either distinctively tabbing it or by having it appear first; and
- (2) Store the shipping paper as follows:

When the driver is at the vehicle's controls, the shipping paper shall be:

- (1) Within his immediate reach while he is restrained by the lap belt; and
- (2) Either **readily visible** to a person entering the driver's compartment or in a holder which is mounted to the inside of the door on the driver's side of the vehicle.



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172.602(c)(1)

When the driver is not at the vehicle's controls, the shipping paper shall be:

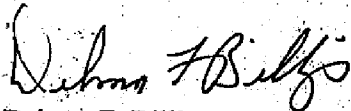
- (1) In a holder which is mounted to the inside of the door on the driver's side of the vehicle; or
- (2) On the driver's seat in the vehicle.

Therefore, unless the ERG in the compartment behind the drivers seat is "readily visible" to a person entering the driver's compartment, the ERG would not be maintained as required in § 177.817(e)(2).

I apologize for any inconvenience or confusion as a result of your contact with a Hazardous Material Information Center Specialist.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,



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



Bellevue  
§ 172.602(c)(1)

Emergency Response  
Information

IN OHIO: (513) 821-9000  
WATTS: (800) 543-7147  
OHIO WATTS: (800) 354-0434

02-0250

September 11, 2001

Mr. Edward Mazzullo  
Office of Hazardous Materials Standards  
U.S. Department of Transportation  
400 7th St. S.E. Suite 8422  
Washington, D.C. 20590

Dear Mr. Mazzullo,

My name is Larry Riestenberg. I am the Safety Director and Hazmat instructor with our company, Royalty Trucking, Inc.

On April 11, 2001 one of our trucks was stopped at a roadside inspection, our truck was carrying Hazardous Materials. In the course of the inspection, the inspector cited our driver for a violation of Section 172.602 of the Hazardous Materials code, stating that the driver did not have his Hazardous Response information in the proper place. He was carrying the latest edition of the Emergency Response Guidebook. This book was carried in a compartment behind the drivers seat and is accessible to the driver when he is in the driver seat and secured by his seatbelt. The truck is a newer Peterbilt with an open sleeper with no bulkhead between the driver compartment and the sleeper area.

We received a notice of apparent violation and intent to assess forfeiture from the Public Utilities Commission of Ohio with a forfeiture of \$382.50 for this apparent violation. We were given a choice of paying the fine or if we disagreed with the assessment, requesting a conference by telephone.

I requested a conference and it took place on September 10, 2002 at 3:00 P.M. My conference was with Alla Magaziner of the Civil Forfeiture Division of P.U.C.O. Her interpretation of this section of the code is that the Emergency Response information should be carried out in the open so that it would be accessible to Emergency Personnel in case of an accident. I disagreed with her, telling her that in my interpretation of this section. It clearly states that Emergency Response information should

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(2)

be treated the same as The Shipping Papers, which is to have them accessible to the driver when he is restrained by his seat belt. His ERG and shipping papers were both accessible. She said that she was right and I was wrong. So I requested an appeal. The appeal is in the form of a hearing before the Public Utilities Commission.


This morning I contacted the Hazardous Materials hotline and asked the representative for an opinion on this matter. He agreed completely with my interpretation of this section of the code. He said that we were totally in compliance with the code and that the agent for the P.U.C.O. was taking the meaning of this section out of context. I asked if I could get his interpretation in writing so that I could use it for my appeal. He told me that I would have to request a written interpretation in the form of a written request to your office.

The appeal hearing could be scheduled any time after 30 days from the conference.

I would like to have this opinion in writing to use at this appeal hearing if possible.

Thank You for Your Cooperation

Sincerely,

  
Larry Riestenberg  
Safety Director

Royalty Trucking, Inc.  
588 W. SEYMOUR AVE.  
CINCINNATI, Ohio 45216