

January 14, 2009

Mr. James H. Portsmouth  
Manager  
Traffic/Regulatory Compliance  
Energy Solutions  
2345 Stevens Drive Suite 240  
Richland, WA 99354

Ref. No.: 08-0021

Dear Mr. Portsmouth:

This responds to your letter regarding clarification of the driver training requirements in §177.816 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180), as they apply to the frequency and recordkeeping of drivers transporting hazardous materials. We apologize for the delay in responding and hope that it has not caused any inconvenience.

You cite two previously written interpretations (6/18/99 and 10/11/02) which you assert conflict with a preamble discussion of the driver training requirements with respect to frequency and recordkeeping provisions contained in the final rule, titled "Training for Safe Transportation of Hazardous Materials; Revisions and Response to Petitions for Reconsideration," published in the Federal Register January 22, 1993 [58 FR 5850]. Specifically, you ask if the training frequency and recordkeeping requirements in §172.704 apply to drivers trained in accordance with 49 CFR Parts 390 through 397.

The answer is yes. A carrier may not transport a hazardous material by motor vehicle unless each hazmat employee, including a driver, is trained as prescribed by Subpart H of Part 172 of the HMR. A carrier may not transport a hazardous material unless each hazmat driver trained as required by Subpart H of Part 172 is also trained in the applicable requirements of the Federal Motor Carrier Safety Regulations (FMCSR; 49 CFR Parts 390 through 397). The training prescribed in Subpart H of Part 172 must initially be completed within 90 days after employment or a change in job function and recurrent training at least once every three years.

Both written interpretations are correct. The preamble discussion in the final rule in Docket HM-126F (58 FR 5851) was intended to clarify that compliance with current requirements for a Commercial Driver's License (CDL) with a tank vehicle or hazmat endorsement may satisfy the training provisions of paragraphs (a) and (b) of §177.816. Additional training, such as operation of emergency control features of cargo tanks and portable tanks, as prescribed in paragraph (b), with respect to frequency and recordkeeping must be conducted in accordance with the requirements of §172.704, for both initial and recurrent training. Preamble discussion, although intended to be informative and helpful, is not used to determine compliance with the regulations.

I hope this information is helpful. If we can be of further assistance, please contact us.

Sincerely,

Charles. E. Betts  
Chief, Standards Development  
Office of Hazardous Materials Standards

172.704, 177.816

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