



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

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

JUL 9 2004

Ms. Marilyn Dirx
Alaska Airlines
Box 68900
Seattle, WA 98168-0900

Ref. No. 03-0307

Dear Ms. Dirx:

This responds to your December 3, 2003, letter requesting clarification on when "acceptance" takes place relative to § 175.31 discrepancy reporting requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if, for purposes of security screening, "acceptance" occurs after the material has been screened and authorized for transportation, or when the shipper turns the material over to the carrier with the assumption that it will be transported. Please accept my apology for the delay in responding.

The discrepancy reporting requirement in § 175.31 applies to an aircraft operator that accepts a shipment of hazardous material that is improperly packaged, marked, labeled, described, or certified in a manner not ascertainable when the shipment is initially accepted for transportation. Generally, "acceptance" under the HMR occurs when the shipper (offeror) or his agent turns the shipment over to the carrier or the carrier's agent, with the assumption that it will be transported. If a violation of the HMR is discovered after acceptance that was not ascertainable when the shipment was initially accepted, a discrepancy report is required. The shipment may or may not pass the security screening process after acceptance has already occurred. If the accepted shipment later fails the security screening because of unauthorized hazardous materials, a discrepancy report must also be filed.

Specifically, your five scenarios and questions are paraphrased and answered as follows:

Q1. The airline is authorized to transport non-hazardous cargo from unknown shippers (offerors) on a passenger aircraft after the cargo has been subjected to a security screening. During the course of screening, undeclared hazmat is discovered. Has acceptance occurred? The shipper (offeror) has released the cargo to us, assuming that it will be transported. Does acceptance occur when we take it from the shipper (offeror), or after we determine that it may be transported? Does it make a difference in this scenario if the shipper (offeror) tendered the cargo directly to us, or tendered it to a Domestic Security Integration Program (DSIP) carrier with its own security plan, such as UPS, who subsequently tenders it to us? In the latter scenario, has UPS acted as the accepting party, even though the package can't travel until it has been screened by the air carrier?



030307

175.31

A1. Acceptance occurs when the shipper (offeror) releases the cargo to the airline regardless of whether the security screening has occurred. If the shipment is first tendered to a DSIP carrier, such as UPS, for delivery to the airline, the airline is the accepting party for the air shipment, not UPS. The DSIP air carrier as well as the subsequent passenger air carrier have, separately, accepted the shipment.

Q2. A piece of non-hazardous cargo is required to undergo security screening before it is transported. We do not complete the air waybill paperwork until after screening, and require the shipper (offeror) to remain at our facility when the piece is being screened. Undeclared hazmat is found. Has acceptance occurred, even though the air waybill has not been executed and the shipper (offeror) is still on the premises?

A2. In this scenario, since you require the shipper (offeror) to remain on the premises and are able to reject the shipment and return it to the shipper, acceptance has not occurred.

Q3. A piece of non-hazardous material cargo is required to undergo security screening before it is transported. The cargo comes to us from a freight forwarder, who drops off the cargo and does not wait for screening to be completed. During the course of screening, undeclared hazardous material is found. Has acceptance occurred, even though the piece isn't authorized for transportation until after it has been security screened? Since the shipper (offeror) has released control of the shipment to the freight forwarder, has the freight forwarder accepted for § 175.31 discrepancy reporting purposes? Does it make a difference if the air waybill has been signed by our employee or not, whereby the signature completes the acceptance process on our part?

A3. Acceptance occurs when the airline takes possession of the shipment from the freight forwarder, even though security screening has not been completed. The air carrier has accepted the shipment for discrepancy reporting purposes, regardless of whether the air waybill has been signed by the airline employee.

Q4. A shipper (offeror) offers a non-hazardous material package to our representative, who provides our pick-up and delivery service. Our representative accepts the package and completes an air waybill on our behalf. However, the package isn't authorized for transportation until it has undergone security screening. Is it considered accepted when our representative takes possession of it from the shipper (offeror)?

A4. Yes, acceptance occurred when your representative took possession of the shipment from the shipper (offeror), regardless of whether the security screening has taken place.

