



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

JUN 29 2000

Mr. John V. Currie
Vessel Operators Hazardous
Materials Association, Inc.
1118 Bay Road
Lake George, NY 12845-4618

Reference No. 00-0016

Dear Mr. Currie:

This is in response to your January 6, 2000 letter requesting clarification regarding persons responsible for compliance with the incident reporting requirements in 49 CFR 171.15 and 171.16. Specifically, you asked whether a person acting as an agent for the carrier, such as a terminal or storage depot operator, is responsible for preparing an incident report for a spill occurring during storage incidental to the movement of the hazardous material.

The answer is yes. Sections 171.2 and 173.1(c) require any person performing a function covered by the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to perform that function in compliance with the appropriate requirements. Therefore, the agent of an intermodal carrier who discovers a spill that occurred during storage incidental to the movement of a hazardous material must ensure that an incident report is filed as required under the HMR. Either the carrier or the agent may file the incident report. I have enclosed for your information one of our training handouts containing general guidance for brokers, forwarding agents, freight forwarders, and warehousemen.

I hope this satisfies your request. Please contact us if we can be of further assistance.

Sincerely,

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

Enclosure



000016

171.16



Guide for Brokers, Forwarding Agents, Freight Forwarders, and Warehouseurs

Each person who transports or offers for transport hazardous materials (hazmat), is a hazmat employer or employee. The Federal Hazardous Materials Regulations (HMR) [located in Title 49, Code of Federal Regulations (49 CFR)] require hazmat employers to train, test, and maintain records of this training for all their hazmat employees. This includes any employee that has responsibility for preparing hazmat for shipment or for transporting the hazmat shipment. [See 49 CFR, 171.8 (Definitions); 172.700 (Training); 173.1 (Shipper function); 174.7 (Rail); 175.20 (Air); 176.13 (Vessel/water); 177.800 (Highway)].

This guide is intended as an in-house training aid for reviewing your hazardous materials procedures. It does not include or refer to all applicable U. S. Department Transportation (DOT) regulations. Brokers, forwarding agents, freight forwarders, and warehouseurs are legally required to comply with the HMR. Knowledge of and compliance with the HMR is essential for your protection and that of your client(s).

In general, each of you may act as an agent for a shipper. If you forward a hazmat shipment, you are not relieved of the responsibility of your actions. That means, if you accept the responsibility of that agency in hazmat transportation-YOU ARE INVOLVED and can be held liable for your actions. Even a written agreement with a client(s) will not remove your liability.

Each of you should have a current copy of the HMR plus any final rules issued in the Federal Register, after the last HMR was printed. This includes Parts 100-185 of the 49 CFR. Know how to use-and consistently use-the HMR.

- A. **BROKERS AND FORWARDING AGENTS**-When acting for a shipper of hazmat, the firm acting for that shipper is equally liable. Therefore, you must have adequate knowledge of DOT's HMR to make sure that your operation complies with the HMR.
1. **Know your shipper.** Are hazmats shipped? If so, what kind and in what quantity? A broker must know when hazmat is being shipped. This involves more than just examination of documents.
 2. **Know the packaging.** Is the material in DOT/UN authorized packages?
 3. **Know/verify the proper hazmat description.** Does it match the proper shipping name, hazard class or division, Identification Number, and Packaging Group listed in the Hazardous Material Table (HMT) in 172.101? Is there a conflict between the documentation and the package marking? Is there an emergency response telephone number on the shipping paper? Does emergency response information accompany the shipping paper?
 4. **Advise the shipper of discrepancies.** You, as an agent of the shipper, cannot make the proper corrections on hazmat shipments **DON'T GUESS.** After you advise the shipper of the problem, verify the corrections with the HMR.
 5. **Make a visual inspection of shipments.** Is the hazmat damaged? In conflict with documentation? Improperly packaged? Other possible violations? To meet the requirements of the HMR, each hazmat shipment's packaging, marking, labeling, certification, and document should be seen and verified.
 6. **Provide correct documentation to the carrier.** Keep in mind that you are assuming shipper responsibility for a hazmat shipment made by another party. You must rely on the shipper for correct documentation and packaging. When discrepancies are noted, it is your responsibility to be sure it is corrected **PRIOR** to offering the shipment for movement. The documentation you give is the only information that the carrier receives. **IT MUST BE CORRECT.**
- B. **FREIGHT FORWARDERS**-Freight forwarders may have a dual responsibility as a shipper and a carrier. When tendering freight to a carrier, you perform the function of a shipper; when, picking up freight from a shipper, you function as a carrier. To make sure that your operation complies with the HMR, consider the following:
1. **Be aware of who is a hazmat shipper.** Who are they? What do they ship?
 2. **Documentation and Packaging.** Assure yourself that the packaging and documentation are correct and that they do not conflict with each other.

3. **Labels and Placards.** Make sure required labels and placards are in place.
4. **Shipper Liaison.** Keep a constant liaison with the shipper and correct discrepancies as soon as they are noted. If you receive an incorrect shipment, contact the shipper to correct it. Remember, **YOU ARE THE SHIPPER TO SUBSEQUENT CARRIERS!**
5. **Hazmat Spill, Release, or Incident.** If a hazmat release occurs while in your possession, **YOU**, as a carrier, **MUST REPORT** that spill to US DOT.

a) **Telephone (800-424-8802) IMMEDIATE NOTIFICATION, If:**

- a person is killed or hospitalized, or
- estimated damage is over \$5,000, or
- evacuation of public for over one hour, or
- a major transportation artery or facility is closed for one hour, or
- aircraft's flight plan or routine is altered.
- **ALSO, IF fire, breakage, spillage, or suspected contamination of/by Class 7 (radioactive) material or Div. 6.2 (etiological agents)**

b) **WRITTEN REPORT (within 30 days on Form DOT 5800.1) is required for:**

- ALL telephone notices listed above, and
- ANY unintentional release of hazmat during transportation.

