



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

JUL 20 2015

Mr. Marvin Sudduth
FedEx Express
3670 Hacks Cross Rd.
Building G, 2nd Floor
Memphis, TN 38125

Ref. No.: 15-0015

Dear Mr. Sudduth:

This responds to your January 20, 2015 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) with regard to the carrier functions regarding salvage packaging. Specifically, you ask whether a carrier who utilizes a salvage drum as prescribed in § 173.3(c) in order to continue transportation of a damaged package containing hazardous materials to its destination or to return the package to a shipper is permitted to cross out the packaging type and net quantity on the original shipping papers and insert the new packaging type (e.g. steel drum) and estimated net quantity. You further ask PHMSA to confirm that if the carrier is allowed to make changes to the shipping papers no other changes to the shipping papers are required.

Section 173.3(c)(5) states "the shipper shall prepare shipping papers in accordance with subpart C of part 172 of this subchapter". In a situation where salvage packaging is required to transport hazardous materials for repackaging or disposal § 173.3(c)(5) requires that new shipping papers be prepared to appropriately identify the shipment. If the carrier elects to perform these functions the carrier assumes responsibility for ensuring these functions are correctly performed.

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

Sincerely,

Duane A. Pfund
International Standards Coordinator
Standards and Rulemaking Division



January 20, 2015

Webb
173.3(c)
Packaging Exempts
15-0015

Mr. Charles E. Betts
Director
Standards and Rulemaking Division
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590

Re: Resubmission of Request for Letter of Interpretation Regarding Salvage Drum Procedures

Dear Mr. Betts,

The purpose of this communication is to resubmit a request for a Letter of Interpretation regarding Salvage Drum Procedures.

The attached letter replaces my original request dated January 16, 2015.

The original request was an earlier version that was sent in error as it did not contain certain questions that FedEx Express is requesting clarification on.

Please disregard the previous request dated January 16 and response to the attached request dated January 19, 2015.

I appreciate your understanding and cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Marvin Sudduth", written over the word "Sincerely,".

Marvin Sudduth
Dangerous Goods Administration
FedEx Express Corporate Safety Department
3670 Hacks Cross Rd. Building G, 2nd Fl.
Memphis, TN 36125-8800
Office: 901-434-9566
Fax: 901-434-9769
Email: masudduth@fedex.com



January 19, 2015

Mr. Charles E. Betts
Director
Standards and Rulemaking Division
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590

Re: Request for Letter of Interpretation Regarding Salvage Drum Procedures

Dear Mr. Betts,

The purpose of this communication is to request a Letter of Interpretation regarding whether a carrier that has contained a damaged hazardous material shipment transiting in their system under the salvage drum procedures listed in 49 CFR 173.3(c) is permitted to amend the original shipper's declaration to indicate the salvage drum packaging and estimated net quantity before continuing to move the shipment in transportation onto the destination or returning it to the shipper.

The regulatory references driving this question are as follows:
49 CFR 171.2(e); 172.202(a)(6); 172.202(a)(7); 172.204(d); 173.3(c).

Situational Summary

For well over thirty years FedEx Express has utilized an internal hazardous materials spill clean-up program to ensure the safe and timely containment of hazardous materials shipments that have been damaged so that they can continue in transportation to the recipient or be returned to the shipper. Many of these shipments are critical to industry and the medical community and have a need to be moved as soon as possible.

The program and its associated training processes have been reviewed and approved by the Federal Aviation Administration and are also in compliance with all OSHA requirements as defined in 29 CFR Part 1910.

The question of whether FedEx Express can continue to operate within these approved guidelines is currently being reviewed. Specifically, when utilizing the salvage drum procedures in 49 CFR 173.3(c), FedEx Express has historically transferred the original shipper's declaration to the salvage drum in order to enable movement of the damaged shipment.

FedEx Express maintains the position that, as we were not the original shipper/offeree for these shipments, that merely performing carrier transportation functions such as containing the released

hazardous material and transferring limited documentation while in transportation does not result in a carrier assuming the shipper's responsibility for the originally offered shipment.

