



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

FEB 08 2013

Mr. William B. Thomas
DHS – Transportation Security Administration
Counsel for Orlando FSD & FAM SAC, Jacksonville FSD
5850 T.G. Lee Boulevard, Suite 610
Orlando, FL 32822-4048

Reference No.: 13-0021

Dear Mr. Thomas:

This is in response to your August 21, 2012 email to the Federal Railroad Administration (FRA) requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to acceptance and inspection requirements when a rail carrier accepts a rail car in interchange from another rail carrier. You also describe a scenario in which a carrier accepts a rail car placarded for hazardous material but is unaware they are transporting a hazardous material due to receipt of an incorrect Standard Transportation Commodity Classification (STCC) and are seeking clarification of the carriers responsibilities.

As identified in §174.24(a), a person may not accept a hazardous material for transportation or transport a hazardous material by rail unless that person receives a shipping paper prepared in accordance Part 172, Subpart C. In addition, §174.26(a) requires the train crew must have a document that reflects the current position in the train of each rail car containing a hazardous material and §174.26(b) requires that a member of the crew of a train transporting a hazardous material must have a copy of a document for the hazardous material being transported showing the information required by Part 172, including the requirements in §172.604(b) applicable to emergency response information.

Section 174.9(a) specifies that at each location where a hazardous material is accepted for transportation or placed in a train, the carrier must inspect each rail car containing the hazardous material, at ground level, for required markings, labels, placards, securement of closures, and leakage. Section 174.9(b) requires that for a rail car containing an amount of hazardous material requiring placarding, the carrier must visually inspect the rail car at ground level for signs of tampering and §174.9(c) prohibits a carrier from transporting a rail car until the deficiencies have been corrected.

An inspection required by §174.9 provides an opportunity for a rail carrier to identify any discrepancies between the shipping paper in the carriers possession and the placards and/or markings displayed on the rail car prior to transporting.

In your scenario, a carrier accepted a rail car placarded for hazardous material but did not receive the accompanying shipment information due to receipt of an incorrect STCC that failed to indicate the presence of a hazardous material and therefore were unaware of the hazardous material being transported. The accepting carrier claims that per accepted railroad industry practice, they can solely rely on the STCC from the shipper when determining if the rail car contains hazardous material and had no duty to further investigate.

Although the use of STCC codes via an Electronic Data Interchange (EDI) is a method utilized in the railroad industry for providing shipment information, the HMR do not contemplate or require the use of STCC codes. The carrier's claim that the receipt of an inaccurate STCC exempts them from any part the provisions set forth in §§174.9, 174.24 or 174.26 is incorrect. As provided above, the HMR do require that (1) the carrier receive a shipping paper prior to acceptance and (2) the carrier must visually inspect each rail car containing a placard. In the situation of a rail car that is displaying a hazardous material placard but the carrier's shipping paper or system information does not indicate the presence of a hazardous material, it imposes a duty of the accepting carrier to inquire further and to reject the shipment if it is improperly described (see Appendix B to 49 CFR Part 209 referencing §174.24(a)). Further, a rail car that is placarded as containing a hazardous material provides notice to the receiving carrier as to the contents contained within and should be observed during inspection as required by §174.9. If a carrier were to forward a placarded rail car in transportation without a proper shipping paper, the carrier could be subject to a civil penalty enforcement action for violation of §174.24(a).

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

Sincerely,



Charles Betts
Director

Standards and Rulemaking Division

6/2

Drakeford, Carolyn (PHMSA)

Wiener
\$174.9
\$174.24
\$174.26
Rail
13-0021

From: Betts, Charles (PHMSA)
Sent: Friday, January 18, 2013 4:11 PM
To: Drakeford, Carolyn (PHMSA)
Cc: Billings, Delmer (PHMSA); Wolsey, Shawn (PHMSA)
Subject: FW: TSA interpretation letter
Attachments: Interp for TSA-RJS edits.doc; RE: 2012/08/21 Referral of CSX EIR 2012JAX0048 to FRA

Importance: High

Carolyn-

Please log and assign the attached new request for interpretation to a specialist for response. Please place a note to the file for the assigned specialist to talk to either Del or myself upon receipt. I need this expedited.

Thanks,

Charles

From: Wolsey, Shawn (PHMSA)
Sent: Friday, January 18, 2013 10:25 AM
To: Betts, Charles (PHMSA)
Subject: FW: TSA interpretation letter

Hi Charles,

Here are the original emails and the attachments.