3. **Training.** As with shipper and carriers, you are required to train, test, maintain the records, and retrain your hazmat employees at least once every three years. (See 49 CFR 172.704)

C. **WAREHOUSERS**-As warehouse personnel, you perform storage and shipping functions on orders of a shipper. You may, in some cases perform all of the documentation functions required for a hazmat shipment, including certification. Be aware of the following factors and satisfy yourself that your operation complies with the HMR.

1. **Know the shipper.** Know the kinds of hazmat the shipper ships. Know the proper shipping name and classification for each material you turn over to a carrier for transportation. Know the storage requirements.
2. **Check the packaging.** Is it a DOT/UN authorized package for the commodity being shipped? Are the required markings and labels attached? If not, you may not ship it legally. Contact the shipper for correction. If the packaging is wrong, not only is it illegal, it could be unsafe and/or result in a hazmat incident.
3. **Documentation.** Make sure the documentation you turn over to the carrier is complete and accurate.
4. **Compatibility.** Check for compatibility of hazmat in storage. [See 177.848]

THIS MATERIAL MAY BE REPRODUCED WITHOUT SPECIAL PERMISSION FROM THIS OFFICE. US DOT ENCOURAGES THE REPLICATION AND WIDE USE OF THIS DOCUMENT FOR INFORMATION AND TRAINING.

TO OBTAIN A LIST OF HAZMAT PUBLICATIONS FROM US DOT:

FAX: (202) 366-7342 or E-MAIL: TRAINING@rspa.dot.gov

WRITE: US DOT/RSPA/DHM-50
400 SEVENTH STREET, SW
WASHINGTON, DC 20590-0001

NEED TECHNICAL ASSISTANCE? CALL 800-HMR49-22 (800-467-4922)



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January 6, 2000

Mr. Robert A. McGuire
Deputy Associate Administrator
Research and Special Programs Administration
Office of Hazardous Materials Safety
U.S. Department of Transportation
400 7th Street, S.W.
Washington, DC 20590-0001

Dear Mr. McGuire:

I am writing to request a clarification regarding the responsibility for compliance with the incident reporting requirements codified in 49 CFR, Part 171, §§171.15 and 171.16. While I understand that rulemaking may be pending regarding amendments to these sections, I am requesting interpretation of the application of the existing sections.

At several of our VOHMA annual conferences in Washington, Mr. Alan Roberts and others on staff have stated that anyone performing a given function covered by regulatory codes has the responsibility to perform such function as defined in 49 CFR regardless of their identity. In other words a person performing a carrier function would have responsibility for compliance with the carrier requirements within 49 CFR even though that person may not meet the specific definition of a carrier. The application was further explained by saying that persons such as terminal operators or inland storage depots who perform the function of a carrier by accepting, loading, unloading, or temporarily storing hazardous materials during transportation must comply with all the regulations applicable to that carrier function.

Based on these responses, the assumption may be drawn that terminal operators or storage depots that are acting as the agents of intermodal carriers and who discover breaches of packaging security including leaks, punctures, or other transportation incidental damage during the time the hazardous materials packages are on their premises and within their physical custody and control, would be responsible for compliance with the carrier immediate reporting responsibilities under §171.15 and for filing the DOT F 5800.1 form as required by §171.16. To require otherwise would result in significant under-reporting of packaging failures that could skew statistical data collection.

As a means to ensure regulatory compliance with these sections, ocean carriers often delineate responsibilities in contractual agreements with such agents at terminals and depots. In order to foster the goals of the incident reporting system to enhance future transportation safety through effective packaging, I would request that your interpretation of the application of these sections be provided in writing at your earliest convenience.

Sincerely,

John V. Currie
VOHMA Administrator

"Committed to the promotion of the safe handling and transportation of hazardous materials."

APL Limited ♦ Atlantic Container Line ♦ Australia-New Zealand Direct Line ♦ Canada Maritime Agencies Ltd. ♦ CMA-CGM America Inc. ♦ Columbus Line USA Inc. ♦ Crowley American Transport, Inc. ♦ Delmas AAL ♦ Evergreen America Corporation ♦ Farrell Lines, Inc. ♦ Hapag-Lloyd Container Linie GmbH ♦ Hoegh Lines Agencies, Inc. ♦ Hyundai Merchant Marine (America) Inc. ♦ Independent Container Line, Ltd. ♦ Italia Line (Italia Di Navigazione) ♦ "K" Line America, Inc. ♦ Linea Maritima Mexicana ♦ Lykes Lines Limited ♦ Maersk-Sealand ♦ Mediterranean Shipping Co., ♦ Mitsui O.S.K. Lines (America) Inc. ♦ The National Shipping Co. of Saudi Arabia ♦ NYK Line (North America) Inc. ♦ OOCL (USA) Inc. ♦ P & O Nedlloyd ♦ DSR Senator Lines (America) Inc. ♦ Tecmarine Lines, Inc. ♦ Transportacion Maritima Grancolombiana ♦ Tropical Shipping ♦ Wallenius - Wilhelmsen Americas ♦ Zim-American Israeli Shipping Co. Inc.