



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

FEB 4 2008

Mr. Greg T. Neylon
Senior Chemical Transportation Administrator
YRC Worldwide Enterprise Services, Inc.
10990 Roe Avenue
Overland Park, Kansas 66211

Ref. No.: 08-0022

Dear Mr. Neylon:

This responds to your December 6, 2007 letter concerning requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to persons who transport hazardous materials in commerce. Specifically, you ask whether a carrier may also meet the definition for “person who offers or offeror” under the HMR.

The answer is yes. As defined in § 171.8, a “person who offers or 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. The definition recognizes that a carrier may be required to perform certain pre-transportation functions in order to facilitate or continue the transportation of a hazardous material in commerce. If a carrier performs a pre-transportation function, the carrier is an offeror for purposes of the HMR and must perform the function in accordance with applicable regulatory requirements.

The HMR consider certain operations to be either pre-transportation or transportation functions, depending on the entity that performs them or the context in which they are performed. For example, pre-transportation functions include loading, blocking and bracing, and segregating a hazardous material in a transport vehicle or freight container when these operations are conducted by a shipper. However, loading operations, including blocking and bracing and segregating a hazardous material in a transport vehicle or freight container, are considered “loading incidental to movement” and, thus, transportation functions when they are performed by carrier personnel or in the presence of carrier personnel. A carrier that loads a transport vehicle or freight container is performing a transportation function and is not considered “a person who offers or offeror” for purposes of the HMR.

Similarly, a carrier is not an offeror when it performs a function as a condition of accepting a hazardous material for transportation in commerce. Selecting, providing, or affixing placards on a freight container or transport vehicle is a pre-transportation function when performed at the time a package or shipment is initially prepared for transportation. However, a carrier who provides and affixes placards to a freight container or transport vehicle performs these functions

as a condition of acceptance and is not considered “a person who offers or offeror” for purposes of the HMR.

Notwithstanding the designation of an operation as a pre-transportation or transportation function, the person performing the function is responsible for performing it in accordance with all applicable HMR requirements. The same is true for a carrier performing functions as a condition of acceptance of a hazardous material in commerce. Note that a carrier may rely on information provided by a prior offeror or carrier unless the carrier knows, or in the exercise of reasonable care, should know that the information provided is incorrect.

I hope this information is helpful.

Sincerely,

Handwritten signature of Edward T. Mazzullo in cursive script.

Edward T. Mazzullo
Director, Office of Hazardous
Materials Standards

YRC Worldwide
Enterprise Services, Inc.
10940 Rose Avenue
Cleveland Park, KS 66211
Phone: (913) 344-3000
www.yrc.com



YRC Worldwide
Enterprise Services

December 6, 2007

Mr. Ed Mazzullo
Director
Office of Hazardous Materials Standards
U.S. Department of Transportation
Washington DC. 20590

Ehorsky
§171.8
Definitions
08-0022

Delivery by E-MAIL

Request for Interpretation

Dear Mr. Mazzullo,

I am requesting an interpretation regarding the difference between an "offerer" and the "transporter".

Please refer to Mr. John A. Gale's letter to Mr. Jonathan Ward (07-0035) for easy reference.

Because the "transporter" (12) may load, block and brace packages in a freight container as a necessary function in a cross dock operation, or the "transporter" (13) may have to segregate hazardous materials packages in a freight container, or the "transporter" (14) may select, provide or affix placards, does this then also place the "transporter" in the category of "offeror"?

The interpretation is very clear in referencing these items in a "pre-transportation function". After the carrier takes possession of the lading, the functions that are inherent to "transportation" must be assessed as being in the "transportation" description. "Carriers for Hire" can not be held in double jeopardy as an "offeror" and a "transporter" when the function performed is "exclusively" that of a "transporter". Functions such as loading, blocking, bracing, segregation, and placarding are "transportation" function after the lading is tendered, by their very nature.

It is with this information in mind that I ask the question, Can a Transporter for hire of a Hazardous Material in performance of the function as Transporter also be the Offeror after accepting the lading specifically and only for transport?

If you need to contact me please feel free to call me at (913) 344 3055.

YRC Worldwide
Enterprise Services, Inc.
10000 Rock Avenue
Overland Park, KS 66211
Phone: 913.244.3300
www.yrc.com



YRC Worldwide
Enterprise Services

I look forward to your interpretation in this matter.

Sincerely

A handwritten signature in black ink that reads "Greg T. Neylon". The signature is fluid and cursive, with a large, prominent initial "G".

