



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

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

JUL 13 2004

Mr. Frank Nesbihal
Senior Environmental Specialist
Florida Power and Light Co.
700 Universe Blvd. JES/JB
Juno Beach, Florida 33408

Ref No. 04-0140

Dear Mr. Nesbihal:

This is in response to your May 17, 2004 email requesting clarification of the hazardous materials training requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask whether the training requirements apply to your employees who unload hazardous materials in 250-gallon tote containers or other non-bulk packages from a carrier's vehicle.

The hazardous materials training requirements in Subpart H of Part 172 of the HMR establish training requirements for hazardous materials employees (hazmat employees). A hazmat employee means a person who, in the course of his employment, directly affects hazardous materials transportation safety (see § 171.8). Hazmat employees must receive general awareness/familiarization, function-specific, safety, and security awareness training.

Your email references a final rule we published on October 3, 2003 in the Federal Register (68 FR 61906) under Docket No. HM-223. This final rule clarifies the applicability of the HMR to specific transportation-related functions and operations, including loading, unloading, and storage operations. With regard to unloading operations, the HM-223 final rule reiterated our long-standing determination that unloading operations that occur after a hazardous material has been delivered to its destination and the delivering carrier has departed from the premises are not subject to the HMR requirements. For example, if the carrier delivers a trailer-load of hazardous materials packages to your facility, leaves the trailer at your facility, and then departs, your unloading operations that occur after the carrier's departure are not subject to HMR requirements, including training requirements.

The unloading operation you describe is a transportation function as that term is defined in the HM-223 final rule. Consistent with our long-standing determinations concerning activities regulated under the HMR, transportation functions include "unloading incidental to movement." "Unloading incidental to movement" includes unloading operations that are conducted by facility personnel prior to the carrier's departure from the premises. For this type of unloading operation, your employees who unload the non-bulk packages from the carrier's vehicle are hazmat employees and are subject to the training requirements in Subpart H of Part 172.



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177.834

You are correct that the HMR do not include specific requirements for unloading non-bulk packages from trailers or containers. However, the HMR include general unloading requirements in § 177.834, some of which may apply to the unloading operation you describe. Training for your employees must include the general unloading requirements, in addition to general awareness/familiarization, safety, and security awareness training.

I hope this information is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Gale", written over a faint, dotted-line signature.

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

Gorsky, Susan

From: Frank_J_Nesbihal@fpl.com
Sent: Monday, May 17, 2004 4:38 PM
To: Gorsky, Susan
Subject: Unloading Hazmat

Foster
\$172.700
\$177.834
Applicability
04-0140

Hello Ms. Gorsky,

I have a question regarding unloading hazmat from our vendor's vehicles. We receive 250-gallon tote containers and 55-gallon drums of hydrazine, sulfuric acid, ammonia and others from various chemical vendors that are used in our operations. Our vendor (i.e., carrier) delivers the hazmat to our plants, but our employees actually unload the hazmat from the vendor's vehicles using forklifts. My question is; whether our employees who unload hazmat in 250-gallon tote containers or any non-bulk packaging (e.g., 55-gallon drums) from a vendor's vehicle are considered "Hazmat Employees", and therefore subject to training?

It is my understanding that the hazardous materials regulations ("HMR"), including the final rule dated October 30, 2003 (HM-223), do not have any regulations at all that pertain to the unloading of hazmat in tote containers and 55-gallon drums. Therefore, the HMR do not apply to our employees who unload said hazmat, including training. Please let me know. Thank you.

Respectfully,
Frank Nesbihal, CHMM
Senior Environmental Specialist
561-691-7013

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