



U.S. Department  
of Transportation

Pipeline and Hazardous Materials  
Safety Administration

1200 New Jersey Ave., SE  
Washington, DC 20590

DEC 11 2009

Mr. Calvin Faulkner  
D&H Specialist  
APL Americas Region  
1111 Broadway  
Oakland, CA 94607-5500

Ref. No. 08-0301R

Dear Mr. Faulkner:

This letter replaces our February 10, 2009 response to your December 5, 2008 e-mail in which you raised several questions regarding the term "initial carrier" and a vessel operator's responsibilities under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Please note that the answers to questions Q1, Q3 and Q5 are revised in response to questions that have arisen and our further review of this issue. Our answers to your questions are revised to read as follows:

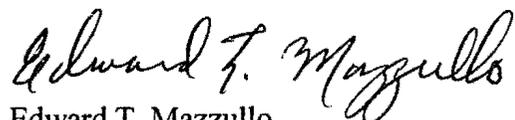
- Q1. Under § 171.22(f)(2), is the vessel operator considered the "initial U.S. carrier" for the purpose of maintaining the shipper's certification required by § 172.204 or is the term "initial U.S. carrier" used to describe the first carrier to transport a hazardous material shipment once importation occurs and it is within United States jurisdiction?
- A1. The term "initial U.S. carrier" is not defined in the HMR. As used in § 171.22(f)(2), it refers to the first carrier to transport a hazardous material shipment within the United States. This role is met when a vessel enters the navigable waters of the United States as defined in 33 CFR 2.36. A vessel operator is required to receive a shipper's certification in accordance with § 176.27 for a hazardous material shipment, unless the material is excepted from the shipping paper requirements under the HMR.
- Q2. What is the obligation of a vessel operator if a hazardous material shipment arrives at a United States port without a prepared shipper's certification as required by § 172.204?
- A2. Unless a hazardous material is excepted from the shipping paper requirements under the HMR, under §§ 176.24 and 176.27, a person (vessel operator) may not transport a hazardous material by vessel unless that person has received a shipping paper prepared in accordance with Part 172 of the HMR, including the shipper's certification prescribed in § 172.204. Thus, a vessel operator would be in violation of the HMR for accepting such a shipment without a shipper's certification. Additionally, the shipment could not be forwarded or offered for transportation and transported in commerce until such documentation was prepared.

- Q3. If a vessel operator releases a container that contains a hazardous material shipment to a carrier and the accompanying shipping papers do not have a shipper's certification, is it a violation of the HMR?
- A3. The answer is no. Because the vessel operator is the initial U.S. carrier, it is not required to provide a shipper's certification on the accompanying shipping papers, prepared in accordance with Part 172 of the HMR, to subsequent highway or rail carriers for onward transportation.
- Q4. Under § 177.817(b), what is the obligation of a vessel operator to provide a prepared shipper's certification to a highway or rail carrier prior to the release of a containerized hazardous material shipment to the highway or rail carrier?
- A4. The answer to your question is the same as the answer in A3 above.
- Q5. Is it permissible for a vessel operator to transfer a hazardous material shipment to the initial U.S. carrier without a shipper's certification on the shipping paper? The vessel operator would indicate on the original shipping paper, prepared in accordance with the IMDG Code, "shipper's certification on file" and retain a copy of the documentation for one year as required by § 172.201(e).
- A5. As stated in response A1, in your scenario the vessel carrier is the initial U.S. carrier. Therefore, if a vessel carrier accepts a hazardous material shipment from a shipper and transfers the shipment to a highway or rail carrier upon entering the United States, only the vessel carrier is required to receive a shipper's certification. The vessel operator must retain the shipping papers with a certification as required by §§ 171.22(f)(4), 172.201(e) and 176.24(b), but is not required to furnish the shipper's certification to any connecting intermodal carrier for subsequent highway or rail transportation. Hazardous material shipments imported into the United States by vessel that are transferred to a highway or rail carrier must be in conformance with the applicable requirements in §§ 171.22, 171.23 and 171.25, including those in § 171.22(c).
- Q6. Is it permissible for a vessel operator to issue a shipper's certification based solely on the information provided in the original certification prepared by the shipper?

A6. The answer is yes. A carrier may rely on the original shipper's certification unless the carrier knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the certification provided by the offeror (shipper) is incorrect. However, a carrier who knowingly uses incorrect information (see § 171.2(e) and (f)), or a person who knowingly or willfully provides incorrect information, is in violation of the HMR.

I trust this satisfies your inquiry. Please accept my apology for any inconvenience caused by this revision of our original response.

Sincerely,

A handwritten signature in cursive script that reads "Edward T. Mazzullo". The signature is written in black ink and is positioned above the printed name and title.

Edward T. Mazzullo  
Director, Office of Hazardous Materials Standards

Stevens  
§ 171.12  
§ 172.204  
Shippers Certification  
08-0301

Drakeford, Carolyn <PHMSA>

From: INFOCNTR <PHMSA>  
Sent: Friday, December 05, 2008 11:39 AM  
To: Drakeford, Carolyn <PHMSA>  
Subject: FW: Request for clarification

From: HAZMATPALC [mailto:HAZMATPALC@APL.COM]  
Sent: Thursday, December 04, 2008 4:57 PM  
To: PHMSA HM InfoCenter  
Subject: Request for clarification

Please clarify and or provide an interpretation to the following questions:

1) Ref 49CFR, Part 171.22(f)(2), what is the impact on vessel operators transporting containerized cargo into the United States from abroad?

- Would we be considered the initial U.S. Carrier, since the hazmat would be physically under our control and on our vessel at time of entering U.S. waters and U.S. ports, or
- Is the initial U.S. Carrier terminology reserved for the rail and/or trucking companies taking possession of the container at the port?
- What is our obligation if a container arrives at a U.S. port without a shippers certification? Are we obligated to retain the container at the port and deny its delivery to the consignee, pending receipt of a shippers certification from the shipper at their overseas location?
- If a container is released to the carrier without a shippers certification, does this place us in violation of 49 CFR?

2) Ref 49CFR, 177.817(b).

- Prior to release of containerized hazmat cargo to the highway/rail carrier, are vessel operators required to provide a shipper certification to the driver and or engineer on the shipping papers?
- Can a statement be added to the shipping papers indicating that a "shippers certification" is on file, (when the original hazardous declaration was prepared per the International Maritime Dangerous Goods (IMDG) code), which we maintain on file for one year?
- If we prepare a shippers certification, based upon the shippers certification (provided by the overseas shipper) and it turns out that the hazmat cargo was not actually packaged, marked, labeled, etc per 49CFR or IMDG, are we subject to violation of 49CFR for signing a false certification? This issue has us very concerned since we would have based our certification solely on the shippers initial certification.
- If a hazardous cargo container is released to the rail or highway carrier without the shippers certification, is the vessel operator in violation of 49CFR?

Thanking you in advance for your understanding and cooperation in determining our legal responsibilities to the Department of Transportation (DOT).

Best regards,

Calvin Faulkner  
D&H Specialist

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