



U.S. Department
of Transportation
**Federal Highway
Administration**

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

DEC 17 1991

Refer to: HCS-10

Mr. Douglas F. Stancell
Transportation Engineer
U.S. Department of Energy
P.O. Box 2001
SE-332
Oak Ridge, Tennessee 37831

Dear Mr. Stancell:

This responds to your November 12 request for a formal interpretation regarding the applicability of the Federal Motor Carrier Safety Regulations (FMCSRs) to Department of Energy (DOE) contractors performing transportation services, under contract, for the DOE.

It is our understanding that the DOE is responsible for several government facilities located in Tennessee, Kentucky and Ohio. These facilities are operated by contractors which are awarded contracts from the competitive procurement process and are compensated for cost plus a fee.

The contractors operate commercial motor vehicles in intrastate and interstate commerce as defined in the FMCSRs. The transportation consists of movements of hazardous and nonhazardous materials. The shipments are not classified nor are they transported under the government material exceptions of 49 CFR § 173.7. The commercial motor vehicle operations conducted by the contractor are incidental to the other activities performed by the contractor (i.e., production, maintenance, shipping, receiving and research).

The DOE furnishes the commercial motor vehicles at these facilities. Vehicle specifications, size and use are determined by the contractor. The vehicles have U.S. Government license plates and are identified with marking on the sides of the vehicles as "U.S. Department of Energy." The commercial motor vehicles are maintained by the contractor at on-site maintenance facilities. The contractor provides the employees who direct the inspection, maintenance and repair of these vehicles.

The commercial motor vehicles are operated by the contractor and its employees. Some of the contractor's employees belong to organized bargaining units (e.g., the International Brotherhood of Teamsters). The bargaining agreements are between the contractor and the union. The DOE is not a party to the bargaining agreement. The contractor recruits, selects, supervises, assigns, directs, controls, dispatches, disciplines, awards, promotes and terminates these employees. The contractor's management and drivers are not employees of the DOE.

For clarity, the questions you asked have been repeated below, immediately followed by our responses:

Question 1: Are the vehicles being operated by the operating contractor commercial motor vehicles as defined in 49 CFR or [are] they government/public vehicles exempt/excepted from these regulations?

Response: The contractor described herein is considered to be a "private motor carrier of property." The transportation of property, in interstate commerce, by such a motor carrier is subject to the FMCSRs. Consequently, the vehicles operated by the contractor, to the extent they meet the definition in § 390.5 are "commercial motor vehicles."

Question 2: Is the operating contractor and their employees subject to the Federal Motor Carrier Safety regulations including all of 49 CFR 383, 385, 387 and 390 - 397?

Response: The operating contractor and its driver employees would be subject to all the FMCSRs when the contractor engages in the interstate transportation.
(Exception: The interstate transportation of nonhazardous materials by a private motor carrier is not subject to the provisions of 49 CFR Part 387.)

Question 3: Are each of the operating contractors required to file a motor carrier identification report and receive a US DOT FHWA identification number per 49 CFR 385?

Response: Section 385.21 of the FMCSRs requires any motor carrier conducting operations in interstate commerce to file a Motor Carrier Identification Report with the FHWA in Washington, D.C. Subsequently, the FHWA will issue the motor carrier a USDOT Identification number. Section 390.21 requires that number, along with the motor carrier's name or trade name, and city and State location to be displayed on both sides of each self-propelled motor vehicle operated by the motor carrier. The DOE vehicles operated by the operating contractor and marked with "United States Department of Energy" must be marked in such manner.

Question 4: Are these operations in interstate commerce subject to the safety rating requirements of 49 CFR 385?

Response: As private motor carriers of property engaged in interstate commerce, these operations are subject to the safety rating requirements of 49 CFR Part 385. Moreover, Section 385.13 (a)(2), as amended [56 FR 40806, August 16, 1991], prohibits a motor carrier which has been issued an "unsatisfactory" safety rating from transporting hazardous materials for

which placarding is required. Section 385.13 (a)(3) states that such a motor carrier shall be ineligible to contract or subcontract with any Federal agency for the transportation of placardable quantities of hazardous materials.

Question 5: Are these operating contractors when operating in interstate commerce and intrastate [commerce] (certain conditions) subject to the financial responsibility requirements of 49 CFR 387?

Response: These operating contractors, as described herein, are, by definition (49 CFR § 390.5), private motor carriers of property. As such, they are subject to all applicable financial responsibility requirements of 49 CFR Part 387, which means only when they are transporting hazardous materials.

Question 6: Are the operating contractors required to mark the commercial motor vehicles when operated in interstate commerce as per 49 CFR 390.21?

Response: Yes. See the response to question number 3.

Question 7: Are vehicles operated by the DOE, i.e., employees of DOE, who are recruited, selected, supervised, assigned, directed, controlled, dispatched, disciplined, awarded, promoted and terminated by DOE subject to 49 CFR 383, 385, 387, and 390-397?

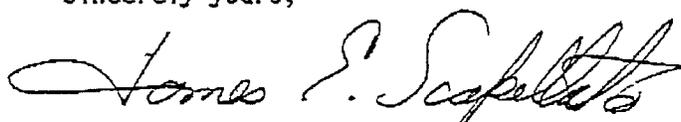
Response: Drivers employed by the DOE who operate commercial motor vehicles in interstate, foreign, or intrastate commerce are subject to the commercial driver's license standards of 49 CFR Part 383. The DOE and its driver employees are, generally, not subject to the provisions of 49 CFR Parts 385 through 399.

The governmental exemption is based on a recognition that such agencies are directly responsible to the public and have strict safety rules of their own. Adherence to uniform safety rules clearly enhances highway safety. In the interest of public safety, the FHWA encourages all governmental agencies engaged in highway transportation activities to adopt the FMCSRs as minimum standards.

Our responses to your questions are based upon a fact-specific scenario. We assume that the DOE has other facilities that are being operated by private contractors and that the contractual arrangement may be similar. If the assumption is accurate, those other contractors would be subject to the FMCSRs.

We trust the above information will be useful to you. Should you have additional questions or need further assistance, please contact me at your convenience.

Sincerely yours,

A handwritten signature in black ink, reading "James E. Scapellato". The signature is written in a cursive style with a large, looping initial "J".

James E. Scapellato, Director
Office of Motor Carrier Standards