



U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

400 - Seventh St., SW
Washington, DC 20590

MAY 15 2000

Refer to: MC-PSV

Mr. Douglass F. Stancell
U.S. Department of Energy
Transportation Packaging and Safety
P.O. Box 2001, SE-32
Oak Ridge, Tennessee 37831

Dear Mr. Stancell:

This is in response to your January 21 letter to Mr. Neill L. Thomas, of my staff requesting clarification of the applicability of the safety regulations to the operation of certain trailers.

You referenced this office's January 13 letter to Mr. Danny Castleberry, in which we indicated that the movement of certain generator trailers is not considered a driveaway-towaway operation. We stated that "[s]ince the generator trailers are not being sold or leased to another entity, the trailers are considered mobile equipment operated by the motor carrier." You requested that we reconsider our response based upon your letter and photographs of the specific generator trailers Mr. Castleberry described.

We have carefully reviewed our response to Mr. Castleberry and stand by that response. Generally, the movement of the generator trailers in question is not considered a driveaway-towaway operation, as defined in 49 CFR 390.5, because the trailers are not being sold or leased to another entity. The generator trailers are mobile equipment being operated by the motor carrier. For generator trailers being operated in interstate commerce, motor carriers must ensure that the vehicles meet all applicable requirements under parts 393 and 396 of the Federal Motor Carrier Safety Regulations (FMCSRs). The exceptions to certain requirements in parts 393 and 396 for vehicles being operated in driveaway-towaway operations are not applicable and therefore would not relieve the motor carrier of compliance with any of the safety regulations. For generator trailers being operated exclusively in intrastate commerce, motor carriers must comply with applicable state laws and regulations.

On March 21, the Federal Motor Carrier Safety Administration (FMCSA) published a final rule concerning the Motor Carrier Safety Assistance Program (MCSAP), a federal grant program that provides financial assistance to the states to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles (CMVs). The MCSAP sets forth conditions for participation by states and local jurisdictions and promotes the adoption and uniform enforcement of safety rules, regulations and standards compatible with the FMCSRs and Federal Hazardous Materials Regulations for both interstate and intrastate motor carriers and drivers. Section 350.341 identifies the specific variances from the FMCSRs allowed by state laws

and regulations governing motor carriers, CMV drivers, and CMVs engaged in intrastate commerce and not subject to federal jurisdiction. Therefore, if a state adopts and enforces safety rules, regulations and standards compatible with the FMCSRs, and the state's interpretations are also compatible with those of the FMCSA, the operation of the generator trailers would not be considered a driveaway-towaway operation under the state's intrastate regulations. We strongly encourage you to carefully review the state's requirements to determine whether the state has included variances in its intrastate regulations. If there are variances, the state should be contacted for clarification of the rules issued and enforced under those variances.

With regard to your reference to the August 15, 1990, clarification of Section 396.17 signed by former Director James E. Scapellato, we believe the agency's position on this issue has been consistent. The 1990 correspondence concerns a company that was "primarily engaged in the shipping" of various types of trailers. The letter confirms that trailers of the type discussed could be covered by the driveaway-towaway exemptions in parts 393 and 396 if the vehicles were the commodity being delivered. The mere fact that the trailers described in our 1990 correspondence could be covered by the exemption depending on how they were actually being used does not, in and of itself, prove that the operation of similar types of trailers by the Oak Ridge National Laboratory's contractors is covered under the definition of a driveaway-towaway operation.

The 1990 letter is a fact-specific clarification concerning the applicability of the FMCSA's periodic inspection rule to trailers being operated under certain conditions. That letter is not a blanket interpretation or policy statement that the operation of certain types of trailers on public roads in interstate commerce is automatically considered a driveaway-towaway operation, and therefore exempt from certain safety regulations. The difference in the purpose and intent of the agency's August 15, 1990, and January 13, 2000, letters are significant and must not be overlooked.

I hope this information is helpful.

Sincerely yours,



C. John MacGowan
Director, Office of Bus and Truck
Standards and Operations