



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

OCT 11 2016

Mr. Vincent Vitollo
The Journal of Hazmat Transportation
President and Publisher
PRI International, Inc.
404 Price Street
West Chester, PA 19382

Reference No. 16-0158

Dear Mr. Vitollo:

This letter is in response to your August 26, 2016, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to reverse logistics. Specifically, you ask about regulatory language that was proposed in the HM-253 Notice of Proposed Rulemaking (NPRM) published on August 11, 2014 [79 FR 46748].

You note that the NPRM included proposed language in § 173.157 stating:

When transported by motor vehicle in conformance with this section, a hazardous material is not subject to any other requirements of this subchapter besides those set forth and referenced in this section.

You further note that the sentence was not included in the HM-253 final rule published on March 31, 2016 [81 FR 18527]. Therefore, you seek comment on your literal reading of the HM-253 final rule, which is that shipments made by private carriers under § 173.157(c) would be subject to training requirements under Subpart H, Shipping Papers, Labeling, Marking, and Placarding.

You are correct that the Pipeline and Hazardous Safety Administration (PHMSA) removed the cited language from the HM-253 final rule. In drafting the final rule, PHMSA determined that separate conditions would be allowed for reverse logistics shipments made by private carrier versus non-private carrier. This modification sought to ensure that reverse logistics shipments made by non-private carrier could not be transported by aircraft. When addressing shipments by non-private carrier, shippers are directed to the limited quantity sections for the applicable hazard class. These limited quantity reverse logistics shipments are then excepted from the training, labeling, and placarding requirements. Therefore, shipments made as reverse logistics limited

quantity shipments would only require a limited quantity marking and the limited training requirements as outlined in the reverse logistics section. PHMSA intended to include in the final rule these same exceptions for private carriers, but as you note, the language was not specifically stated in § 173.157(c). PHMSA will work to clarify this language in a future rulemaking.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "T. Glenn Foster".

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



Andrews
\$173.157
Reverse Logistics
16-0158

August 26, 2016

U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Question for the PHMSA:

Dear Sir or Madam:

It has been brought to our attention that PHMSA in issuing its HM-253 final rule on reverse logistics on March 31, 2016 omitted an important sentence that appeared in the HM-253 NPRM. The proposal in PHMSA's NPRM dated August 11, 2014, included a proposed first paragraph of 173.157 with the heading "General" that included a sentence saying:

"When transported by motor vehicle in conformance with this section, a hazardous material is not subject to any other requirements of this subchapter besides those set forth or referenced in this section."

We note that this sentence was not included in the final rule. In our opinion, this was an important part of 173.157, because it signaled that, if you met the requirements of 173.157, you were not required to meet all the other parts of the HMR normally applicable. It is our reading of the final requirements that by omission of the above sentence any relevant HMR requirement that is not specifically exempted by 173.157 must be met.

For reverse logistics shipments under 173.157(c), the result of not including the above quoted NPRM sentence seems particularly significant. Absent any sentence to the contrary, it would appear the HMR is broadly applicable in the case of the reverse logistics hazmat under 173.157(c). Based on our literal reading, requirements that in our opinion appear to apply in the case of reverse logistics, include:

- *Training* under Part 172 Subpart H.
- *Shipping papers.*
- *Labelling and Marking.*
- *Placarding.* and
- *Hazmat CDL.*

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This is contrary to what we had understood to be the intent of the HM-253 rulemaking.

We would like to discuss this issue in the next edition of the Journal and would appreciate any comment PHMSA could make on this topic.

Sincerely,

A handwritten signature in cursive script, appearing to read "Vincent Vitollo".

Vincent Vitollo

The Journal of HazMat Transportation

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