



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

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

JUN 21 2004

Mr. Mark K. Malone
Senior Attorney
New York Power Authority
123 Main Street
White Plains, New York 10601

Ref. No.: 04-0092

Dear Mr. Malone:

This responds to your request for clarification of an amendment to the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) adopted under Docket HM-223 (final rule published October 30, 2003; 68 FR 61906). Your questions are paraphrased and answered as follows:

Q1. You asked if your understanding is correct that the HMR do not apply to the Authority, a corporate municipal instrumentality of New York State, in which a State employee transports hazardous materials in a State vehicle from an Authority work area to an Authority facility?

A1. Your understanding is correct. Functions not subject to the HMR include transportation of a hazardous material in a motor vehicle, aircraft, or vessel operated by a Federal, State, or local government employee solely for noncommercial Federal, State, or local governmental purposes.

Q2. Is an Authority employee subject to the HMR if he or she performs a pre-transportation function on a hazardous material package at an Authority facility that will eventually be transported in a vehicle operated by a commercial carrier?

A2. The answer is yes. The requirements of the HMR apply to each person who offers a hazardous material for transportation in commerce, causes a hazardous material to be transported in commerce, or transports a hazardous material in commerce and who performs or is responsible for performing a pre-transportation function, including each person performing pre-transportation functions under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal



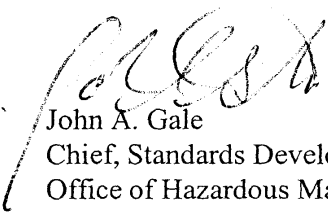
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government. Therefore, an instrumentality, such as the New York State Authority, offering a hazardous material to a commercial carrier for transportation is subject to the applicable rules of the HMR.

I hope this satisfies your inquiry. If we can be of further assistance, please contact us.

Sincerely,



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

123 Main Street
White Plains, New York 10601
914 681.6200



Engram
§ 171.1
Applicability
04-0092

April 6, 2004

Susan Gorsky
Office of Hazardous Materials Standards,
Research and Special Programs Administration
Department of Transportation
400 7th Street S.W.
Washington, D.C. 20590

Subject: Interpretation of Final Rule [Docket No. RSPA-98-4952 (HM-223)]

Dear Ms. Gorsky:

I am an attorney with the New York Power Authority ("Authority") seeking an opinion on a Department of Transportation (DOT) Final Rule, effective October 1, 2004, concerning hazardous materials. The Authority, a corporate municipal instrumentality of New York State, would like DOT's interpretation of the Final Rule (68 FR 51906) clarifying the applicability of the Hazardous Materials Regulations ("HMRs").

The Authority encounters situations in which an Authority employee, in an Authority vehicle, transports hazardous materials from an Authority work area to an Authority facility. Authority employees are considered state employees. The Authority's interpretation is that the HMRs do not apply to these activities (see, 49 U.S.C. 5102 [9]; 49 CFR 171.1 [d] [5]; 68 FR 61912-61913).

The HMRs are applicable to packaging, certain pre-transportation functions, and transportation functions beginning when a non-Authority carrier takes physical possession of the hazardous materials from the Authority facility to transport these materials to a destination for long-term storage or appropriate disposal. Is an Authority employee subject to the HMRs if he or she performs a pre-transportation function at an Authority facility on a hazardous material package that will eventually be shipped on a non-Authority (carrier) vehicle?

The Authority would be grateful for your written opinion on the applicability of the HMRs for these two distinct stages of the transportation of hazardous materials.

Very truly yours,

A handwritten signature in cursive script that reads 'Mark K. Malone'.

Mark K. Malone
Senior Attorney

cc: Ms. Donna O'Berry