



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

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

JUL 15 1999

Mr. Sean Kelly  
Manager, Tech Control  
DGI Training Center  
P.O. Box 1283  
Amelia Island, FL 32035

Ref. No. 99-0142

Dear Mr. Kelly:

This is in response to your letter dated May 26, 1999, requesting clarification on the training requirements under § 172.702(b) of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you are requesting clarification on required remedial training in new or revised regulatory requirements regardless of the minimum three year required training frequency. Your questions are answered as follows:

Q1. Do final rules carry enforcement authority? Do published training requirements in a final rule mandate a "shipper" of hazardous materials to comply with those rules?

A1. The answer is yes.

Q2. Was this requirement (remedial training when job function or regulations change) intentionally omitted from changes to 49 CFR 172.702(b)?

A2. The answer is no. RSPA provided clarification in the preamble of the final rule which served as official interpretation by RSPA of the intent of the regulatory language. RSPA clarified the intent of the regulatory language by stating that if RSPA adopts a new regulation, or changes an existing regulation, that relates to a function performed by a hazmat employee, that hazmat employee must be instructed in those new or revised function-specific requirements without regard to the three year training cycle. RSPA further stated that it is not necessary to completely retrain the employee sooner than the required three year cycle. The only instruction required is that necessary to assure knowledge of the new or revised regulatory requirement. It not necessary to test the employee or retain records of the remedial instruction provided in the new or revised requirements until the next scheduled retraining at or within the three year cycle. RSPA revised the training rules to make it clear that RSPA does not intend that millions of detailed records be created and retained and associated testing be conducted each time a hazmat employee is instructed in regard to a change in the regulations within the three year cycle.



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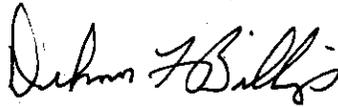
172.704

Q3. If the requirement was intentionally omitted, is there another regulation which mandates training pursuant to changes in the regulations or job functions?

A3. See A2 above.

I hope this answers your inquiry.

Sincerely,

A handwritten signature in cursive script, appearing to read "Delmer F. Billings".

Delmer F. Billings  
Chief, Standards Development  
Office of Hazardous Materials Standards



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3 172-704  
99-0142

DGI Training Center  
Sean Kelly, Manager, Tech Control  
P.O. Box 1283  
Amelia Island, FL 32035

May 26, 1999

Department of Transportation  
Research and Special Programs Administration  
Attention: Mr Edward Mazzullo  
Copy: Delmer Billings  
400 Seventh Street, S.W., DHM-51  
Washington D.C 20590-0001

Reference: Remedial Training Requirements in Relation to Regulatory Updates or Changes  
(NPRM HM 222-B, Final Rule HM 222-B, Final Rule; Responses to Petitions for  
Reconsideration and Advisory Guidance Notice 96-10)

Dear Mr. Mazzullo,

Under the NPRM, Docket HM 222B, February 20, 1996, Section II Proposed Changes, Pages 6479 and 6480, your office recommended and suggested that remedial training be provided to a hazmat employee whenever their functions change or the requirements are revised.

Under the Final Rule, Docket HM-222B, May 30, 1996, Section II Summary of Amendments, Page 27169 your office quoted the aforementioned NPRM ("Except as provided in Sec. 172.704(c), hazmat employees must be trained whenever their hazmat functions change or the requirements are revised, regardless of the minimally required training frequency.")

The Final Rule continued with a reference to 172.702 (Subpart H) saying, "If a new regulation is adopted, or an existing regulation is changed, that relates to a function performed by a hazmat employee, that hazmat employee must be instructed in those new or revised function specific requirements without regard to the timing of the three year training cycle."

Also, in this same Final Rule, (same section) your office went on to say, "In order to clarify the training requirements of the HMR, RSPA is revising Sec. 172.702(b) to state that an employee must be instructed in the requirements of the HMR that apply to each function performed by the employee without a reference to the requirements of subpart H (e.g., the training, testing and recordkeeping requirements of Sec 172.704)."

**Corporate Office**

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Contrary to the NPRM and Section II of the Final Rule, Section III Regulatory Analysis & Notices, List of Subjects, Page 27173, Amendments made no mention of the proposed or revised training requirement.

In addition, your office published the same statement ("If RSPA adopts a new regulation, or changes an existing regulation, that relates to a function performed by a hazmat employee, that hazmat employee must be instructed in those new or revised function-specific requirements without regard to the three year training cycle.") in two other documents;

a) Docket HM-222B; Amendment Number 172-149 / RIN 2137-AC76 / Responses to Petitions for Reconsideration (October 1, 1996) and;

b) Advisory Guidance 96-10; Offering, Accepting and Transporting Hazardous Materials; Final Rule (June 14, 1996).

With regard to the above mentioned documents, would you please provide me a Letter of Interpretation answering the following questions;

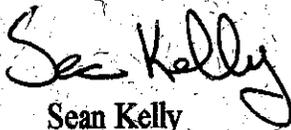
a) Do Final Rules carry enforcement authority? Do published training requirements in a Final Rule mandate a "Shipper" of Hazardous Materials to comply with those rules?

b) Was this requirement (remedial training when job function or regulations change) intentionally omitted from changes to 49 CFR, 172.702 (b)?

(c) If the requirement was intentionally omitted, is there another regulation which mandates training pursuant to changes in the regulations or job functions?

Your time, effort and consideration are greatly appreciated.

Sincerely,



Sean Kelly  
Manager, Tech Control

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