



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

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

AUG 18 2016

Mr. Jeff Messer
XPO Logistics
4701 East 32nd Street
Joplin, MO 64804

Reference No. 16-0061

Dear Mr. Messer:

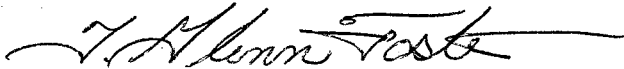
This letter is in response to your April 11, 2016, email and subsequent telephone conversation requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to a scenario where the offeror loads the transport vehicle. Specifically, you state that you are an over-the-road commercial carrier that transports trailers loaded by the offeror, and you provide photographs of a scenario showing the loaded trailer in the condition in which it was offered to the driver. The driver did not participate in the loading but did provide a general inspection of the open trailer, verifying that the cargo visible at the tail of the trailer was properly secured, as shown in the enclosed photographs. During the course of transportation, the carrier was stopped by a State enforcement agent and the trailer was inspected, whereupon the agent determined the interior cargo—which was not visible or assessable from the end of the trailer—was not secured. You are requesting an interpretation to determine if you are correct in your understanding that the driver exercised reasonable care and that the enforcement citation should go to the offeror.

It is the opinion of this Office that, barring additional information pertinent to the scenario you describe, the shipper performed and was responsible for the loading and package securement requirements of § 177.834(a). 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—or a reasonable person acting in the circumstances and exercising reasonable care—has 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, the Department of Transportation 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 full interior of 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 had actual or constructive knowledge, beyond the information available in the photographs, that the interior packages were not properly secured, we see no reason for the driver to have refused this shipment.

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

Sincerely,

A handwritten signature in cursive script, reading "T. Glenn Foster". The signature is fluid and extends to the right with a long horizontal stroke.

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

Lehman
\$173.30 + 177.834
Shippers Respons.
16-0061

Dodd, Alice (PHMSA)

From: Geller, Shelby CTR (PHMSA)
Sent: Wednesday, April 13, 2016 11:43 AM
To: Hazmat Interps
Subject: FW: 173.30 and 177.834
Attachments: ohio letter.pdf; 20150827_101916.jpg; 20150827_101939.jpg; 20150827_101946 (1).jpg

Dear Shante and Alice,

Forwarded is a request for a formal letter of interpretation. Mr. Messer spoke with Jordan.

Thanks,
Shelby

From: Jeff Messer [<mailto:jeff.messer@xpo.com>]
Sent: Monday, April 11, 2016 4:24 PM
To: PHMSA HM InfoCenter
Subject: 173.30 and 177.834

I have attached three photos and copy of a letter of interpretation # 13-0195. Our company had a driver pick up a loaded trailer that he inspected for securement (see pics). Our driver did not participate in the loading of the trailer and only was able to view the rear of the trailer and relied on the shipping papers being certified. According to the attached letter I would believe the driver did rely on the information provided from the offer and of the hazmat and did exercise reasonable care and acted in a circumstance and exercised reasonable care and did not know the offeror did not secure the cargo beyond the tail of the truck. The end of the letter states that a driver may not ignore readily apparent information that would indicate the packages are not properly secure. I believe our driver did due diligence by inspecting the load and relying on information from the shipper. Would the proper violation be against the offeror under 173.30. if found in a road side inspection.

Jeff Messer
Truckload | Safety Analyst

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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.

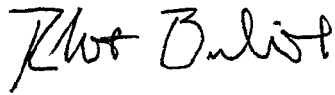
It is the opinion of this Office that, and barring additional information pertinent to the scenario you describe, the person performing the loading of the hazmat packages in the motor vehicle is in violation of the package securement requirements of § 177.834(a); in this case the shipper. Regarding carrier 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 cursive script, appearing to read "Robert Benedict".

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.

