



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

SEP 8 2005

Ms. Gina Lupian
Project Manager
San Diego Sales and Service Division
Hitachi Transport System (America) Ltd.
2222 Enrico Fermi Drive
San Diego, California 92154

Ref. No.: 04-0274

Dear Ms. Lupian:

This responds to your December 1, 2004 letter requesting clarification concerning the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to international shipments. Please accept my apology for our delay in responding and any inconvenience this may have caused.

Your letter presents the following scenario:

Company ABC manufactures Product XYZ and registers with a third-party provider of 24-hour emergency response services. Company ABC prepares Product XYZ for shipment to Mexico and offers the shipment to a motor carrier for transportation. The shipping paper indicates that Company ABC is the shipper and that the consignee is a freight forwarder at the port of export. The motor carrier delivers the shipment to the freight forwarder's warehouse at the border. Product XYZ is unloaded and held at the warehouse until the freight forwarder receives instructions to transport the shipment across the border into Mexico (usually the same or the next day). The freight forwarder prepares the commercial invoice, Customs documentation, and a new shipping paper that indicates the freight forwarder as the shipper.

Your questions are paraphrased and answered as follows:

Q1. Do the HMR distinguish between the terms "offeror" and "shipper"?

A1. No. The terms "offeror" and "shipper" generally are used interchangeably in the HMR.

Q2. In the scenario described above, which entity is the offeror of the shipment – Company ABC or the freight forwarder?



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A2. In the scenario provided, both Company ABC and the freight forwarder are offerors of Product XYZ because both entities performed offeror functions related to the shipment. Under the HMR, any person who performs an offeror function is an offeror of the hazardous materials. Offeror functions are functions performed to prepare a shipment for transportation, including assigning a hazard class to a material, selecting a packaging for the material, filling and closing the packaging, marking and labeling the packaging, and preparing shipping documentation and emergency response information to accompany the shipment. There may be more than one offeror of a shipment of hazardous materials; however, each offeror is responsible only for the specific offeror functions that it performs. Further, each offeror may rely on information provided by another offeror, unless an offeror knows or has reason to believe that the information provided by the other offeror is incorrect.

Q3. At the freight forwarder's warehouse, is the person loading the hazardous material onto a motor carrier for transportation across the border an offeror or is the freight forwarder the offeror?

A3. The freight forwarding company is generally considered to be an offeror for purposes of the HMR. Company employees who directly affect the safety of the hazardous material during transportation, such as employees who load a hazardous material onto a motor vehicle, are "hazmat employees" of the freight forwarder (see § 171.8 of the HMR). Hazmat employees must be trained in accordance with Subpart H of Part 172 of the HMR.

Q4. May the freight forwarder duplicate the information provided by Company ABC, including the emergency response telephone number provided by Company ABC, on the shipping paper prepared for transporting the hazardous material into Mexico?

A4. Yes. As indicated above, when preparing a hazardous materials shipment for further transportation, a freight forwarder or other subsequent offeror of the shipment may rely on information provided by the initial offeror of the shipment unless it knows or should have known that the information provided is incorrect. In the scenario provided, the freight forwarder may use the emergency response number provided by the initial offeror unless the freight forwarder is aware (or should be aware) of facts indicating that the emergency response telephone number is not operative and does not meet the requirements of § 172.604(b) of the HMR.

Q5. If a freight forwarder uses the emergency response number provided by the initial offeror of the shipment on shipping papers prepared by the freight forwarder, must the freight forwarder register with the emergency response provider?

A5. In accordance with § 172.604, a person who offers a hazardous material for transportation must provide an emergency response telephone number for use in the event of an emergency involving the hazardous material. The telephone number must be the number of the offeror or the number of an agency or organization capable of, and accepting responsibility for, providing detailed information about the hazardous material.

As indicated above, a freight forwarder may use the emergency response number provided by the initial offeror on shipping papers it prepares for subsequent transportation of the hazardous material unless the freight forwarder knows or should have known of facts indicating that the emergency response telephone number is not operative or does not meet the requirements of § 172.604(b) of the HMR. The HMR do not require a freight forwarder or other subsequent offeror to register with the emergency response provider if the initial offeror furnishes the emergency response telephone number. However, the emergency response provider may require evidence, such as the initial offeror's name or registration number, indicating that the initial offeror has contracted for emergency response services. An indication of this contractual relationship on the shipping paper will promote linkage between the provider and the person arranging to use the provider's service, ensuring compliance with § 172.604. Accordingly, a person who arranges with an organization to provide emergency response services required by the HMR should ensure that the shipping papers that accompany the shipment include the information necessary to enable the provider to identify the person who has contracted for the services. This may necessitate special arrangements with subsequent offerors or carriers that will transfer the information provided by the original offeror to subsequent shipping papers.

Q6. Must the offeror's name and address appear on the shipping paper? If so, should the shipping paper indicate the name and address of the initial offeror (Company ABC) or a subsequent offeror (freight forwarder)?

A6. Except for vessel and hazardous waste shipments, the HMR do not require a shipping paper to include the name and address of the person offering the shipment for transportation. A shipping paper may include the name and address of the offeror, the consignee, or any other party.

Q7. In the event of a spill, what information does the emergency responder need to provide to the emergency response telephone service to verify that the shipment is covered by the service?

A7. The information required will depend on the service being utilized. Generally the emergency response telephone service provider will require the shipper's name or registration number to verify that the shipment is covered by the service.

Q8. If a freight forwarder consolidates hazardous materials shipments from more than one company, which emergency response telephone numbers must be placed on the shipping paper prepared by the freight forwarder?