Likewise, we do not believe that it is the intent of 173.3(c) or in the best interest of hazardous materials transportation safety to import such responsibility to the carrier. Despite being listed in Part 173, the procedures in 173.3(c) are facially designed for carriers as it would be very unusual for a shipper to offer a damaged hazmat package to a carrier in a salvage drum. Therefore, by performing these procedures a carrier is undertaking a carrier and not a shipper function. The original offeror of the shipment is the only party equipped to provide the most accurate information about the shipment. To imply that a carrier that contains and forwards a damaged hazardous materials shipment assumes the same responsibility and liability as the original offeror suggests the following:

- That the carrier has the same knowledge of the material being shipped as the original shipper.
- That the carrier is acting as a shipment generator when that is not the case.
- That the carrier has knowledge of the packaging testing process.
- That the carrier is repackaging the material when we are only transferring the damaged packaging which at this point the original packaging can no longer perform the containment function for the material it was tested for.
- That the carrier has the capacity to certify the shipment in accordance with 49 CFR 172.204.
- That the carrier can attest to appropriate emergency contact information (when required).

In an October 10, 2010 letter of interpretation (Ref. No. 10-0192, attached), PHMSA indicated that it was permissible for a carrier to amend a shipper's declaration to enable compliant transportation of hazardous materials shipments. We are seeking confirmation that is also permissible to amend a shipper's declaration to reflect the appropriate packaging type and net quantity of the contained hazardous material when applying the salvage drum procedures of 173.3(c). Therefore, FedEx Express respectfully submits the following questions for your office's interpretation:

When a carrier utilizes the salvage drum procedures outlined in 49 CFR 173.3(c) in order to continue transportation of a damaged hazardous material onto destination or return it to the shipper, is the carrier permitted to cross out the packaging type and net quantity on the original shipper's declaration and insert the new packaging type (e.g. "steel drum") and estimated net quantity?

If so, can you confirm that no other changes to the shipper's declaration are required?

FedEx Express contends that containment of damaged hazardous material shipments for continued transportation does not turn a carrier into a shipper/offeror, and consequently, the carrier should not be required to generate a new shipper's declaration to enable onward movement of the contained package or its return to the shipper.

Thank you in advance for your review of this letter. I look forward to your response. Should you have any questions or require additional information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Marvin Sudduth". The signature is fluid and cursive, with the first name "Marvin" and last name "Sudduth" clearly distinguishable.

Marvin Sudduth

Manager

Dangerous Goods Administration

FedEx Express Corporate Safety Department

3670 Hacks Cross Rd., Building G., 2nd FL

Memphis, TN 38125-8800

Office: 901-434-9566

Fax: 901-434-9769

Email: masudduth@fedex.com



U.S. Department of Transportation
Pipeline and Hazardous Materials
Safety Administration

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

OCT 5 2010

Mr. Timothy Wiseman
Scopelitis, Garvin, Light, Hanson & Feary
10 W. Market Street, Suite 1500
Indianapolis, IN 46204

Ref. No.: 10-0192

Dear Mr. Wiseman:

This responds to your August 31, 2010 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you request clarification of the shipping paper requirements in § 172.204 and § 177.817. Your questions are paraphrased and answered as follows:

- Q1) May a carrier correct a shipping paper after it has been certified by the shipper by crossing out the entry for a hazardous material, which was not accepted by the motor carrier because it did not comply with the packaging requirements in the HMR?
- A1) Yes. A carrier with knowledge of incorrect information may not continue to use that information (see § 171.2(e) and (f)) and must resolve any discrepancies pertaining to the shipment before it is accepted for transportation.
- Q2) By correcting a shipping paper after it has been certified by the shipper, does the motor carrier become the offeror of the hazardous material?
- A2) No. A carrier is not an offeror when it performs a function required by the HMR as a condition of acceptance of a hazardous material for transportation in commerce (e.g., reviewing shipping papers, examining packages to ensure that they are in conformance with the HMR, or preparing shipping documentation for its own use) or when it transfers a hazardous material to another carrier for continued transportation in commerce without performing a pre-transportation function (see § 171.8, definition of *person who offers or offeror*).

