



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

June 3, 2021

Mr. Philip Poland
DHL Global Forwarding
2151 Southpark Dr. Ste 1
Hebron, KY 41048

Reference No. 20-0087

Dear Mr. Poland

This letter is in response to your November 13, 2020, email and subsequent telephone conversations requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the responsibilities of a freight forwarder. Beginning January 1, 2022, each manufacturer and subsequent distributor of lithium cells or batteries manufactured on or after January 1, 2008, must make available a lithium battery test summary (see § 173.185(a)(3)). Specifically, you ask whether a freight forwarder is responsible for validating that shipments of lithium cells or batteries comply with the HMR—by requesting a United Nations (UN) 38.3 Test Summary—prior to offering the shipments to an airline.

As provided in § 171.2(b), “... each offeror is responsible only for the specific pre-transportation functions that it performs or is required to perform, and each offeror may rely on information provided by another offeror, unless that offeror knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the other offeror is incorrect.” In the instance of shipments of lithium cells or batteries, a freight forwarder would not be expected to validate whether a shipment meets all the applicable requirements of the HMR unless the freight forwarder is performing a pre-transportation function that would require such knowledge, such as signing a shipper’s certification.

In addition, if the freight forwarder has a reason to believe the information provided by the offeror is incorrect or does not meet the requirements of the HMR, the freight forwarder would be required to validate the information before offering the lithium cells or batteries shipments into transportation.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in blue ink that reads "T. Glenn Foster". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

From: [Phillip Poland \(DHL US\)](#)
To: [Pfund, Duane \(PHMSA\)](#); [Dodd, Alice \(PHMSA\)](#)
Cc: [Foster, Glenn \(PHMSA\)](#); [Patrick, Eamonn \(PHMSA\)](#); [Dennis Raymund \(DHL US\)](#)
Subject: UN 38.3 Test Summary Question
Date: Friday, November 13, 2020 10:12:31 AM

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Mr. Pfund,

I have an question about the UN38.3 test summary. The written documentation from PHMSA and IATA state that the manufacture and distributor must have the test available upon request, and this can include being listed on a website.

DGF's interpretation of 49 CFR § 171 is that as the freight forwarder we still hold responsibility to validate that the shipments are in compliance prior to tendering the shipments to an airline. This includes validating that a declaration is not required and that the batteries meet the requirements outlined by IATA. Additionally during the PHMSA calls in June and September we understood that the US government is requesting forwarders to validate lithium ion battery compliance.

Many times customers do not provide enough information on the SDS and commercial invoice, thus meaning the only way to have all the information to ensure compliance is to request the UN38.3 test summary. We are getting a lot of push back saying that an airline or customs can request that test summary, but that it is not the responsibility of a freight forwarder to have the UN38.3 test summary. Also customers are pushing back really hard saying that no other freight forwarder is asking for the UN38.3 test summary prior to export.

What is the expectation of DOT in regards to our responsibility to validate the batteries are in compliance prior to tendering freight to the airlines?

Thanks and Regards

Phillip Poland *

Head of U.S. Trade and Dangerous Goods Compliance

DHL Global Forwarding
2151 Southpark Dr. Ste 1
Hebron, KY 41048
United States

Phone: +1 859 869 5020
Cell: +1 937 218 4797
phillip.poland@dhl.com
www.dhl.com

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