



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

FEB 28 2005

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

Mr. Frank Nesbihal, CHMM
Florida Power and Light Company
700 Universe Boulevard
Juno Beach, FL 33408

Ref. No.: 05-0019

Dear Mr. Nesbihal:

This is in response to your letter dated January 18, 2005, regarding the training requirements prescribed in § 172.704(c)(1) of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you request clarification on the training requirements for hazmat employees intermittently performing functions subject to the HMR (i.e., less than ninety consecutive days). In your request, you reference a discussion of "casual" employees in HM-222B (61 FR 27166; May 30, 1996), and request clarification whether persons performing hazmat functions for less than ninety days consecutively are considered "casual" employees and therefore not subject to the training requirements of Part 172 of Subpart H.

The answer is no. Except as provided in § 172.704(c)(1), each hazmat employee who performs any function subject to the HMR may not perform that function unless properly trained (§ 172.702(b)). As discussed in HM-222B, the provision in § 172.704(c)(1) that allows for direct supervision of a hazmat employee for up to ninety days after employment or change in job function is intended to address short-term employment. Since your employees retain employment for greater than ninety days (even though they may not be performing the hazmat functions for greater than ninety consecutive days) and may perform these functions again, they must be properly trained.

I hope this satisfies your request.

Sincerely,

John Gale
Chief, Standards Development
Office of Hazardous Materials Standards



050019

172.704

Gorsky, Susan

From: Frank_J_Nesbihal@fpl.com
Sent: Tuesday, January 18, 2005 10:28 AM
To: susan.gorsky@rspa.dot.gov
Cc: Al_Gould@fpl.com; Roger_Messer@fpl.com
Subject: Hazmat Training Question

BATH
§ 172.704
TRAINING
05-0019

Dear Ms. Gorsky:

We have a question that pertains to in-house employees who only occasionally are assigned to perform hazmat functions. The employees are in a facility support function (i.e. Maintenance Department) and may perform hazmat functions such as lifting a package and placing it on a vehicle, loading a package, preparing or closing a package etc. The employee would perform these hazmat functions for less than 90 consecutive days. At the end of his specific assignment, the employee's job assignments change and he may work for a number of months without performing any hazmat functions. However, sometime later the same employee's job assignment may be changed back again where he could work another short-term assignment that includes performing some hazmat functions. Again, the employee would perform these hazmat functions for less than 90 consecutive days. The employee's job function with respect to performing hazmat functions is changed based on his job assignments. In other words, the employee is assigned a job function to perform hazmat functions only intermittently and occasionally.

It is our understanding that in accordance with the training requirements outlined in 49 CFR 172.704(c), it permits a hazmat employee who changes job functions to perform hazmat functions prior to completion of training provided that 1) the employee performs those functions under the direct supervision of a properly trained and knowledgeable hazmat employee; and 2) training is completed within 90 days after a change in the job function. In addition, the preamble to a 1996 proposed rule (HM-222B - February 20, 1996) RSPA discusses that working under the 90-day provision applies to "casual" employees employed for less than 90 consecutive days.

The question that we have is in the above case, where an employee occasionally and intermittently performs hazmat functions (assignments lasting less than 90 consecutive days -similar to a "casual"), can he perform those functions under direct supervision of a properly trained and knowledgeable hazmat employee in lieu of meeting all of the training requirements specified by 172.704(a) or (b)?

Respectfully,

Frank Nesbihal, CHMM
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