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

Ben Supko
Acting Chief, Standards Development
Office of Hazardous Materials Standards



SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY

ATTORNEYS AT LAW

INDIANAPOLIS

CHICAGO • WASHINGTON, D.C. • LOS ANGELES • KANSAS CITY • CHATTANOOGA • DETROIT

TIMOTHY W. WISEMAN
twiseman@scopelitis.com

10 W. Market Street, Suite 1500 Indianapolis, Indiana 46204
phone (317) 637-1777 fax (317) 687-2414
www.scopelitis.com

Winter
\$172.204

\$177.817

Shipping Papers
10-0192

August 31, 2010

Office of Hazardous Material Standards
Pipeline & Hazardous Material Safety Adm.
PHH-10
U.S. Department of Transportation, E. Bldg.
1200 New Jersey Avenue, SE
Washington, Dc 20590-0001

Re: Request for Interpretation
49 C.F.R. §§ 172.204 & 177.817

To Whom It May Concern:

I have some questions with respect to the shipper certification requirements under 49 C.F.R. § 172.204 and § 177.817 that do not appear to be answered in previous guidance offered by the Pipeline & Hazardous Material Safety Administration ("PHMSA"). The shipping scenario from which my questions arise is as follows:

A motor carrier will occasionally transport multiple hazardous materials under a single bill of lading and shipper's certificate issued under § 172.204. Prior to acceptance of the consolidated shipment for transportation, the carrier discovers an error on the shipper certification in that one or more of the packages described on the certificate is not in compliance with the hazardous material regulations. Rather than require the shipper to reissue a new shipper certification, the carrier will instead refuse to accept the non-complying package and cross off that portion of the shipper certificate that references the non-accepted package. The remaining packages would then be accepted for transportation by the motor carrier under the original shipper certification. The shipper's certification with the motor carrier's handwritten notations would then be maintained by the motor carrier as required by § 177.817.

I have the following questions with respect to this scenario:

1. Is it permissible under the hazardous material regulations for a motor carrier to cross off an entry contained on the signed shipper certification?
2. If so, by crossing off an entry on the signed certificate, does the motor carrier become the new offeror of the shipment and thus responsible for all regulatory obligations of the shipper/offeror?

Based on my reading and understanding of the applicable regulations, it would appear that merely crossing off a specific hazmat package notation on the shipper's certificate is not altering or obliterating the certification itself, but rather only acts to signify that the package was not accepted for transportation by the motor carrier. However, in this case, the motor carrier wants to ensure compliance with the regulations and, in addition, not assume responsibility as the shipper/offeror for the accuracy of the information contained on the certification.

Any assistance you can provide in helping me understand these regulations in the context of the above-stated scenario is greatly appreciated. If you need any further information to respond, feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. W. Wiseman', followed by a horizontal line.

Timothy W. Wiseman

TWW/kkc

cc: Joseph Solomey, Assistant Chief Counsel

16:23:39 Tuesday, January 20, 2015

NEXT SCREEN:

F E D E X E X P R E S S
* * * * P R I S M * * * *
JUMPSEAT BUSINESS AUTHORIZATION SCREEN

PEP505
01/20/15
16:23:28

NOTICE: DELIBERATE FALSIFICATION OF BUSINESS TRAVEL STATUS IS CAUSE
FOR SEVERE DISCIPLINARY ACTION. BUSINESS TRAVEL IS DEFINED
AS TRAVEL WHICH WOULD OTHERWISE BE PAID BY FEDERAL EXPRESS.

EMP NBR: 36631 Michael J. Hoysler

THIS EMPLOYEE IS AUTHORIZED TO RESERVE A JUMPSEAT
FOR BUSINESS TRAVEL FOR THE FOLLOWING DATE(S):

1. MMDDYY	2. MMDDYY	3. MMDDYY	4. MMDDYY	5. MMDDYY
6. MMDDYY	7. MMDDYY	8. MMDDYY	9. MMDDYY	10. MMDDYY
11. MMDDYY	12. MMDDYY	13. MMDDYY	14. MMDDYY	

OR FOR 180 DAYS BLANKET APPROVAL (Y OR N): EXP. DATE: 07/19/15

NOTE: ENTER EMPLOYEE NUMBER AND DATE(S) FOR WHICH BUSINESS TRAVEL IS
AUTHORIZED OR ENTER EMPLOYEE NUMBER AND "Y" FOR 180 DAYS BLANKET APPROVAL.
AUTHORIZATION SCREEN WILL ONLY RETAIN 14 DATES. ADDITIONAL DATES MAY BE
ENTERED BY KEYING OVER DATES WHICH HAVE ALREADY PASSED.

ENTER: HELP=CODES/INSTRUCTIONS, RETURN, BYE=LOGOFF, PRESS F8= GOC/TRNG

Michael J. Hoysler

JUMPSEAT BUSINESS AUTHORIZATION DATES UPDATED