



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety Administration**

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***Hazardous Materials Safety  
Law Division***

**LETTER OF INTERPRETATION**

March 12, 2010

Mr. Mickey R. Dragash  
Wal-Mart Stores, Inc., Legal Department  
601 North Walton Boulevard, MS-L20  
Bentonville, Arkansas 72716-0710

**Ref. No.: 10-0097**

Dear Mr. Dragash:

This letter is in response to the meeting that occurred on September 22, 2009 in which Wal-Mart asked for clarification of a previous Letter of Interpretation (08-0133) that was issued by the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Office of Hazardous Materials Standards. Attendees at that meeting included Messrs. Sharkey, Evans, you, and PHMSA's legal and program staff. Previously, Wal-Mart Legal asked PHMSA to examine the requirements that apply to loading hazardous materials on the rear of a trailer for purposes of inspection, and specifically asked my office to clarify the phrase "must be made available for examination and inspection," which is found in 49 C.F.R. § 177.802 "Roadside inspection." You also asked if requiring the hazardous materials to be placed on the rear of the trailer is an unreasonable requirement.

The phrase "must be made available for examination and inspection" does not require the carrier to load the hazardous material on the rear of the trailer. Requiring all the hazardous materials to be placed on the rear of the trailer would be an unreasonable inspection requirement.

The following summarizes your scenario:

Wal-Mart owned and operated trailers are loaded at distribution centers and company employed drivers deliver goods to individual stores. These trailers regularly carry hazardous materials, which may be loaded anywhere on the trailer and mixed with general

merchandise. On several occasions, state enforcement officers have stopped your tractor trailers and demanded that the driver allow the inspection of the trailers for hazardous materials, pursuant to 49 C.F.R. §177.802. The state officials have taken the position that the hazardous materials shipments must be loaded on the rear of the trailer at all times. When the hazardous materials were not loaded at the rear of the trailer, the state officials directed the driver to the nearest rest stop, or some other location, to unload the trailer for inspection of the hazardous materials in question. Several of the tractor trailers were placed out of service as a result of the inspections and Wal-Mart drivers were issued citations or given warnings.

In coming to our determination, we consulted the preambles to the final rule<sup>1</sup> and the Notice of Proposed Rulemaking<sup>2</sup> (NPRM). The language “made available for examination or inspection,” was not addressed in the preamble to the final rule, however, the rule specifically emphasized the inspection of carrier facilities and records but not trailers. The preamble to the NPRM states: “Section 177.802 would be removed and a new section governing the inspection of carrier facilities and records would be added. These inspection requirements are similar to those applicable to rail and air carriers.”

The inspection requirement was adopted from the regulations that pertain to rail carriers found in 49 C.F.R. §174.8 (11-1-85 Edition), which stated, in pertinent part:

(b) At any point where a train is required to be inspected, each loaded placarded rail car and each rail car immediately adjacent thereto must be inspected. The cars may continue in transit only when the inspection indicates that the cars are in a safe condition for transportation. (See §§ 174.9 and 174.10.) The inspection of a rail car other than a tank car or a rail car containing Class A explosives must include a visual inspection for obvious defects of the running gear and any leakage of contents from the car and to determine whether all required placards are in place and conform to the information given on the train consist or other shipping document as required by § 174.26(b).

In 1976, The Materials Transportation Bureau (a predecessor to PHMSA) consolidated the air, water, and surface transportation hazardous materials regulations into one volume and amended the regulations to ensure consistency in their application to the different modes. The final rule<sup>3</sup> does not state the intent for the rule. The amendment to consolidation<sup>4</sup> states that Section 174.8: “[a]lso requires an inspection of all placarded cars at points where trains are required to be inspected. The Bureau believes that this requirement will contribute substantially to safety without placing an unreasonable burden on the rail carriers.”

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<sup>1</sup> HM-183, 54, Fed. Reg. 24982, 24992 (June 12, 1989).