Thanks,

Shawn

Shawn C. Wolsey
Pipeline and Hazardous Materials Safety Administration
Senior Attorney-Advisor
Hazardous Materials Safety Law Division
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shawn.wolsey@dot.gov

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From: Wolsey, Shawn (PHMSA)
Sent: Thursday, October 11, 2012 4:00 PM
To: Solomey, Joe (PHMSA); Betts, Charles (PHMSA)
Subject: RE: TSA interpretation letter

Hi everyone,

I reviewed the letter. The only point that I do not like is the use of "outwardly placarded" four times throughout the letter. Also, I think it should be Rob's name as Chief of Standards.

Thanks,

Shawn

Shawn C. Wolsey
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From: St. Peter, Joseph (FRA)
Sent: Thursday, October 11, 2012 3:16 PM
To: Solomey, Joe (PHMSA); Betts, Charles (PHMSA); Wolsey, Shawn (PHMSA)
Subject: RE: TSA interpretation letter

Mr. Betts-

Per Joe Solomey's previous, attached is an HMR interpretation letter responding to TSA's inquiry that we have put together at FRA. The initial e-mail inquiry from TSA to FRA is also attached. We had initially responded to TSA's inquiry informally and pointed them to the requirements of the HMR as it relates to hazmat rail car inspections. After discussions with TSA counsel it was decided to issue an HMR interpretation letter to answer their inquiry. This relates to an enforcement action TSA is taking against CSX railroad for an alleged violation of one of TSA's rail security-related regulations, and apparently they'd also like to direct CSX to the requirements of DOT's hazmat regs. Thanks, please let me know if FRA needs to do anything else to have the letter processed and issued by PHMSA, or if you need any more information. Thanks.

Joe
493-6047

From: Solomey, Joe (PHMSA)
Sent: Monday, September 17, 2012 3:37 PM
To: St. Peter, Joseph (FRA); Betts, Charles (PHMSA); Wolsey, Shawn (PHMSA)
Subject: Re: TSA interpretation letter

We should coordinate with Mr. Betts and Shawn can help from my office

From: St. Peter, Joseph (FRA)
Sent: Monday, September 17, 2012 03:34 PM
To: Solomey, Joe (PHMSA)

Cc: Stewart, Roberta (FRA)
Subject: TSA interpretation letter

Joe-

Awhile back, a TSA attorney in Florida was looking for informal guidance from FRA on the hazmat regs. as they relate to a railroad's responsibility to compare the placards on rail cars they haul in a train to the information listed on a car's shipping paperwork. We provided him some informal advice on the requirements of the HMR and how we handle enforcement action in situations where discrepancies exist between placards and shipping paperwork. His inquiry was related to a TSA enforcement case against CSX. As the matter has progressed, he now desires a formal interpretation for his use in the subsequent ALJ proceeding against CSX (in lieu of attempting to try to use FRA attorneys or HM specialists as "expert opinion witnesses", which we told him wasn't really possible). I was going to put an interpretation letter together, but obviously wanted to coordinate with your office as PHMSA typically issues HMR interpretations. If you could let me know who to coordinate with I would be appreciative, or, if this is something PHMSA prefers that FRA just issue to TSA directly, that is fine also, just let me know. Thanks.

Joe

From: joseph.st.peter@dot.gov [<mailto:joseph.st.peter@dot.gov>]
Sent: Wednesday, August 22, 2012 9:20 AM
To: Thomas, William B <TSA OCC>
Cc: john.alexey@dot.gov; roberta.stewart@dot.gov
Subject: RE: 2012/08/21 Referral of CSX EIR 2012JAX0048 to FRA

William-

As follow up to our discussion, at the point a carrier accepts any rail car containing hazmat for transportation, they are required by 174.9 to inspect that car at ground level for proper placarding, labeling, and marking (amongst other things required to be inspected). If the shipping documentation a carrier has for the rail car does not match the placards/markings displayed on that car, they are prohibited by 174.9 (and 174.50) from transporting the rail car until the discrepancy is resolved. This same requirement also applies anytime the railroad car places the car into a train (meaning in your situation, anytime CSX may have placed the car into a subsequent train the inspection requirement would have been triggered again). Unfortunately, FRA routinely has to take enforcement action based on this very fact pattern, where the shipping paperwork in the possession of a rail carrier and/or its train crew do not match up with the placards being displayed on the rail car containing hazmat. As mentioned below, the ground level inspection requirement at 174.9 is the railroad's opportunity to identify and correct these mistakes before transporting a hazmat rail car. Thanks, please let me know if you need anything else.

