



U.S. Department of Transportation
**Pipeline and Hazardous Materials
Safety Administration**

1200 New Jersey Ave, S.E.
Washington, D.C. 20590

AUG 7 2009

Mr. Bill Lewis
Director
Occupational Health & Safety & Quality
YRC Reimer
1400 Inkster Blvd.
Winnipeg, Manitoba
R2X1R1

Ref. No.: 09-0122

Dear Mr. Lewis:

This is in response to your May 13, 2009 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) regarding authorization and conditions for use of international standards and regulations. Specifically, you ask for clarification of the requirement to provide timely and complete written information to forwarding agents at the place of entry into the United States for hazardous materials that are imported into the United States from Canada.

According to your letter, YRC Reimer, located in Canada, is a division of YRCW, which is based in the United States. Hazardous materials destined for the United States are loaded in accordance with Canada's Transport of Dangerous Goods Regulations (TDG Regulations). The hazardous materials shipments are then transported across the border into the United States.

Your questions are paraphrased and answered as follows:

Q1. Does the requirement to provide a shipper's certification effective May 4, 2009 apply to hazardous materials shipments originating in Canada?

A1. Yes. Prior to the publication of the final rule, HM-215F, published on May 3, 2007 (72 FR 25162), the requirement did not apply to shipments under Canada's Transport of Dangerous Goods Regulations (TDG Regulations).

Q2. Under § 171.22(f)(2), would YRC Reimer be considered the "initial U.S. carrier" for the purpose of maintaining the shipper's certification required by § 172.204?

A2. Yes. Although 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. Thus, YRC Reimer would be considered the initial U.S. carrier.

Q3. Is it permissible for a shipper to transfer a hazardous material shipment to the initial U.S. carrier without a shipper's certification on the shipping paper?

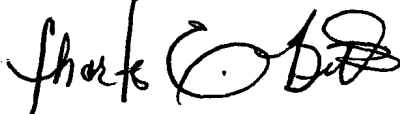
A3. No. The shipper, directly or through the forwarding agent at the place of entry, must provide the initial U.S. carrier with the shipper's certification required by §172.204. A person who knowingly violates the HMR is subject to penalty action.

Q4. What are the guidelines for HMR violations?

A4. Penalties for violations of the HMR are assessed on a case-by-case basis and depend on a number of factors, including the nature, circumstances, extent, and gravity of the violation. Enforcement procedures and civil penalty guidelines are set forth in 49 CFR Part 107, Subpart D.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Betts". The signature is stylized and written over a circular stamp or mark.

Charles E. Betts
Chief, Standards Development
Office of Hazardous Materials Standards

Drakeford, Carolyn <PHMSA>

From: Mazzullo, Ed <PHMSA>
Sent: Wednesday, May 13, 2009 4:08 PM
To: Mitchell, Hattie <PHMSA>
Cc: Gorsky, Susan <PHMSA>; Drakeford, Carolyn <PHMSA>
Subject: FW: Canadian Origin H/M Freight - Shipper's Certification Requirements
Importance: High

Leary
 §171.22
 §172.204
 §171.12
 Applicability
 09-0122

From: Lewis, Bill [mailto:Bill.Lewis@yrcw.com]
Sent: Monday, May 11, 2009 9:25 AM
To: Mitchell, Hattie <PHMSA>
Cc: Swedberg, Richard (FMCSA)
Subject: RE: Canadian Origin H/M Freight - Shipper's Certification Requirements

Could you advise please?

Bill Lewis
 Director, Occupational Health & Safety & Quality
 YRC Reimer
 PH: (204) 958-5000 X5011
 Fax: (204) 694-1275
bill.lewis@yrcw.com

From: Lewis, Bill
Sent: Tuesday, April 28, 2009 7:10 PM
To: 'hattie.mitchell@dot.gov'
Cc: 'Richard.Swedberg@dot.gov'
Subject: Canadian Origin H/M Freight - Shipper's Certification Requirements

HelloI secured your name and email address from Richard Swedberg today. I contacted Richard about clarification on the May 4, 2009 changes to 49CFR 172.204 where our Canadian shippers of H/M materials destined to the USA are going to be required to show a Shippers Certification on their shipping documents.

YRC Reimer is a division on YRCW based in Overland Park KS. H/M shipments destined to the USA are loaded in Canada under the Canadian TDG regulations. The freight is moved by Canadian Line Haul drivers as sealed trailer loads across the US border to a YRC facility (eg: St Paul MN, Buffalo NY) and taken to final destination by US YRC equipment/drivers. Our Canadian Line Haul drivers carry a copy of the original shipper's H/M document(s) in the cab with them as required by TDG regs.

Our Canadian H/M shippers comply with Canadian TDG regulations and are unlikely to

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know or comply with this 49CFR Shipper Certification rule effective May 4, 2009.

If our Canadian Line Haul drivers are stopped and inspected in the USA and the original shipper's H/M document(s) do not provide the shipper's certification:

- Are we subject to US violations and fines?
- If a fine is applicable what would it be set at?
- As we are the same company as YRC USA are we considered the "initial US Carrier"?
- Is this 172.204 change applicable to our US destined H/M shipments?

Appreciate your comments and direction.

