



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

Office of
Chief Counsel

1200 New Jersey Avenue, S.E.,
PHC-10, Room E26-331
Washington, D.C. 20590-0001
Phone: (202)366-4400
Fax: (202) 366-7041
Email: shawn.wolsey@dot.gov

**Hazardous Materials Safety
Law Division**

LETTER OF INTERPRETATION

October 6, 2010

Andrea Abraham, Esq.
Meeks, Sheppard, Leo & Pillsbury
1735 Post Road, Suite 4
Fairfield, CT 06824

Dear Ms. Abraham:

This letter is in response to your email request on September 8, 2010 in which you asked for a Letter of Interpretation from the Office of the Chief Counsel. In particular, you are concerned with the offeror's responsibilities.

The Hazardous Materials Regulations, in 49 C.F.R. § 171.8, define a "Person who offers or offeror" as:

(1) Any person who does either or both of the following:

(i) Performs, or is responsible for performing, any pre-transportation function required under this subchapter for transportation of the hazardous material in commerce.

(ii) Tenders or makes the hazardous material available to a carrier for transportation in commerce.

(2) A carrier is not an offeror when it performs a function required by this subchapter 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 this subchapter, 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.

Further, the Hazardous Materials Regulations, in 49 C.F.R. §171.8, define “Pre-transportation function” as:

a function specified in the HMR that is required to assure the safe transportation of a hazardous material in commerce, including—

- (1) Determining the hazard class of a hazardous material.
- (2) Selecting a hazardous materials packaging.
- (3) Filling a hazardous materials packaging, including a bulk packaging.
- (4) Securing a closure on a filled or partially filled hazardous materials package or container or on a package or container containing a residue of a hazardous material.
- (5) Marking a package to indicate that it contains a hazardous material.
- (6) Labeling a package to indicate that it contains a hazardous material.
- (7) Preparing a shipping paper.
- (8) Providing and maintaining emergency response information.
- (9) Reviewing a shipping paper to verify compliance with the HMR or international equivalents.
- (10) For each person importing a hazardous material into the United States, providing the shipper with timely and complete information as to the HMR requirements that will apply to the transportation of the material within the United States.
- (11) Certifying that a hazardous material is in proper condition for transportation in conformance with the requirements of the HMR.
- (12) Loading, blocking, and bracing a hazardous materials package in a freight container or transport vehicle.
- (13) Segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo.
- (14) Selecting, providing, or affixing placards for a freight container or transport vehicle to indicate that it contains a hazardous material.

The following summarizes your scenario:

You represent company (A) which has transported a hazardous material to another company (B). A package needs to be returned to Company A, so Company A issues a call tag to have the material picked up from Company B and shipped back to Company A. United Parcel Service (UPS) goes to Company B with a return label, puts it on the package and returns the

package to Company A. What liability could Company A face if an incident occurs en route? Does the liability issue change if the shipment is still in the original Company A packaging and has not been repacked by Company B?

In your scenario, Company A has engaged in pre-transportation functions by packaging, marking and labeling the package. Company A has also made the hazardous material available to a carrier for transportation to Company B. When the package goes from Company A to Company B, Company A has performed all pre-transportation functions and offered the package into commerce. Company A is responsible and must comply with the Hazardous Materials Regulations.

When a call tag has been issued by Company A for the hazardous material to be returned to Company A, and Company B has not opened the package, Company B has not engaged in any pre-transportation functions due to the fact that they have not selected the packaging, marked or labeled the package. UPS, as the carrier who places the return label on the package is not a person who offers. However, Company B, is a person who offers because they have made the package available to a carrier for transport. In this situation, Company A and B must both comply with the requirements of the Hazardous Materials Regulations. Company A would have more culpability under the regulations because they selected the packaging, marked and labeled the package.

If Company B has opened and closed the package, or placed the hazardous material into a new package, they have engaged in pre-transportation functions and must assure that the package is properly closed and certify that the hazardous material is in proper condition for transportation in conformance with the requirements of the HMR. Company B is responsible for the package.

You have also asked the following questions:

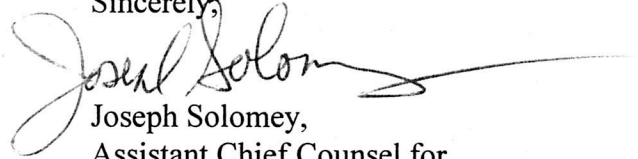
Do the Interpretation letters CHI-04-001 and CHI-04-002 apply to this case? The interpretation letters that you have referenced do not apply to this scenario. Interpretation Letters CHI-98-001 and CHI-89-001 are more on point to this scenario.

Are there any other interpretation letters involving call tags? No.

Are there any enforcement actions regarding call tags? If so, please provide the numbers/dates. PHMSA has not had any enforcement actions against a company regarding call tags.

I hope this information is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Solomey", with a long horizontal flourish extending to the right.

Joseph Solomey,
Assistant Chief Counsel for
Hazardous Materials Safety