Joe

From: St. Peter, Joseph (FRA)
Sent: Wednesday, August 22, 2012 8:54 AM
To: 'Thomas, William B <TSA OCC>'
Cc: Alexy, Karl (FRA); Stewart, Roberta (FRA)
Subject: RE: 2012/08/21 Referral of CSX EIR 2012JAX0048 to FRA

Mr. Thomas-

49 CFR 174.9 establishes a railroad's duty with regard to accepting placarded hazmat cars for transportation. When a railroad accepts a hazmat rail car, or places it in a train, 174.9(a) states "...the carrier must inspect each rail car containing the hazardous material, at ground level, for required markings, labels, placards, securement of closures, and leakage." Section 174.9(b) contains additional requirements for rail cars with placards, requiring that they must be

inspected for signs of tampering. If deficiencies are found during this inspection, 174.9(c) prohibits a carrier from transporting the car until the deficiencies have been corrected. FRA often takes enforcement action where a car was placarded in one manner, but the railroad's paperwork does not parallel the information conveyed by those placards, as via 49 CFR 174.24 and 174.26, the railroad and the transporting train crew is required to have accurate shipping papers and emergency response contact info for each shipment of hazmat that is transported. The ground level inspection requirement at section 174.9 is the railroad's opportunity to compare their shipping paperwork to the placards displayed on the rail cars containing hazmat. Please give me a call if I can provide any other info. Thanks.

Joe

Joe St. Peter
Trial Attorney
Federal Railroad Administration
1200 New Jersey Avenue, SE
Room W31-208
Washington, DC 20590
Tel: (202) 493-6047
Fax: (202) 493-6068
joseph.st.peter@dot.gov

From: Thomas, William B <TSA OCC> [<mailto:William.Thomas@tsa.dhs.gov>]
Sent: Tuesday, August 21, 2012 9:58 PM
To: St. Peter, Joseph (FRA); Stewart, Roberta (FRA); Alpert, Daniel (FRA)
Cc: Rader, Robert (FRA); Alexy, Karl (FRA); Kasminoff, David <TSA OCC>; Gorton, Scott; Secret, Curt; Loschin, Tina
Subject: RE: 2012/08/21 Referral of CSX EIR 2012JAX0048 to FRA

Mr. St. Peter, Ms Stewart, Mr. Alpert, Mr. Alexy, and Mr. Rader,

THANK YOU for all for your assistance. In the course of our TSA enforcement efforts David Kasminoff discussed some issues that might be relevant to your regulatory activities. In addition I am particularly interested the general rule of thumb noted by Dan Alpert, to the effect that **in situations in which railroads pull cars from interchange: railroads do so at their own peril if they don't inspect the equipment and accompanying paperwork that they are accepting.** In our case CSXT accepted a rail car with an explosive placard on it but appear to be claiming that the STCC 3722221 was wrong and did not alert their electronic system so they would know that they were transporting hazmat. They appear to be claiming that per accepted RR practice they could just rely on the STCC from the shipper that the car did not contain anything hazardous and had no duty to investigate in to find they were transporting in excess of 5,000 lbs of class 1.1 explosives. [Per the shipping documents it was actually over 100,000 lbs of explosives.] Our Inspectors advise me of a duty to walk the train upon receipt of new cars and note any cars with explosive placards. I am trying to document the responsibility for such action. If that car had a non-hazmat STCC I believe there would be a duty to check further to determine how much explosives they were carrying?

I will call attorney **Joe St. Peter** tomorrow to discuss.

Regards and thanks to all,

Bill Thomas

William B. Thomas
DHS - Transportation Security Administration

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From: joseph.st.peter@dot.gov [mailto:joseph.st.peter@dot.gov]
Sent: Tuesday, August 21, 2012 8:25 PM
To: roberta.stewart@dot.gov; daniel.alpert@dot.gov; Thomas, William B <TSA OCC>; Kasminoff, David <TSA OCC>
Cc: robert.rader@dot.gov; john.alexey@dot.gov
Subject: Re: 2012/08/21 Referral of CSX EIR 2012JAX0048 to FRA

I am in the office tomorrow and available to discuss if needed at 202-493-6047. Thanks.