A8. The shipping paper must include all the emergency response telephone numbers applicable to the consolidated shipments. Emergency response telephone numbers must be entered on the shipping paper immediately following the description of each hazardous material or must be entered once in a clearly visible location if the number applies to all hazardous materials listed on the paper (see § 172.604(a)(3)). When more than one telephone number is required, the shipper may elect to identify each hazardous material on

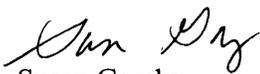
a separate sheet of paper that includes the applicable emergency response telephone number.

Q9. How are penalties assessed? Does a hazardous materials spill always result in a penalty? Does having "control" determine responsibility and liability in the event of a spill?

A9. Each person who offers a hazardous material for transportation or transports a hazardous material in commerce is responsible for compliance with the requirements of the HMR, or an exemption, approval, or registration issued under the HMR, with respect to any regulated function that it performs or is required to perform. However, each person is responsible only for the specific regulated functions that it performs or is required to perform. Penalties for violations of the HMR are assessed on a case-by-case basis and depend on a number of factors, including the nature, circumstances, extent, and gravity of the violation. A spill may or may not result in a penalty depending on the cause of the spill and whether it is related to non-compliance with the HMR. Enforcement program procedures and civil penalty guidelines are set forth in 49 CFR Part 107, Subpart D. Under the HMR, each person in possession of a hazardous material during its transportation must report certain incidents involving the hazardous material to the Pipeline and Hazardous Materials Safety Administration (PHMSA). The specific requirements for incident reporting are contained in §§ 171.15 and 171.16. For incidents that meet the criteria listed in § 171.15(b) of the HMR, the person in possession of the hazardous material must report the incident by telephone to the National Response Center at the number indicated in § 171.15(a). For incidents that meet the criteria listed in § 171.16(a), the person in possession of the hazardous material must submit a written Hazardous Materials Incident Report to PHMSA.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,



Susan Gorsky
Acting Director, Office of Hazardous
Materials Standards


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December 1, 2004

 Edward Mazzullo
 Dept. of Transportation - RSPA
 Office of HazMat Standards
 400 7th Street, S.W.
 Washington D.C. 20590

Dear Mr. Mazzullo:

Hitachi Transport System America Ltd. respectfully requests clarification of the applicability of the US DOT hazardous materials regulations to issues regarding the scenario presented:

Company ABC is the manufacturer of product XYZ. Product XYZ is registered with a 24 Hour Emergency Response company. Company ABC loads Product XYZ to a transportation carrier, provides the trucker with Haz Mat Bill of Lading (800 Emergency Response # is listed on the B/L), Packing List, MSDS (also lists the 800 Emergency Response #), etc. On the Haz Mat bill of lading, Company ABC indicates they are the shipper and that the consignee is a Freight Forwarder at the port of export.

The trucker delivers the cargo to the Freight Forwarder's (FF) warehouse at the border. Company ABC's bill of lading is signed off as "received" by the FF. Product XYZ is un-loaded and held in the warehouse until they receive instructions are received to proceed to cross the cargo to Mexico (usually same day or one day later). The FF/coordinator prepares the commercial invoice, Customs documentation for both export from the U.S. and the import into Mexico, as well as the Haz Mat bill of lading. The FF shows his company as the shipper (or are we the offeror?)

For clarification I have prepared several questions:

1. Is Company ABC considered the shipper since they still have ownership of the cargo until it reaches final destination in Mexico?
2. Does Company ABC remain the shipper even though a new Haz Mat bill of lading is prepared for another trucker to transport the cargo to Mexico?
3. What is the difference between an "offeror" and a shipper?
4. Is the shipper going to be the FF who has sub-contracted the trucker to cross to Mexico?
5. Or is the FF considered the "offeror" and or "shipper"? Can he be both?
6. Can the Haz Mat bill of lading show Company ABC c/o FF and the FF address?
7. At what point is Company ABC considered to have lost control of the cargo?
8. Does having "control" play a significant role in responsibility and liability, in the event of a spill?
9. Can the FF duplicate all the information from Company ABC's bill of lading including the 800 Emergency Response Number, even though the FF is not registered with any Emergency Response Group?
10. Does the FF have to be registered with an Emergency Response Group, why or why not?
11. Does the trucker have to be registered with an Emergency Response Group, why or why not?
12. In the event of a spill, does the agency calling in to the Emergency Response Group identify the shipper or the product name to confirm registration?
13. Why isn't the owners registration number required on the MSDS document or the Bill of Lading, along with the 800 Emergency Response number?
14. How are penalties assessed? Where does it begin: from Company ABC, the FF or the trucker?

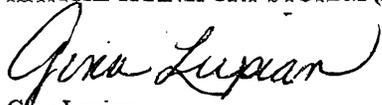
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15. How is it determined who caused the damage, does it work backwards starting with the trucker, to the warehouse loader, FF who prepared the paperwork, or Company ABC?
16. Does a spill always result in a penalty, or is it more of a huge cost factor for the company that caused it?
17. Is the warehouse loader considered an offeror or is it basically the whole company considered an offeror?
18. If the freight forwarder loads Haz Mat from several suppliers, and they all have their own respective 800 Emergency Response number, is it required that all the 800 numbers are shown on the bill of lading?

As these questions are a concern currently, your kind attention and consideration is requested at your earliest convenience. If you have further questions or comments, please do not hesitate to contact me at (619) 941-3609 or through my e-mail address: glupian@hitachitransport.com.

Thank you very much it is appreciated,

Respectfully yours,
HITACHI TRANSPORT SYSTEM (AMERICA) LTD



Gina Lupian
Project Manager