



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

NOV - 3 2005

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

Mr. Frank Nesbihal
Senior Environmental Specialist
FPL Group
700 Universe Blvd.
Juno Beach, FL 33408

Ref. No. 05-0188

Dear Mr. Nesbihal:

This is in response to your August 8, 2005, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if DOT will clarify the relationship of the terms "offeror" and "shipper" in the HMR and when they are applicable to use.

Under final rulemaking HM-223A (70 FR 43638; July 28, 2005), PHMSA amended the HMR to add a definition for "person who offers or offeror" in order to codify long-standing interpretations and administrative determinations on the applicability of those regulations. Within this final rule, PHMSA defined in § 171.8 "person who offers or offeror" to mean any person who performs or is responsible for performing any pre-transportation function required by the HMR or who tenders or makes the hazardous material available to a carrier for transportation in commerce. When the word "shipper" is used, such as in the title of Part 173 – "Shippers-General Requirements for Shipments and Packagings" – that word refers to a person who prepares a shipment for transportation. As already discussed, that person may also be a carrier, when it prepares the shipment for its own transportation (as a private carrier) or for transportation by a succeeding carrier. The word "shipper" is not used in the HMR in a commercial or contractual sense that denotes the economic arrangements of a shipment.

I hope this satisfies your request.

Sincerely,

John A. Gale
Chief, Standards Development
Office of Hazardous Materials Standards



050188

171.8

BAH
§ 171.8
Definition
05-0188

INFOCNTR <PHMSA>

From: Frank_J_Nesbihal@fpl.com
Sent: Monday, August 08, 2005 2:29 PM
To: INFOCNTR <PHMSA>
Cc: Roger_Messer@fpl.com
Subject: "Shipper" vs "Persons Who Offer or Offeror"

Dear Sir/Madam:

FPL Group has reviewed the July 28, 2005 final rule regarding the Applicability of the Hazardous Materials Regulations ("HMR") to a "Person Who Offers" a Hazardous Material for Transportation in Commerce. Specifically, we have provided a comment when this rule was proposed on September 24, 2004 to clarify the use of the terms "shipper" and "offeror". We commented that the term "shipper" has never been officially defined by the Department of Transportation ("DOT"), and that word is used in many interpretation letters, and is printed on common straight bills of lading that can be purchased at many truck stops and hazmat supply companies. Based on the context used in the HMR and in interpretation letters, we concluded that a "shipper" and an "offeror" are the same.

Our comment was addressed on page 43641 in the final rule, but the DOT did not believe it is necessary to modify the HMR to clarify the meaning of the term "shipper". We understand DOT's answer in regards to the rulemaking. However, to avoid confusion within our company, we are kindly asking if the DOT can clarify the relationship of these two terms, and when they are applicable to use.

If you have any questions, please call me at 561-691-7013.

Respectfully,
Frank Nesbihal, CHMM
Senior Environmental Specialist
FPL Group
700 Universe Blvd. JES/JB
Juno Beach, FL 33408

8/9/2005