<sup>2</sup> HM-183-A, 50 Fed. Reg. 37766, 37773 (September 17, 1985).

<sup>3</sup> HM-103/112, 41 Fed. Reg. 57018 (December 30, 1976)

<sup>4</sup> HM-112, 41 Fed. Reg. 15972, 15986 (April 15, 1976).

The Materials Transportation Bureau intended that the inspections take place at points where trains are to be inspected without placing an unreasonable burden on the rail carrier. The place to inspect a train is a rail yard, the point of origin and the point of destination. Rail carriers must keep schedules, and the Bureau did not intend to disrupt the rail schedules. The NPRM for 49 C.F.R. § 177.802 specifically stated that the origination of the motor carrier inspection requirements are similar to the rail carrier requirements. The preambles to the NPRM and Final Rule for 49 C.F.R. §177.802 both reference inspection of the carrier facilities and records. Therefore, there should be no unreasonable burden imposed on motor carriers. Roadside inspection of vehicles carrying hazardous materials is a critical enforcement tool. Generally, however, this inspection may not impose an unreasonable burden on the carrier. Requirements for a truck driver of hazardous materials to unload a trailer at a rest stop, the roadside or similar location for inspection of hazardous materials packages places an unreasonable burden on the carrier. Section 177.802 does not impose such requirements.

Contemporaneous with the HM-183, 183A rulemaking, the agency proposed to remove long-standing requirements from 49 C.F.R. § 177.834 concerning access to loadings. In an NPRM<sup>5</sup> published June 3, 1986, RSPA, proposed to remove paragraph (k) which read as follows: “(k) *Access to mixed loadings.* Flammable solids, oxidizing materials, or corrosive liquids, when transported on a motor vehicle with other lading not otherwise forbidden, shall be so loaded as to provide ready access thereto for shifting or removal”.

As stated in the preamble to the NPRM, reasons for the change were as follows: The American Trucking Association, Inc. (ATA) had petitioned for removal of paragraph (k). “The ATA believes that carrier operating practices should dictate how the weight of the load should be distributed throughout the trailer to insure an optimum level of vehicle stability and compliance with weight laws. The motor carrier also should be given the flexibility to load the trailer to minimize the possibility of lighter packages being crushed by heavier freight.”<sup>6</sup>

The final rule<sup>7</sup> indicates that nineteen commentators supported the removal of paragraph (k), and the provision was removed. There were no other requirements for access to hazardous materials stowed on a vehicle in the HMR. If the industry had viewed the new 49 C.F.R. § 177.802 added under HM-183, 183A as implementing more stringent requirements for making hazmat accessible during transport, there would have been strong opposition during the notice stage.

To be consistent with the intent of the NPRM, and PHMSA’s letter of interpretation, PHMSA must uphold that hazardous materials are not required to be stored in the rear of a trailer to allow for an inspection in accordance with 49 C.F.R. §177.802 and that requiring a driver of a tractor trailer to unload the contents of the trailer, at a place other than the truck’s origin or destination, places an unreasonable burden to on the driver.

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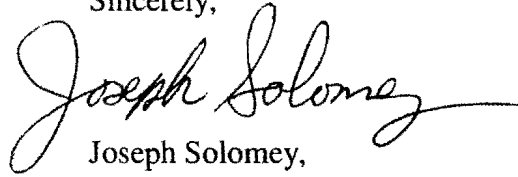
<sup>5</sup> HM-166U, 51 Fed. Reg. 19866 (June 3, 1986).

<sup>6</sup> *Id.* at 19873.

<sup>7</sup> HM-166U, 52 Fed. Reg. 13034, 13036 (April 20, 1987).

I hope this information is helpful.

Sincerely,

A handwritten signature in black ink that reads "Joseph Solomey". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Joseph Solomey,  
Assistant Chief Counsel for  
Hazardous Materials Safety