Joe

From: Stewart, Roberta (FRA)
Sent: Tuesday, August 21, 2012 07:30 PM
To: Alpert, Daniel (FRA); 'William.Thomas@tsa.dhs.gov' <William.Thomas@tsa.dhs.gov>; 'David.Kasminoff@tsa.dhs.gov' <David.Kasminoff@tsa.dhs.gov>
Cc: Rader, Robert (FRA); Alexy, Karl (FRA); St. Peter, Joseph (FRA)
Subject: Re: 2012/08/21 Referral of CSX EIR 2012JAX0048 to FRA

I believe **Bob Rader, the FRA Hazmat Specialist in Region 3**, spoke at length to Tina Loschin (sp?) today and answered all of her questions about this matter. Please let us know how we can be of further assistance.

-Roberta Stewart

From: Alpert, Daniel (FRA)
Sent: Tuesday, August 21, 2012 06:19 PM
To: Thomas, William B <TSA OCC> <William.Thomas@tsa.dhs.gov>; Kasminoff, David <TSA OCC> <David.Kasminoff@tsa.dhs.gov>
Cc: Rader, Robert (FRA); Stewart, Roberta (FRA); Alexy, Karl (FRA); St. Peter, Joseph (FRA)
Subject: RE: 2012/08/21 Referral of CSX EIR 2012JAX0048 to FRA

Mr. Thomas,

I'm sorry for not getting back to you and David sooner. Roberta is on travel, and I've been in meetings all day (actually interviewing candidates for an open FTE).

By this e-mail, I'm asking **Joe St. Peter**, one of the attorneys who handle **HMT issues for the Office of Chief Counsel**, to provide assistance to you. I'm also copying **Karl Alexy**, who is the staff director for FRA's **HMT Division**, so that he may arrange for his office to provide support as needed.

As I am not familiar with the specifics of this matter, I can only offer the general rule of thumb that I've applied to situations in which railroads pull cars from interchange: railroads do so at their own peril if they don't inspect the equipment and accompanying paperwork that they are accepting. But of course there is a body of Federal law that applies more specifically (and affirmatively), covering not only HMT but also mechanical and other safety issues, and which we should be able to identify for you.

I assume that at this stage you are seeking FRA's assistance informally, and not asking for an affidavit or for FRA to provide testimony, although it could come to the should the case not settle (and at which time higher managerial levels here would need to be more closely involved)? Thanks.

Dan Alpert
Deputy Assistant Chief Counsel for Safety
(202) 493-6026

From: Thomas, William B <TSA OCC> [<mailto:William.Thomas@tsa.dhs.gov>]
Sent: Tuesday, August 21, 2012 5:02 PM
To: Alpert, Daniel (FRA); Stewart, Roberta (FRA)
Cc: Rader, Robert (FRA)
Subject: FW: 2012/08/21 Referral of CSX EIR 2012JAX0048 to FRA

Are you available for a brief discussion?

Regards and thanks,

William B. Thomas
DHS - Transportation Security Administration
Counsel for Orlando FSD & FAM SAC, Jacksonville FSD
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From: Su, Emily <TSA OCC>
Sent: Tuesday, August 21, 2012 4:28 PM
To: Thomas, William B <TSA OCC>
Subject: RE: 2012/08/21 Referral of CSX EIR 2012JAX0048 to FRA

Thank you. Have you been able to set up a time to talk to FRA counsel regarding questions about requirements to walk trains?

Emily H. Su
Assistant Chief Counsel, Civil Enforcement
Transportation Security Administration
(571) 227-2305

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From: Thomas, William B <TSA OCC>
Sent: Tuesday, August 21, 2012 3:44 PM
To: Su, Emily <TSA OCC>; Kasminoff, David <TSA OCC>; Gorton, Scott
Cc: Powell, Barbara <TSA OCC>
Subject: 2012/08/21 Referral of CSX EIR 2012JAX0048 to FRA

Curt Secrest sent EIR 2012JAX0048 to FRA. He also forwarded the email I sent to FRA Counsel last evening [attached].
Informal but effectively completed in a timely manner.

r/

WBT

Desk - (407) 563-4048 Cell -(407) 697-1912

William.B.Thomas@DHS.gov

From: Secrest, Curt
Sent: Tuesday, August 21, 2012 2:41 PM
To: Thomas, William B <TSA OCC>
Subject: FW: CSX

My message to Bob Rader.

From: Secrest, Curt
Sent: Tuesday, August 21, 2012 2:05 PM
To: robert.rader@dot.gov
Subject: CSX

Hi Bob:

Good talking to you. here's the background on what we were discussing. PW to follow.

Curt

Curt Secrest
TSA
Regional Security Inspector-Surface
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Jacksonville, FL 32218
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