



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

JUN 16 2006

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

Mr. Michael Becker
Jacksonville Port Authority
5945 Williams Mills Rd.
Jacksonville, FL 32256

Ref. No. 06-0088

Dear Mr. Becker:

This is in response to your letter and subsequent telephone conversation with a member of my staff requesting clarification of the term "restricted public access" under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) as it applies to loading, unloading and transportation of hazardous materials on Jacksonville Port Authority (Jaxport) property. You also question whether a hazardous materials endorsement is required for drivers. You state that Jaxport employees are transporting the material using Jaxport vehicles and that the material is used for Jaxport operations, not for commercial purposes. You also state that the roads are open to the public.

The statutory authority granted to the Department of Transportation under the Federal hazardous materials transportation law (49 U.S.C. 5101 et. seq.) is limited to transportation in commerce. Shipments of hazardous materials transported by a government entity in vehicles operated by government personnel for non-commercial purposes are not subject to the HMR, whether on public or private roads.

Under the HMR, the phrase "restricted public access" means the public is denied access to the road during the entire time the hazardous material is being transported. Access may be restricted by signals, lights or gates. Any similar controls may be used provided the intent of the requirement is met and public access is denied.

Requirements for commercial drivers licenses (CDLs) are contained in regulations issued by the Federal Motor Carrier Safety Administration (FMCSA) at 49 CFR Part 383. These regulations require drivers who transport hazardous materials shipments for which a placard is required under the HMR to obtain a CDL with a hazardous materials



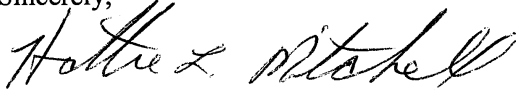
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(hazmat) endorsement. The requirement for a hazmat endorsement applies only to shipments subject to the HMR. Note that even though Jaxport drivers are not required to have a hazmat endorsement under the Federal regulations, state or local authorities may require conformance with the requirement.

I hope this information is helpful. Please contact this office should you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Hattie L. Mitchell". The signature is written in a cursive style with a large initial "H" and "M".

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

To: Edward Mazzullo
From: Michael Becker CT3
Jacksonville Port Authority

McIntyre
§ 171.1
Applicability
06-0088

Dear Sir;

I had just called and talked to Carrie about some problems we are having with the hazmat endorsement changes with background checks. We have had a new Jaxport policy change stating that the endorsement is no longer required. Our jobs require us to drive, load and unload a fuel truck on Jaxport property. My manger is using 49 CFR 171. (d)(4) to base their decision. I kind of agree with it when "public access is restricted". My problem is that we are a large port with heavy automotive, truck, train, and pedestrian traffic. We are also on the waterfront with military and civilian ships. We do have a security gate and all that is required to come in is a driver's license. I would like to know the intent of the "functions not subject to the requirements of the HMR 171. (d)(4)". The other question is about 49 CFR 171. (b)(3). It talks about "loading/unloading of bulk hazmat". We buy fuel that is unloaded into our storage tank then as a driver I am required to load our fuel truck with on average of 4000 gal of red die diesel fuel from that tank and transport it to the water front and unload it two or three times a week. Are there any exceptions to this rule?

With all the new security changes with ports, our security has increased dramatically. And now we have all different enforcement agencies looking all the time with different opinions. I just need to know if I am following the right rules. I would also need it on paper to enforce or change our new policy.

Thank you for time
Michael Becker CT3
Email mikeb@jaxport.com
Cell 904- 333- 4902