



U.S. Department
of Transportation

**Federal Motor Carrier
Safety Administration**

Administrator

MAY 24 2004

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

Refer To: MC-CC

Ms. Ella B. McNeil
Transportation Emergency Management Specialist
Office of Transportation, EM-11
U.S. Department of Energy
19901 Germantown Road
Germantown, MD 20874

Dear Ms. McNeil:

You asked the Federal Motor Carrier Safety Administration whether the vehicles and drivers used by the U.S. Department of Energy's (DOE) Office of Emergency Response are exempt from the Federal Motor Carrier Safety Regulations (FMCSRs), either under 49 C.F.R. 390.3(f)(2), dealing with transportation performed by government, or under § 390.3(f)(5), concerning fire trucks and rescue vehicles.

You reported that DOE maintains several emergency response teams: the Radiological Assistance Program (RAP), Nuclear Radiological Advisory Teams (NRAT), the Accident Response Group (ARG), and Joint Technical Operations Teams (JTOT). These teams are trained to assist Federal, Tribal, State and local authorities during a potential or actual radiological emergency. Among other things, these teams provide monitoring and assessment of the scene and advise on steps that could be taken to minimize hazards. Unless the incident involves materials owned by DOE, a team is dispatched only at the request of Federal, Tribal, State or local officials.

Under a Memorandum of Agreement between the Department of Homeland Security (DHS) and DOE signed on February 28, 2003, DHS will assume operational control of ARG and RAP teams that are summoned to a non-DOE facility in connection with an actual or threatened terrorist attack, major disaster, or other emergency.

The teams are composed of DOE employees and individual contractors, all chosen (or in the case of contractors, hired) for specific kinds of technical expertise. The operational leader of a particular team may be either a DOE employee or a contractor, but all of the teams are controlled and managed by DOE personnel, sometimes under the further supervision of DHS employees.

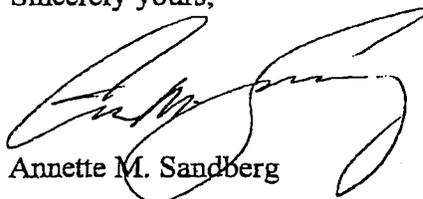
The trucks operated by the teams usually, though not always, have gross vehicle or combination weight ratings of 10,001 pounds or more. The vehicles are owned by DOE and marked "U.S. Government" and "For Official Use Only" in accordance with 41 C.F.R. 102-34.110. They have U.S. Government license plates. Training accounts for about half of the mileage generated by these vehicles, real responses for the other half. DOE's emergency response teams cross State lines with some frequency.

Each driver has the driver's license required by his or her home State for that type of truck. Some vehicles carry cylinders of compressed oxygen for self-contained breathing apparatus, but not in quantities that require placarding. Only one team operates vehicles subject to 49 C.F.R. Part 383; these drivers hold commercial drivers' licenses and participate in the drug and alcohol testing programs required by 49 C.F.R. Part 382.

In light of this information, we conclude that DOE's emergency response teams are covered by the exemption for government transportation in § 390.3(f)(2). Although the functions of DOE teams are in many ways comparable to those of emergency response vehicles, the more salient fact is that they are simply government teams operating government-owned trucks for governmental purposes. Contractors employed by a Federal or State agency are not necessarily exempt under § 390.3(f)(2), but the contract workers who serve on DOE's emergency response teams are so completely embedded in governmental organizations controlled and managed by Federal personnel that they are functionally indistinguishable from government employees. DOE's emergency response teams – RAP, NRAT, ARG, JTOT and any similar teams that may later be established – are therefore exempt from the FMCSRs under 49 C.F.R. 390.3(f)(2).

I hope this information is helpful. If you need additional information or assistance contact Charles Medalen at 202-366-0834.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Annette M. Sandberg", written in a cursive style. The signature is positioned above the printed name.

Annette M. Sandberg