



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

NOV 13 2013

Mr. Jeff Messer
Safety Analyst
Con-Way Truckload
4701 E. 32nd Street
Joplin, MO 64803

Reference No. 13-0035

Dear Mr. Messer:

This is in response to your e-mail and subsequent emails and telephone conversations supplying additional information pertaining to clarification of the Hazardous Materials Regulations (HMR; 49 CFR 171-180) applicable to a transporter relying on information concerning hazardous material shipments, when those shipments are prepared for transportation by the offeror. Specifically, you state that you are an over-the-road commercial carrier that transports trailers loaded and pre-sealed by the offeror. You further state that your drivers do not unseal the trailers and open them to inspect the loads. At times, your drivers have been subject to roadside inspections and required to open the trailers. As a result, the drivers have been cited for not complying with the requirements of § 177.834(a). You are requesting an interpretation to determine if you are correct in your understanding that the enforcement citation should go to the offeror.

To support your understanding, you cite § 171.2(f), pertaining to exercising reasonable care in the reliance on information provided by an offeror or prior carrier; § 171.8, pertaining to the definitions for "person who offers or offeror" and "pre-transportation function," including "(12) loading, blocking, and bracing a hazardous materials package in a freight container or transport vehicle;" and § 177.800(b), pertaining to a carrier's responsibility for compliance with Part 177, "Carriage by Highway," unless specifically provided that another person shall perform a particular duty. Additionally, you state that under § 173.30, pertaining to the loading and unloading of transport vehicles, the responsibility falls on the person loading and unloading the hazardous material to comply with § 177.834, although § 177.834 is a requirement under the Part 177, "Carriage by Highway." Lastly, you state it is your belief that § 177.801 and not § 177.834 is the correct citation reference for a violation.

Your understanding of pre-transportation function responsibility is partially correct. Although responsibility for compliance with Part 177 of the HMR is inherently placed on the motor carrier, pre-transportation and other regulated functions (e.g., loading, blocking, and bracing of a hazardous materials package into or onto a motor vehicle) can be performed

by more than one party. Thus, an offeror and a motor carrier may both be held responsible for non-compliance with applicable requirements of Part 177 of the HMR. However, in the scenario where trailers have Customs Seals or security seals (to prevent theft or contamination), and the driver has no way to inspect the load, the onus for compliance could fall on the shipper/offeror.

Regarding a motor carrier's responsibility, no person may transport a hazardous material in commerce unless the hazardous material is transported in accordance with applicable requirements of the HMR. In other words, as specified in § 177.800, unless otherwise provided, each carrier, including a connecting carrier, shall perform the duties specified and comply with applicable requirements in Part 177, including, but not limited to, the general package securement requirements specified in § 177.834. However, under § 171.2(f), a motor carrier who transports a hazardous material in commerce may rely on information provided by the offeror of the hazardous material, unless the motor carrier knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the offeror is incorrect. The degree of a motor carrier's culpability is measured by whether the loading, blocking, or bracing violation could have been avoided by exercising reasonable care. An example of exercising reasonable care could be where the trailer was not sealed until after motor carrier personnel, or someone acting on its behalf, examined the trailer for proper cargo securement.

Regarding an offeror's responsibility, any person who performs, attempts to perform, or, under the circumstances involved, is contractually or otherwise responsible to perform, any of the regulated transportation functions subject to the HMR is legally responsible under the HMR for their proper performance. Thus, the degree of an offeror's culpability is also measured by whether the loading, blocking, or bracing violation could have been avoided by exercising reasonable care.

I trust this information is helpful. Please contact this office should you have additional questions.

Sincerely,

A handwritten signature in black ink that reads "T. Glenn Foster". The signature is written in a cursive style with a horizontal line extending to the left.

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

Drakeford, Carolyn (PHMSA)

McIntyre
§177.834
Loading & Unloading

From: INFOCNTR (PHMSA)
Sent: Monday, February 04, 2013 4:16 PM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Formal Letter of Interpretation

1.3-0035

Hi Carolyn,

We received the following request for a formal letter of interpretation.

Thanks,
Victoria

From: Jeff Messer [<mailto:messer.jeff@conwaytruckload.com>]
Sent: Monday, February 04, 2013 4:09 PM
To: INFOCNTR (PHMSA)
Subject: Formal Letter of Interpretation

February 04, 2013

U.S. DOT
PHMSA Office of Hazardous Materials Standards
Attn: PHH-10
East Building
1200 New Jersey Avenue, SE.
Washington, DC 20590-0001

To Whom It May Concern:

As an over-the-road commercial hauler, we are often asked to pick up trailers that have already been loaded and pre-sealed by the offeror. Our drivers do not unseal the trailer and open it to inspect the load. There have been times that we have been inspected by law enforcement and have been required to open the trailer at that time. We have been cited for not complying with the requirements of Subpart B-Loading and Unloading 177.834(a). We are requesting an interpretation to determine if we are correct in our assertion that the citation should go to the offeror based on the following logic:

177.800(b) Responsibility for compliance states that "Unless this subchapter specifically provides that another person shall perform a particular duty."

171.2(f) states that "Each carrier who transports a hazardous material in commerce may rely on information provided by the offeror of the hazardous material or a prior carrier, unless the carrier knows...that the information provided by the offeror or prior carrier is incorrect".

171.8 Person who offers or offeror means (1) Any person who does either or both of the following:

- (i) Performs or is responsible for performing any pre-transportation function required under this subchapter for transportation of the hazardous material in commerce.
- (ii) Tenders or makes the hazardous material available to a carrier for transportation in commerce

171.8 Pre-transportation function means a function specified in the HMR that is required to assure the safe transportation of a hazardous material in commerce, including –

(12) *Loading, blocking, and bracing* a hazardous material package in a freight container or transport vehicle

Based on these citations, we feel that the requirements of 177.834 are a pre-transportation function for which we are relying on the offeror to perform correctly as is their regulatory responsibility. Furthermore all subsections of 177.834 specifically speak to load and unloading procedures done by the offeror. As such, it is our opinion that the offeror should be the entity who receives the citation if there is a violation of 177.834.

Please feel free to contact me for further clarification of our position on this matter. Thank you in advance for your time.

Sincerely,

Jeff Messer
Safety Analyst
Con-Way Truckload
4701 E. 32nd Street
Joplin, MO 64803
Phone: 417-623-5229, Ext. 5561
Fax: 417-782-4768

This e-mail and any files transmitted with it are confidential and solely for the use of the individual or entity to which they are addressed and intended. If you have received this e-mail in error, please notify the sender by return e-mail. If you are not the intended recipient, you may not read, copy, retain, print, disclose, or distribute this message or its contents to any other individual, for such actions may be unlawful. WARNING: We take certain precautions to prevent viruses, but we are not responsible for loss or damage arising from the use of this e-mail or attachments.