



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

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

APR - 6 2004

Mr. W. L. Buzick
Florida East Coast Railway, L.L.C.
One Malaga Street
P.O. Box 1048
St. Augustine, FL 32085-1048

Ref. No. 04-0026

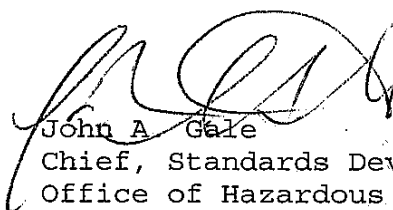
Dear Mr. Buzick:

This is in response to your February 4, 2004, letter regarding incident reporting requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if the exception under § 171.16(d) applies to materials offered for transportation or transported by rail.

The answer is yes. In the final rule published December 3, 2003 (Docket HM-229; 68 FR 67746); effective July 1, 2004 incidents involving hazardous materials offered for transportation or transported by rail, highway, or vessel, which fall under the exception in § 171.16(d)(2) are excepted from § 171.16(a) through (c).

I hope this satisfies your request.

Sincerely,



John A. Gale
Chief, Standards Development
Office of Hazardous Materials Standards



040026

§ 171.16



BAT
§171.16

February 4, 2004

Hazardous Materials
Incident Reports
OH-0026

Via U.S. Mail and Facsimile #(202)366-3012

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
U.S DOT/RSPA (DHM-10)
400 7th Street S.W.
Washington, D.C. 20590-0001

Re: 49 CFR Part 171 [Docket No. RSPA-99-5013 (HM-2290)]

Dear Mr. Mazzullo:

The revised regulation at 49 CFR Part 171.16(d)(2) provides that unless a telephone report is required under 49 CFR Part 171.15, the reporting requirements under 171.16(a), (b) and (c) do not apply if unintentional releases of hazardous materials meet certain classification, capacity and aggregate release amounts, the material is not a hazardous waste or an undeclared hazardous material AND the material is "not offered for transportation or transported by aircraft." It is our understanding that the words "by aircraft" at 49 CFR Part 171.16(d)(2)(iv)(A) relate to both the "offered for transportation" and "transported" terms. Thus, for example, if an unintentional release of hazardous material meeting the other requirements of 171.16(d)(2) was offered for transportation by rail, the reporting exception would still apply.

We would appreciate confirmation of our understanding that the exception set forth at 49 CFR Part 171.16(d)(2) is applicable to hazardous releases of materials offered for rail transportation or transported by rail, if all of the other requirements of 49 CFR Part 171.16(d)(2) are met.

Sincerely,



W. L. Buzick
Corporate Director of Env. Affairs

WLB/r