Bill Lewis
Director, Occupational Health & Safety & Quality
YRC Reimer
PH: (204) 958-5000 X5011
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bill.lewis@yrcw.com

From: Richard.Swedberg@dot.gov [mailto:Richard.Swedberg@dot.gov]
Sent: Tuesday, April 28, 2009 6:26 PM
To: Lewis, Bill
Subject: FW:

Richard Swedberg
Western Service Center
Hazardous Materials Program Manager
303-407-2368

From: Swedberg, Richard <FMCSA>
Sent: Tuesday, April 28, 2009 4:16 PM
To: Brewster, Janelle <FMCSA>; Moravec, William <FMCSA>; Schmalz, Albert <FMCSA>; Lucero, Robert <FMCSA>; Tomlinson, Donald <FMCSA>
Cc: Eno, Andrew <FMCSA>; Macias, Dolores <FMCSA>; Jensen, Jeff <FMCSA>; Holmes, Bruce <FMCSA>; Cunningham, Wendy <FMCSA>; Evans, Joseph <FMCSA>; Phillips, Kris <FMCSA>; Simmons, James <FMCSA>
Subject: RE:

As Janelle has suggested, this is the interpretation that she has referenced regarding this issue.
Rich

PHMSA Interpretation #08-0301

Feb 10, 2009

PHMSA Response Letter

February 10, 2009

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

Ref. No. 08-0301

Dear Mr. Faulkner:

This responds to a series of questions submitted by you in an e-mail regarding vessel operator responsibilities under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Your questions are paraphrased and answered as follows:

Q1. Under § 171.22(f)(2), should a vessel operator be 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 U.S. 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.

Q2. What is the obligation of a vessel operator if a hazardous material shipment arrives at a U.S. port without a prepared shipper's certification as required by § 172.204?

A2. Under § 176.24, a person may not accept a hazardous material for transportation or transport a hazardous material by vessel unless that person has received a shipping paper prepared in accordance with Part 172 of the HMR (unless the material is excepted from the shipping paper requirements under the HMR). This requirement includes a shipper's certification under § 172.204. Thus, a vessel operator would be in violation of the HMR for initially accepting such a shipment. 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 without a shipper's certification, is it a violation of the HMR?

A3. In accordance with § 171.22(f)(2) it is a shipper's responsibility, either directly or through the forwarding agent at the place of entry, to provide the initial U.S. carrier with the shipper's certification when required by § 172.204. Additionally, after May 4, 2009, this requirement applies to an imported hazardous materials shipment prepared in accordance with Transport Canada's Transportation of Dangerous Goods Regulations. A carrier may not accept for transportation or transport a shipment of hazardous materials that is not accompanied by a prepared shipper's certification when such certification is required.

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. The answer is no. Unless otherwise excepted in § 172.204(b), each person who transfers an imported hazardous material shipment must provide the initial U.S. carrier a certification that the hazardous material shipment is being offered for transportation in accordance with the HMR and applicable international regulations. The certification statement required by the HMR must be printed (manually or mechanically) on the shipping paper containing the shipping description of the hazardous material.

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 contact us if we can be of further assistance.

Sincerely,

Hattie L. Mitchell
 Chief, Regulatory Review and Reinvention
 Office of Hazardous Materials Standards

5/15/2009

171.22, 172.204

DMS ID# 08-0301

Richard Swedberg
Western Service Center
Hazardous Materials Program Manager
303-407-2368

From: Brewster, Janelle <FMCSA>
Sent: Tuesday, April 28, 2009 3:48 PM
To: Swedberg, Richard <FMCSA>
Cc: Eno, Andrew <FMCSA>
Subject: RE:

On Page 234 of March/April 2009, The Journal of HAZMAT Transportation there is an interpretation titled, Who is the Initial US Carrier?, last paragraph discusses the movement between Canada and US. You may want to include the interpretation in your correspondence.

From: Swedberg, Richard <FMCSA>
Sent: Tuesday, April 28, 2009 2:14 PM
To: Jensen, Jeff <FMCSA>; Holmes, Bruce <FMCSA>; Macias, Dolores <FMCSA>; Cunningham, Wendy <FMCSA>
Cc: Brewster, Janelle <FMCSA>; Lucero, Robert <FMCSA>; Moravec, William <FMCSA>; Schmalz, Albert <FMCSA>; Tomlinson, Donald <FMCSA>
Subject:

TO ALL,

This regulation from 49 CFR 171.22 is nearly in effect.(May 4, 2009) I received a call from a Winnipeg carrier concerning this and this reg is in addition to the 171.12 regulations that have accepted much of the TDG's regulations. Just something to be aware.

Rich

(f) *Complete information and certification.*

(f)(1) Except for shipments into the United States from Canada conforming to §171.12, each person importing a hazardous material into the United States must provide the forwarding agent at the place of entry into the United States timely and complete written information as to the requirements of this subchapter applicable to the particular shipment.

(f)(2) After May 4, 2009, the shipper, directly or through the forwarding agent at the place of entry, must provide the initial U.S. carrier with the shipper's certification required by §172.204 of this subchapter, unless the shipment is otherwise *excepted* from the certification requirement. Except for shipments for which the certification requirement does not apply, a carrier may not accept a hazardous material for transportation unless provided a shipper's certification.

(f)(3) All shipping paper information and package markings required in accordance with this subchapter must be in English. The use of shipping papers and a package marked with both English

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and a language other than English, in order to dually comply with this subchapter and the regulations of a foreign entity, is permitted under this subchapter.

(f)(4) Each person who provides for transportation or receives for transportation (see §§174.24, 175.30, 176.24 and 177.817 of this subchapter) a shipping paper must retain a copy of the shipping paper or an electronic image thereof that is accessible at or through its principal place of business in accordance with §172.201(e) of this part.

Richard Swedberg
Western Service Center
Hazardous Materials Program Manager
303-407-2368