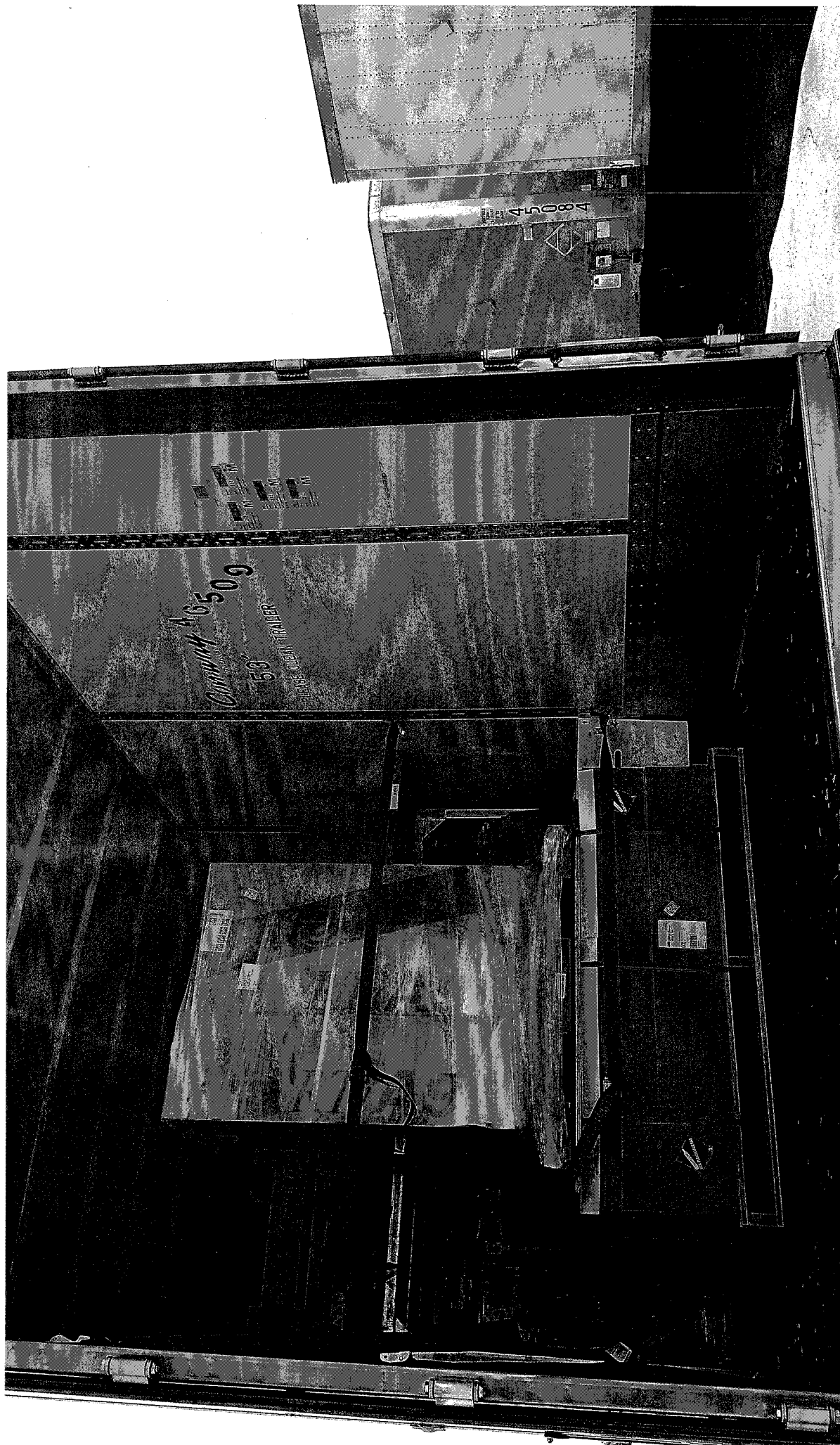
While transporting the shipment between Point A and Point B the carrier get stopped and inspected by a MCSAP certified inspector. The inspector discovers the hazardous material is not secured at all.

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
Phone 614-644-0296
Fax 614-728-2133



Company 46509

53' PLEASE CLEAN TRAILER



9/24/18

46509

AVI FREIGHT

RIGHT



32A 634



32A 634