



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

OCT 28 2005

Mr. John G. Mayfield, DGSA
Manager, Dangerous Goods Transportation
Fisher Scientific International
2000 Park Lane
Pittsburgh, PA 15275-1126

Ref. No: 05-0236

Dear Mr. Mayfield:

This is in response to your September 29, 2005, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) for the transportation of hazardous materials by more than one offeror as amended by Docket HM-223A (July 28, 2005). Your questions are paraphrased and answered below.

Q1: May there be more than one offeror for a shipment of hazardous materials? May each offeror rely on information provided by another offeror?

A1: The answer is yes. For purposes of the HMR, an offeror is any person who: (1) performs, or is responsible for performing, any pre-transportation function required under the HMR for transportation of a hazardous material in commerce; or (2) tenders or makes the hazardous material available to a carrier for transportation in commerce. There may be more than one offeror of a shipment of hazardous materials. Each offeror is responsible for complying with the requirements of the HMR with respect to any pre-transportation function that it performs or is required to perform; however, each offeror is responsible only for the specific pre-transportation functions that it performs or is required to perform. Further, each offeror may rely on information provided by another offeror, unless that offeror knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the other offeror is incorrect.

Q2: Would there be any modifications of civil penalties under the HMR, when one offeror relies on information provided by another offeror for a shipment of hazardous materials?



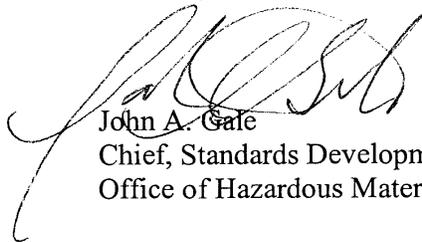
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171.2(b)

A2: Each person who performs a function governed by the HMR is responsible for complying with the appropriate requirements of the HMR. Penalties for noncompliance with the HMR are based on a number of statutory and regulatory factors and are determined on a case-by-case basis.

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

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Gale", is written over the typed name.

John A. Gale
Chief, Standards Development
Office of Hazardous Materials Standards



September 29, 2005

Ms. Susan Gorsky, Regulations Officer
Office of Hazardous materials Standards
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
400 Seventh Street, SW
Washington, DC 20590-0001

FAX: 202 366-3012

Re: Docket No. PHMSA-04-19173 (HM223A); RIN 2167-AE04

Dear Ms. Gorsky:

Fisher Scientific respectfully requests some clarification on the application for Final Rule HM-223A, published July 28, 2005.

As we understand this rulemaking, PHMSA is stating that there may be more than one offeror of a hazardous material for transportation and that carriers and freight forwarders may accept classifications provided to them during the transportation of a hazardous material shipment. In the General Requirements [49 CFR 172.2 (b)], you state that "... and each offeror may rely on information provided by another offeror, unless that offeror knows or, a reasonable person . . . would have knowledge that the information provided by the other offeror is incorrect."

Does this mean that if an original shipper offers a material as regulated for transportation, using a specific proper shipping name, hazard class or division and identification number, a receiver may accept that classification to re-offer the material for transportation? If, for example, the original manufacturer classifies a material as Flammable Liquid, N.O.S. (Methanol, Acetone), 3, UN1993, II, may any subsequent receiver, lacking any substantive knowledge or indication that the original offeror was unable or inadequately prepared to perform the prescribed pre-transportation functions, rely upon that classification and use it when offering the material for transportation without independently verifying its complete accuracy?

Conversely, if the original vendor ships a material as non-regulated, is it acceptable for a receiver, again lacking any substantive knowledge to question or refute the original offeror abilities, to accept and subsequently use that classification also? Although the definition of "offeror" under 49 CFR is specifically designated for a hazardous material shipment, it would appear that the application would apply equally to the assessment that a particular material is not subject to the HMR. Is this the intent of this rule?

If the intent of this regulation is to provide for more than one offeror, will PHMSA modify the penalty actions for violation of the Hazmat regulations when one offeror relies upon the representations of another offeror? Specifically, will the wording of IV. B. of Appendix A to Subpart D of Part 107-Guidelines for Civil Penalties be modified? Or is the intent of "...and each offeror may rely on information provided by another offeror, . . ." merely to provide a 25% reduction in penalty collection? In either case, Fisher Scientific may have some additional comments or questions.

Please let us know if you have questions about the above. We look forward to hearing from you at your earliest convenience.

Respectfully,

John G. Mayfield, DGSA
Manager, Dangerous Goods Transportation

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Applicability
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