



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

FEB 10 2009

Mr. Calvin Faulkner
D&H Specialist
APL Americas Region
1111 Broadway
Oakland, CA 94607-5500

Ref. No. 08-0301

Dear Mr. Faulkner:

This responds to a series of questions submitted by you in an e-mail regarding vessel operator responsibilities under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Your questions are paraphrased and answered as follows:

- Q1. Under § 171.22(f)(2), should a vessel operator be considered the “initial U.S. carrier” for the purpose of maintaining the shipper’s certification required by § 172.204 or is the term “initial U.S. carrier” used to describe the first carrier to transport a hazardous material shipment once importation occurs and it is within U.S. jurisdiction?
- A1. The term “initial U.S. carrier” is not defined in the HMR. As used in § 171.22(f)(2), it refers to the first carrier to transport a hazardous material shipment within the United States.
- Q2. What is the obligation of a vessel operator if a hazardous material shipment arrives at a U.S. port without a prepared shipper’s certification as required by § 172.204?
- A2. Under § 176.24, a person may not accept a hazardous material for transportation or transport a hazardous material by vessel unless that person has received a shipping paper prepared in accordance with Part 172 of the HMR (unless the material is excepted from the shipping paper requirements under the HMR). This requirement includes a shipper’s certification under § 172.204. Thus, a vessel operator would be in violation of the HMR for initially accepting such a shipment. Additionally, the shipment could not be forwarded or offered for transportation and transported in commerce until such documentation was prepared.
- Q3. If a vessel operator releases a container that contains a hazardous material shipment to a carrier without a shipper’s certification, is it a violation of the HMR?
- A3. In accordance with § 171.22(f)(2) it is a shipper’s responsibility, either directly or through the forwarding agent at the place of entry, to provide the initial U.S. carrier

with the shipper's certification when required by § 172.204. Additionally, after May 4, 2009, this requirement applies to an imported hazardous materials shipment prepared in accordance with Transport Canada's Transportation of Dangerous Goods Regulations. A carrier may not accept for transportation or transport a shipment of hazardous materials that is not accompanied by a prepared shipper's certification when such certification is required.

Q4. Under § 177.817(b), what is the obligation of a vessel operator to provide a prepared shipper's certification to a highway or rail carrier prior to the release of a containerized hazardous material shipment to the highway or rail carrier?

A4. The answer to your question is the same as the answer in A3 above.

Q5. Is it permissible for a vessel operator to transfer a hazardous material shipment to the initial U.S. carrier without a shipper's certification on the shipping paper? The vessel operator would indicate on the original shipping paper, prepared in accordance with the IMDG Code, "shipper's certification on file" and retain a copy of the documentation for one year as required by § 172.201(e).

A5. The answer is no. Unless otherwise excepted in § 172.204(b), each person who transfers an imported hazardous material shipment must provide the initial U.S. carrier a certification that the hazardous material shipment is being offered for transportation in accordance with the HMR and applicable international regulations. The certification statement required by the HMR must be printed (manually or mechanically) on the shipping paper containing the shipping description of the hazardous material.

Q6. Is it permissible for a vessel operator to issue a shipper's certification based solely on the information provided in the original certification prepared by the shipper?

A6. The answer is yes. A carrier may rely on the original shipper's certification unless the carrier knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the certification provided by the offeror (shipper) is incorrect. However, a carrier who knowingly uses incorrect information (see § 171.2(e) and (f)), or a person who knowingly or willfully provides incorrect information, is in violation of the HMR.

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,



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

Stevens
\$171.12
\$172.204
Shippers Certification
08-0301

Drakeford, Carolyn <PHMSA>

From: INFOCNTR <PHMSA>
Sent: Friday, December 05, 2008 11:39 AM
To: Drakeford, Carolyn <PHMSA>
Subject: FW: Request for clarification

From: HAZMATPALC [mailto:HAZMATPALC@APL.COM]
Sent: Thursday, December 04, 2008 4:57 PM
To: PHMSA HM InfoCenter
Subject: Request for clarification

Please clarify and or provide an interpretation to the following questions:

1) Ref 49CFR, Part 171.22(f)(2), what is the impact on vessel operators transporting containerized cargo into the United States from abroad?

- Would we be considered the initial U.S. Carrier, since the hazmat would be physically under our control and on our vessel at time of entering U.S. waters and U.S. ports, or
- Is the initial U.S. Carrier terminology reserved for the rail and/or trucking companies taking possession of the container at the port?
- What is our obligation if a container arrives at a U.S. port without a shippers certification? Are we obligated to retain the container at the port and deny its delivery to the consignee, pending receipt of a shippers certification from the shipper at their overseas location?
- If a container is released to the carrier without a shippers certification, does this place us in violation of 49 CFR?

2) Ref 49CFR, 177.817(b).

- Prior to release of containerized hazmat cargo to the highway/rail carrier, are vessel operators required to provide a shipper certification to the driver and or engineer on the shipping papers?
- Can a statement be added to the shipping papers indicating that a "shippers certification" is on file, (when the original hazardous declaration was prepared per the International Maritime Dangerous Goods (IMDG) code), which we maintain on file for one year?
- If we prepare a shippers certification, based upon the shippers certification (provided by the overseas shipper) and it turns out that the hazmat cargo was not actually packaged, marked, labeled, etc per 49CFR or IMDG, are we subject to violation of 49CFR for signing a false certification? This issue has us very concerned since we would have based our certification solely on the shippers initial certification.
- If a hazardous cargo container is released to the rail or highway carrier without the shippers certification, is the vessel operator in violation of 49CFR?

Thanking you in advance for your understanding and cooperation in determining our legal responsibilities to the Department of Transportation (DOT).

Best regards,

Calvin Faulkner
D&H Specialist

Hazmatpalc-Hazardous Materials Compliance
APL Americas Region
CWO3, United States Army, Retired
510-272-8285
fax, 510-272-8615