



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

NOV 16 2004

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

Mr. Andrew N. Romach
Corporate Regulatory Manager
URS Corporation
1600 Perimeter Park Drive
Morrisville, NC 27560-8421

Ref. No. 04-0082

Dear Mr. Romach:

This is in response to your March 29, 2004 letter requesting clarification of responsibility for loading and unloading packages under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). In your scenario the shipper physically transfers the drums containing hazardous materials onto a transport vehicle and the carrier secures the drums against movement. Specifically, you ask whether the shipper or the carrier is in violation of the HMR if the drums are not adequately secured on the transport vehicle.

Depending on the actual functions performed, one or both parties may be held responsible for violations related to the carrier's load securing devices or methods. A shipper or carrier who performs loading or unloading functions must perform those functions in accordance with applicable HMR requirements. Securing drums or other packages in a transport vehicle is a loading function subject to regulation under the HMR. In your scenario, the shipper's personnel place the drums on the transport vehicle, but, by agreement with the carrier, responsibility for securing the load rests with the carrier's personnel. Shipper personnel verify that the load is properly secured prior to the carrier's departure from the facility. In accordance with § 173.30, because both the shipper and the carrier are involved in the loading operation, both are responsible for assuring compliance with applicable HMR requirements. In addition, in accordance with § 177.834(a), a carrier has a further responsibility to ensure that any package of hazardous materials not permanently attached to their motor vehicle is properly secured at all times while in transportation.



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I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Hattie L. Mitchell". The signature is written in dark ink and is positioned below the word "Sincerely,".

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



March 29, 2004

Mr. Ed Mazzullo, Director
Office of Hazardous Material Standards
Research and Special Programs Administration
U.S. Department of Transportation
400 7th Street, SW (DHM-10)
Washington, DC 20590-0001
FAX: (202) 366-3012

Dear Mr. Mazzullo:

I am writing to you to request a written regulatory interpretation to clarify the shipper's responsibility in a situation where the blocking and bracing configuration that secures several 55-gallon drums of hazardous material in place onboard a truck becomes dislodged during transit.

The specific questions are:

- ?? Is the shipper responsible for any failures of the carrier's load-securing devices or failures due to the carrier's securement methods that become apparent after the truck leaves the shipper's facility?**
- ?? Is the shipper responsible because the shipper physically placed the containers onboard the truck, even though the truck driver signed the bill of lading verifying that the load was secured properly?**
- ?? Is responsibility tied to the specific loading/blocking/bracing activity performed?**

The situation about which we are concerned is as follows. A Company ships 55-gallon drums of hazardous materials by ground transportation to customers in various locations around the United States. These HAZMAT shipments are transported onboard trucks by commercial carriers.

The Company prepares the drums for shipment (which includes packaging, marking, labeling). Employees of the Company place the drums into the carrier's truck trailer. The carrier is responsible for securing the load, including responsibility for providing the necessary equipment to secure the load (such as load lock levers, straps, etc.) The Company has internal procedures, which require the carrier to secure all containers prior to departure. Employees of the company are not allowed to secure the containers.

Prior to allowing the Carrier to transport the load offsite, employees of the Company inspect the truck trailer to verify visually that the carrier has installed appropriate load securing devices. Following this inspection, the truck driver signs a statement on the bill of lading verifying that the load is secured properly.

49 CFR §173.30 states that a person must load hazardous materials in accordance with applicable loading and unloading requirements. This provision might be interpreted as placing responsibility for insuring proper loading upon the shipper in the situation above. However, this

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§ 177.834
Loading + Unloading
04-0082



interpretation seems to be at odds with the regulations governing the carriage of HazMat by public highway. 49 CFR §177.834(a) sets forth the general requirement to secure loads against shifting. It is our understanding that responsibility for insuring compliance with this provision, falls upon the carrier. Placing responsibility for insuring proper loading upon the shipper would seem to remove responsibility for this activity from the one entity that is most qualified to insure compliance, i.e., the carrier. Also, 49 CFR §392.9 places load securement responsibilities on the carrier and further requires the carrier to reexamine the load securement at intervals during the course of transportation and to make any necessary adjustments.

We appreciate your assistance in resolving this question. Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew N. Romach', written in a cursive style.

Andrew N. Romach
Corporate Regulatory Manager
URS Corporation