



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

AUG - 5 2005

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

Ms. Debbie Hape
Transportation Compliance Specialist
PGM Global Logistics
Pfizer Inc.
1855 Shelby Oaks Drive North
Memphis, TN 38134

Reference No.: 05-0148

Dear Ms. Hape:

This is in response to your June 21, 2005 letter requesting clarification of the Hazardous Materials Incident Reporting requirements, effective January 1, 2005, under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask whether a consignee is required to file a Hazardous Materials Incident Report (DOT Form F5800.1) if, during a loading/unloading operation, the consignee discovers an undeclared shipment of hazardous material, or a shipment of hazardous material that is damaged or leaking.

As specified in § 171.16, each person in physical possession of a hazardous material while it is being transported must submit a Hazardous Materials Incident Report on DOT Form F5800.1 within 30 days of discovery of an incident when any of the following occurs: (1) any of the circumstances set forth in § 171.15(b); (2) an unintentional release of a hazardous material or the discharge of any quantity of hazardous waste; (3) a cargo tank with a capacity of 1,000 gallons or greater containing any hazardous material suffers structural damage to the lading retention system or damage that requires repair to a system intended to protect the lading retention system, even if there is no release of hazardous material; (4) or an undeclared hazardous material is discovered.

For purposes of the HMR, transportation in commerce begins when a carrier takes possession of a hazardous material for the purpose of transporting it and continues until the package containing the hazardous material arrives at its destination. Therefore, an incident that occurs while a shipper is filling a bulk packaging, such as a cargo tank, portable tank, or rail car, or loading packaged or containerized hazardous material onto a transport vehicle before the carrier arrives at the facility to pick up the shipment is not required to be reported because the incident occurs prior to the onset of transportation in commerce. An incident that occurs while the carrier that will be transporting the hazardous material is observing or participating in the filling or loading operation must be reported because the carrier is deemed to be in possession of the hazardous material at that point; the incident thus occurs during transportation. For these incidents, the carrier must complete the report.



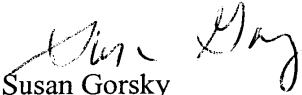
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171.16

Similarly, an incident that occurs or is discovered while a consignee is unloading a hazardous material from a transport vehicle or emptying a bulk packaging after the carrier has delivered the material is not required to be reported because the incident occurs or is discovered after transportation has ended. Thus, the consignee is not required to report an undeclared shipment or a damaged or leaking shipment that is discovered after the carrier has delivered the hazardous material. An incident that occurs while the carrier that delivered the hazardous material is observing or participating in the unloading operation must be reported because the carrier is deemed to be in possession of the hazardous material at that point; the incident thus occurs during transportation. For these incidents, the carrier must complete the report.

I trust this satisfies your inquiry.

Sincerely,


Susan Gorsky
Acting Director
Office of Hazardous Materials Standards

Foster
§ 171.16
Incident Reports
05-0148

Drakeford, Carolyn <PHMSA>

From: Gorsky, Susan <PHMSA>
Sent: Wednesday, June 22, 2005 7:01 AM
To: Drakeford, Carolyn <PHMSA>
Cc: Foster, Glenn <PHMSA>
Subject: FW: DGAC Incident Reporting Workshop

Please turn this into an interp request and assign it to Glenn for response. Thanks.

Susan

-----Original Message-----

From: Hape, Debbie [mailto:Debbie.Hape@pfizer.com]
Sent: Tuesday, June 21, 2005 10:58 AM
To: Gorsky, Susan <PHMSA>
Subject: DGAC Incident Reporting Workshop

Susan,

I recently attended the DGAC Incident Reporting Workshop in Washington, D.C. (June 10). I would like to thank you and the other members of the DOT staff who attended the workshop. Your input was very much appreciated!

As a representative of the Shipper and Consignee segment of the transportation chain, I was very interested in your statement that shippers and consignees would not be required to submit HazMat Incident Reports. May I have written confirmation of this statement for my file? I would like to update my company on this clarification of the Incident Reporting Regulation, but hesitate to do so until I have a hard copy in hand.

At the workshop, it was explained that HazMat materials that were discovered by the consignee to be either leaking or undeclared would still fall under the carrier's responsibility to file the Incident Report, as the carrier was the entity in possession of the material during actual transportation.

I remember that one attendee actually had a copy of the DOT Guidance Document for Incident Reporting that stated that there are instances in which a consignee or shipper would be required to complete an Incident Report. I believe you said that document would be updated to revise that information.

On behalf of my company, I would like confirmation that HazMat Shippers and/or Consignees would not be responsible for completing an Incident Report for damaged/leaking or undeclared HazMat discovered during loading/unloading operations. It is my understanding that the Shipper/Consignee should report any such incidents to the Carrier, who would then be responsible for filing the report with DOT.

Thank you.

Debbie F. Hape, CHMM

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6/22/2005