



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

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

NOV 29 2000

Ref. No. 00-0276

Mr. Ken M. Ikeda  
Environmental Safety Specialist  
College of Tropical Agriculture  
and Human Resources  
University of Hawaii at Manoa  
2040 East-West Road  
Honolulu, HI 96822

Dear Mr. Ikeda:

This is in response to your October 2, 2000, letter regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you request clarification on whether employees receiving hazardous materials require DOT training and when the applicability of the HMR ceases.

A person who receives hazardous materials (a consignee) that does not perform duties that are regulated under the HMR (e.g., unload a transport vehicle) is not subject to the HMR (including training). A hazmat employee is a person employed by a hazmat employer and who in the course of employment directly affects hazardous materials transportation safety (see § 171.8). In other words, a person who performs duties that are regulated under the HMR is considered to be a hazmat employee. The term hazmat employee includes an individual employed by a hazmat employer who, during the course of employment loads, unloads, or handles hazardous materials. Section 172.704 requires a hazmat employee to receive general awareness, function specific, and safety training.

As specified in § 171.1, the HMR govern the safe transportation of hazardous materials in intrastate, interstate and foreign commerce. "Transportation" is defined as "the movement of property and loading, unloading, or storage incidental to the movement" (49 U.S.C. 5102(12)). "Commerce" is defined as "trade or transportation in the jurisdiction of the United States between a place in a state or a place outside of the state; or that affects trade or transportation between a place in a state and a place outside of the state" (49 U.S.C. 5102(1)).



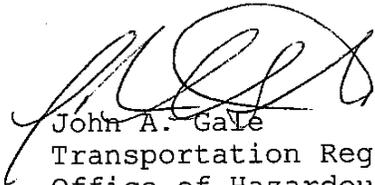
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172.704

On April 29, 1999, the Research and Special Programs Administration published a supplemental advance notice of proposed rulemaking inviting comment on the applicability of the HMR to loading, unloading, and storage of hazardous materials (64 FR 22718; HM-223). We are continuing to evaluate comments from the public regarding the meaning of "transportation in commerce" and whether particular activities are covered by that term, and therefore, subject to regulation under the HMR.

I hope this satisfies your request.

Sincerely,



John A. Gale  
Transportation Regulations Specialist  
Office of Hazardous Materials Standards



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# University of Hawai'i at Mānoa

# Training

Environmental Health and Safety Office  
2040 East-West Road • Honolulu, Hawai'i 96822  
Telephone: (808) 956-8660 • Facsimile: (808) 956-3205

October 2, 2000

Mr. Edward Mazullo, Director  
Office of Hazardous Materials Standards  
U.S. DOT/RSPA (DHM10)  
400 7<sup>th</sup> Street SW  
Washington D.C. 20590-0001

Post-It® Fax Note	7671	Date	10/2/2000	# of pages	1
To	EDWARD MAZULLO		From	KEN IKEDA	
Co./Dept.	DOT/RSPA		Co.	UNIV. OF HAWAII	
Phone #			Phone #	(808) 956-7918	
Fax #	(202) 366-3012		Fax #	(808) 956-3205	

Dear Mr. Mazullo:

I would like to request a clarification on the following items relating to the shipping and receiving of hazardous materials.

1. Is a secretary or member of a clerical office staff, who is employed by a hazmat employer, but whose job function is simply to receive a package delivered by a transporter, considered to be a "hazmat employee" under the definitions in 49 CFR 171.8.
2. If so, what type of training is required by the employer, specifically,
  - How much time in training is required?
  - What specifically needs to be included in the training?
3. At what point is a package no longer considered to be "in commerce" as relates to the Department of Transportation Hazardous Materials Regulations? If a package is delivered to a facility, is it still considered to be "in commerce" until it is signed for, or is it out of commerce once the transporter places it on the counter at the facility?
4. If it is considered to be "in commerce" until it is signed for, is the member of the office staff liable for any violations relating to improperly packed or shipped hazardous materials? Specifically, could a secretary who signs for a package be fined for receiving a package that was improperly packed or shipped?

In a telephone conversation with a member of your Information Center staff, I was advised that the receiver would bear no liability. He also gave me your name in order to receive confirmation of this in writing.

Thank you in advance for your prompt assistance in this matter. If you have any questions please feel free to contact me at (808) 956-7918 or email at [keni@hawaii.edu](mailto:keni@hawaii.edu). Additionally, if possible could you please fax your response to (808) 956-3205 as time is of the essence in this matter.

Sincerely,

Ken M. Ikeda  
Environmental Safety Specialist  
College of Tropical Agriculture and Human Resources