Q5. We take possession of a hazardous material shipment, but rather than run it through our checklist right away we place it in a conditional acceptance storage location. Later, we run our checklist on it and discover a compliance violation. Has acceptance occurred since we are in

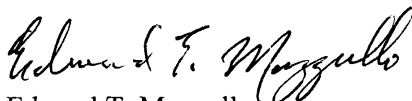
possession of the shipment? Or does acceptance not occur until we subject the shipment to our acceptance checklist?

A5. Acceptance has occurred, and the discrepancy is reportable if it meets the criteria in § 175.31(b), even though you have not yet completed your inspection in accordance with § 175.30.

For guidance as to when acceptance occurs for hazardous materials in passenger baggage, please refer to the enclosed formal interpretation published under Docket RSPA-2003-14424, Notice No. 03-2 (68 FR 9735).

I hope this answers your inquiry.

Sincerely,



Edward T. Mazzullo
Director, Office of Hazardous
Materials Standards

Enclosure

Alaska Airlines

Ms. Susan Gorsky
Office of Hazardous Materials Standards
202-366-3012
Total pages: 2

December 3, 2003

Dear Ms. Gorsky,

A particular situation recently occurred, and with the upcoming changes to cargo security procedures, I am searching for clarification on when 'acceptance' takes place relative to 49CFR 175.31 discrepancy reporting requirements. I'm not sure who is the best person to address these questions to, but since they relate somewhat to HM-223, I will begin my search for clarification with you.

If a shipper tenders a shipment, but that shipment must undergo security screening prior to air travel, does acceptance occur after the item has been screened and deemed to be authorized to travel? Or does acceptance occur when the shipper turns the item over to the carrier, with the assumption that it will be transported?

Below are a few scenarios where we need clarification on when acceptance has occurred.

- 1 • Currently, in the State of Alaska, we are allowed to transport cargo from unknown shippers on a passenger aircraft after the cargo has been subjected to a security screening process. During the course of screening, undeclared hazmat is discovered. Has acceptance occurred? The shipper has released the cargo to us, assuming that it will travel, but we can't transport it until after we screen it. So do we 'accept' it when we take it from the shipper, or after we determine that it may travel? Does it make a difference in this scenario if the shipper tendered the cargo directly to us, or tendered it to a DSIP carrier with its own security plan, such as UPS, who subsequently tenders it to us? In the latter scenario, has UPS acted as the accepting party, even though the package can't travel until it has been screened by the air carrier?
- 2 • A piece of cargo is required to undergo security screening before it is transported. We do not complete the air waybill paperwork until after screening, and require the shipper to remain at our facility while the piece is being screened. Undeclared hazmat is found. Has acceptance occurred, even though the air waybill has not been executed and the shipper is still on the premises?
- 3 • A piece of cargo is required to undergo security screening before it is transported. The cargo comes to us from a freight forwarder, who drops off the cargo and does not

Boothe
§ 175.31

Air
03 - 0307


wait for screening to be completed. During the course of screening, undeclared hazmat is found. Has acceptance occurred, even though the piece isn't authorized for travel until after it has been screened? Since the shipper has released control of the shipment to the freight forwarder, has the freight forwarder 'accepted' it for 175.31 discrepancy reporting purposes? Does it make a difference if the air waybill has been signed by our employee or not, whereby the signature completes the 'acceptance' process on our part?

- 4 • A shipper offers a package to our representative, who provides our pick-up and delivery service. Our representative 'accepts' the package and completes an air waybill on our behalf. However, the package isn't authorized for travel until it has undergone security screening. Is it considered accepted when our representative takes possession of it from the shipper?
- 5 • One last scenario. We take possession of a hazardous materials shipment, but rather than run it through our checklist right away we place it in a 'conditional acceptance' storage location. Later, we run our checklist on it and discover a compliance violation. Has acceptance occurred since we are in possession of the shipment? Or does acceptance not occur until we subject the shipment to our acceptance checklist?

I realize some of these scenarios are a bit complicated. Please feel free to call if you would like to discuss them, or need further clarification. I am also reachable by e-mail. (Phone and fax number and e-mail address below.)

Thank you for your assistance.

Sincerely,


Marilyn Dirkx
Manager, Dangerous Goods Compliance
Tel: 206-392-5442
Fax: 206-392-5225
E-mail: marilyn.dirkx@alaskaAir.com