



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

AUG 04 2016

Mr. Frank Horvat
ASCM – FedEx Freight
750 NE Fazio Way
Portland, OR 97211

Reference No. 16-0053

Dear Mr. Horvat:

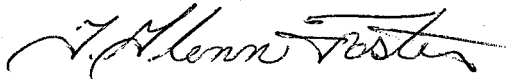
This letter is in response to your March 28, 2016, email and subsequent phone conversation with a member of my staff requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to carrier requirements when transporting packagings authorized under special permit. Specifically, you describe a scenario in which a carrier (driver from FedEx) accepts and transports a hazardous material shipment operating under a special permit that was not provided to it by the offeror/shipper at the time the shipment was tendered. Your questions have been paraphrased and answered as follows:

- Q1. Is an offeror required to furnish a copy of the special permit to the carrier in all instances when offering packagings authorized under a special permit?
- A1. The answer is no. As provided in § 173.22a(c), when a special permit issued to a person who offers a hazardous material contains requirements that apply to a carrier of the hazardous material, the offeror shall furnish a copy of the current special permit to the carrier before or at the time a shipment is tendered. However, the offeror is required to do so only when the provisions of the special permit specifically require it to be in the possession of the carrier during transportation.
- Q2. Can a carrier (driver from FedEx) rely on information provided by the offeror/shipper?
- A2. As provided in § 171.2(f), no person may transport a hazardous material in commerce unless the hazardous material is transported in accordance with applicable requirements of this subchapter, or an exemption or special permit, approval, or registration issued under the HMR. Each carrier who transports a hazardous material in commerce may rely on information provided by the offeror of the hazardous material or a prior carrier, 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 or prior carrier is incorrect.

- Q3. Can a carrier (driver from FedEx) be cited for civil penalties due to the fact that it may be transporting a special permit load without possessing a copy of the current special permit?
- A3. Generally the answer is no unless the carrier knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided (or lack thereof) by the offeror or prior carrier is incorrect. See § 171.2(f). Further, in instances where hazmat is not shipped in compliance with the HMR, the U.S. Department of Transportation generally attempts 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).¹

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,



T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

¹ <https://www.gpo.gov/fdsys/pkg/FR-1998-06-04/pdf/98-14561.pdf>

Nickels
§173.22(a), 171.2(f)
Shipper's Responsibility
16-0053

Dodd, Alice (PHMSA)

From: Geller, Shelby CTR (PHMSA)
Sent: Monday, March 28, 2016 4:15 PM
To: Hazmat Interps
Subject: FW: Formal Request for Interpretation

Dear Shante and Alice,

Forwarded is a request for a formal letter of interpretation. Mr. Horvat's address is:
Frank Horvat
750 NE Fazio Way
Portland, OR 97211

Thanks,
Shelby

From: Frank Horvat [<mailto:Frank.Horvat2@fedex.com>]
Sent: Monday, March 28, 2016 2:31 PM
To: INFOCNTR (PHMSA)
Subject: Formal Request for Interpretation

I would like to submit a formal request for interpretation regarding how the shipper's requirements in 173.22a(c), if unfulfilled, affect the carrier's liability for not meeting the general requirements set forth in 171.2(f). Please note, 171.2(f) does state:

"Each carrier who transports a hazardous material in commerce may rely on information provided by the offeror of the hazardous material or a prior carrier, 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 or prior carrier is incorrect."

The underlying question I would like to get answered is if the driver (from FedEx) is transporting a hazardous material shipment requiring a special permit and the permit was not provided by the shipper at the time it was picked up can the driver or carrier (FedEx) be cited for not having the special permit with him or her during the transportation of the shipment?

If you need any additional information please let me know.

Thanks,

Frank Horvat
ASCM – FedEx Freight
Portland, OR 97211
971-806-5077