



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

JUN 30 2014

Mr. Andrew Buchan  
Radiation Safety Specialist  
University of New Mexico  
Basic Medical Sciences Building  
1 University of New Mexico  
Albuquerque, NM 87131

Ref. No.: 14-0118

Dear Mr. Buchan:

This is in response to your letter dated May 21, 2014, and subsequent conversation with a member of my staff, requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) relating to the transportation of radioactive materials in commerce. You state you understand that as a state agency, operating state vehicles you are not considered to be "in commerce" and are not subject to the HMR. You ask if your waste or other radioactive materials were to be offered for transport to a third party, such as a waste broker or commercial carrier that the items are subject to HMR requirements.

You are correct to note that state agency, such as a state university, that transports hazardous materials for its own use, using its own personnel and vehicles is not engaged in transportation in commerce per § 171.1(d)(5) and, therefore, is not subject to the HMR. If your waste or other radioactive materials were to be offered for transport to a third party, such as a waste broker or commercial carrier, these shipments would be subject to all applicable HMR requirements.

I trust this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

Shane C. Kelley  
Acting International Standards Coordinator  
Standards and Rulemaking Division



OFFICE OF RESEARCH

Webb  
§171.1 #14-0118  
Apprability  
Clinical and Translational Science Center  
Clinical Trials Center  
Animal Resource Facility  
Biomedical Research Education Program  
Biohazard Compliance  
Conflict of Interest  
Export Control  
Radiation Safety

DATE: May 21, 2014

Mr. Charles Betts, Director  
US Department of Transportation  
Office of Hazardous Materials Standards  
PHH-10  
400 7<sup>th</sup> St. S.W.  
Washington, DC 20590-0001

Dear Mr. Betts:

I am writing on behalf of the University of New Mexico. We have been transporting radioactive materials packages and radioactive waste throughout our campus and to our outlying facilities based on your letter of interpretation #07-0043 (attached) to Western Kentucky University and numerous other letters like it, issued to other Universities. We understand from your letters that as a State Agency, operating State vehicles, we are not considered "in commerce," and as such are not subject to the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). However, if our waste or other radioactive materials was to be offered for transport by a third party, such as a waste broker or commercial carrier, the items are subject to HMR regulations.

Recently our regulators have requested that we obtain a letter of interpretation from US DOT of our own, and I am writing to request that you provide this letter. If you have any questions please call or email me; otherwise, we look forward for your prompt return of this clarification to us on your letterhead.

Thank you,

Andrew E. Buchan  
Radiation Safety Specialist  
[abuchan@salud.unm.edu](mailto:abuchan@salud.unm.edu)  
Phone: 505-925-0743  
Fax: 505-272-8738



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials Safety  
Administration**

MAR 26 2007

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

Mr. Gary M. Spichiger  
Radiation Safety Officer  
Department of Environmental Health and Safety  
Western Kentucky University  
1906 College Heights Boulevard, #11046  
Bowling Green, KY 42101-1046

Reference No. 07-0043

Dear Mr. Spichiger:

This is in response to your February 15, 2007 letter requesting clarification on how the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) apply to the transport of radioactive materials by a university that is a state agency. Specifically, you state your university employees transport packaged instruments and articles containing excepted quantities of Class 7 (radioactive) material appropriately labeled "RADIOACTIVE WHITE-I" OR "RADIOACTIVE YELLOW-II" in university-owned vehicles, and ask if the employees are required to receive the hazardous material training for drivers prescribed in § 177.816.

The answer is no. A state agency, such as a state university, that transports hazardous materials for its own use, using its own personnel and vehicles is not engaged in transportation in commerce and, therefore, is not subject to the HMR. However, if the university transports hazardous materials using a commercial carrier, such as a contractor or a contract or common carrier, it is subject to the requirements of the HMR, including those prescribed in § 177.816. See § 171.1(introductory paragraph) and (c).

I hope this satisfies your request.

Sincerely,

Hattie L. Mitchell, Chief  
Regulatory Review and Reinvention  
Office of Hazardous Materials Standards



070043

177.816

Department of Environmental  
Health and Safety  
270-745-5825  
FAX: 270-745-5037



*The Spirit Makes the Master*

Edmonson  
§177.816  
Highway / Training  
07-0043

Western Kentucky University  
1906 College Heights Blvd. #11046  
Bowling Green, KY 42101-1046

February 15, 2007

Mr. Edward T. Mazzullo, Director  
US Department of Transportation  
Office of Hazardous Materials Standards  
PHH-10  
400 7th St., S.W.  
Washington, DC 20590-0001

Dear Mr. Mazzullo:

SUBJECT: APPLICABILITY OF 49 CFR 177.816

There are occasions that packages of radioactive material (i.e., excepted package-instruments or articles, RADIOACTIVE WHITE-I or RADIOACTIVE YELLOW-II) need to be transported in University vehicles by University personnel as a private carrier. The vehicles used do not meet the definition of a commercial motor vehicle as described in the Federal Motor Carrier Safety Regulations. The applicability of hazmat training requirements for the personnel that might drive these vehicles is very clear (e.g. General Awareness, Function Specific, Security Awareness, and Safety Training).

I am seeking clarification on the applicability of the driver training requirements of 49 CFR 177.816 for this type of transportation. It seems that the driver training requirements apply to drivers only of commercial motor vehicles. The available hazmat driver training packages that I have been able to locate also seem to focus entirely on commercial motor vehicles.

If you have any questions for me regarding my inquiry, I can be contacted at 270-745-7095 or [gary.spichiger@wku.edu](mailto:gary.spichiger@wku.edu). Thank you for your time.

Sincerely,

Gary M. Spichiger  
Radiation Safety Officer