



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

DEC 23 2013

Mr. Tom Forbes
Public Utilities Commission of Ohio
Transportation Department
180 E Broad Street, 4th Floor
Columbus, OH 43215

Ref. No. 13-0195

Dear Mr. Forbes:

This responds to your October 15, 2013 email regarding enforcement of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). In your email, you describe a scenario where a shipper loads a van trailer with hazardous materials (hazmat) packages and then seals the trailer noting that the carrier is not present during loading. The shipper then instructs the carrier not to break the seal and provides a shipping paper. During the course of transportation, the carrier is stopped by a State enforcement agent and the trailer is inspected whereupon the agent discovers the hazmat packages are not secured. With respect to this situation, you request clarification of the person in violation of the package securement requirements of § 177.834(a) of the HMR.

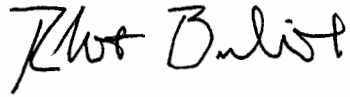
It is the opinion of this Office that, and barring additional information pertinent to the scenario you describe, the person performing the loading of the hazmat packages in the motor vehicle is in violation of the package securement requirements of § 177.834(a); in this case the shipper. Regarding carrier responsibility, as specified in § 171.2(f), no person may transport hazmat unless it is transported in accordance with the HMR. The carrier may rely on information provided by the offeror (the shipper) of the hazmat unless the carrier knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the offeror is incorrect. See § 171.8 for the HMR definition of person who offers or offeror. Note that in general, whenever hazmat has not been shipped in compliance with the HMR, DOT will attempt to identify and bring an enforcement proceeding against the person who first caused the transportation of the noncomplying shipment. See the formal interpretation of carrier responsibility when accepting hazmat for transportation in commerce (June 4, 1998; 63 FR 30411).

In the absence of participating in the loading operation or having access to the loaded trailer, it is assumed that the carrier would be relying on the shipping paper and the accompanying certification that the packages are in proper condition for transportation; i.e., properly secured.

Unless the carrier has actual or constructive knowledge that the packages are not properly secured, we see no reason not to accept the shipment. However, the carrier may not ignore readily apparent information that would indicate the packages are not properly secured.

I hope this information is helpful. If you have further questions, please contact this office.

Sincerely,

A handwritten signature in black ink that reads "Robert Benedict". The signature is written in a cursive style with a large, stylized initial "R".

Robert Benedict
Chief, Standards Development Branch
Standards and Rulemaking Division

Der Kinderen
§173.22

Drakeford, Carolyn (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Thursday, October 17, 2013 11:10 AM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Interpretation Request

Shipper's Responsibility
13-0195

Hi Carolyn,

This caller requested we submit this e-mail as a formal letter of interpretation.

Thanks,
Victoria

From: Forbes, Tom [<mailto:Tom.Forbes@puc.state.oh.us>]
Sent: Tuesday, October 15, 2013 7:47 AM
To: PHMSA HM InfoCenter
Subject: Interpretation Request

October 15, 2013

PHMSA Office of Hazardous Materials Standards
Attn: PHH-10
East Building
1200 New Jersey Avenue, SE.
Washington, DC 20590-0001

Dear Sir:

We are requesting written interpretation providing clarification of the regulatory responsibility for securement of packages of hazardous materials under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) in the following loading scenario.

A shipper pre-loads and seals a van trailer containing hazardous materials. The shipper instructs the carrier not to break the seal. No carrier personal was present during the loading. The shipper provides a properly completed shipping paper to the carrier.

While transporting the shipment between Point A and Point B the carrier get stopped and inspected by a MCSAP certified inspector. The inspector discovers the hazardous material is not secured at all.

Should a securement/loading violation be listed against the carrier only, the shipper only or both the carrier and shipper in this scenario?

Thank you for your assistance in this matter.

Tom Forbes, Enforcement Supervisor
Public Utilities Commission of Ohio
Transportation Department
180 E Broad Street, 4th Floor

Columbus, OH 43215
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