Greg T. Neylon
Sr. Chemical Transportation Administrator

Enclosures



Mr. Jonathan Ward Reference No. 07-0035
Risk Manager
Cornerstone Systems. Inc.
5101 Wheelis Drive, Suite 300
Memphis, TN 38117

Dear Mr. Ward:

This responds to your February 7, 2007 e-mail, requesting clarification of the security plan requirements of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). In your e-mail, you state your company arranges for the transportation of hazardous materials with qualified motor carriers at the request of your customers. Your customers consist of customs brokers, freight forwarders, and third-party logistics companies. You state that you require your customers to sign a document verifying they are in compliance with the registration, security plan, and training requirements of the HMR. You state that many of your customers refuse to sign this document because they are not required to have a security plan. You ask whether custom brokers, freight forwarders, and third-party logistics companies are required to have a security plan in accordance with 49 CFR Part 172, Subpart I.

As required by § 172.800, each person who offers for transportation or transports in commerce one or more of the hazardous materials specified in § 172.800(b) of the HMR must develop and adhere to a security plan addressing personnel, unauthorized access, and en route security. If a broker, freight forwarder, or agent meets the definition of a "person who offers or offeror" in § 171.8 for one or more of the hazardous materials listed in § 172.800(b), then the broker, freight forwarder, or agent must develop and implement a security plan covering the security risks associated with the functions he or she performs.

As defined in § 171.8, a "person who offers or offeror" is any person who does either or both of the following: (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.

Pre-transportation functions are functions specified in the HMR under § 171.8 that are required to assure the safe transportation of a hazardous material in commerce, and include:

- (1) Determining the hazard class of a hazardous material.
- (2) Selecting a hazardous materials packaging.
- (3) Filling a hazardous material 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 NMR 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.

If a broker, freight forwarder, or agent performs one or more pre-transportation functions to prepare a hazardous materials shipment for transportation in commerce, then the broker, freight forwarder, or agent is an offeror under the HMR and is subject to all applicable regulatory requirements, including the security plan requirements. A third party logistics company or broker who contracts with a carrier to transport a shipment on behalf of the original shipper is not considered an offeror for purposes of the HMR unless it also performs one or more pre-transportation functions to prepare the shipment for transportation in commerce.

I hope this information is helpful.

Sincerely

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

171.8, 172.800

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Public Utilities Commission of Ohio
 180 East Broad Street
 Transportation Department
 Columbus, OH 43215
 Phone: (614)466-0429 Fax: (614)752-9274

DRIVER/VEHICLE EXAMINATION REPORT
 Report Number: OH3207300476
 Inspection Date: 10/03/2007
 Start Time: 11:59 AM End Time: 01:43 PM
 Insp. Level: 1-Full, Non-Bulk HM Insp.

USF HOLLAND INC
 750 E 40TH ST
 HOLLAND, MI 49423
 USDOT#: 00075806 Phone#: (616)395-5000
 MC/MX#: 059206 Fax#: _____
 State#: _____

Driver: GILLESPIE, DAVID L
 License#: G421-1725-3356 State: IL
 Date of Birth: 12/15/1953
 CoDriver: _____
 License#: _____ State: _____
 Date of Birth: _____

Location: PREBLE SCALES
 Highway: IS70
 County: PREBLE, OH

MilePost: MP1 Shipper: KMG BERNUTH, INC.
 Origin: ST. JOSEPH, MO. Bill of Lading: ORDER #61121
 Destination: FRUITLAND, MD. Cargo: HAZ MAT (ALL)

VEHICLE IDENTIFICATION

Unit	Type	Make	Year	State	License #	Company #	Vin #	GVWR	CVSA #	OOS#
1	TT	INTL	2006	IL	P544199	26146	2HSCNAPR76C190025		7015433	
2	ST	GDAN	2005	TN	T664197	534385	1GRAA06255D409921			YES

BRAKE ADJUSTMENTS

Axle #	1	2	3	4	5
Right	1 1/8	1 1/4	1 3/8	1 1/8	1 1/4
Left	1 1/4	1 1/4	1 3/8	1	1 1/4
Chamber	C-20	C-30	C-30	C-30	C-30

VIOLATIONS

Section Code	Type	Unit	OOS	Citation #	Verify	Crash	Violations Discovered
172.504(a)	F	2	N		N	N	Vehicle not placarded as required - VAN TRAILER MISSING 4 OF 4 REQUIRED CORROSIVE PLACARDS (CARRIER RELOADED TRAILER AT BREAK-BULK FACILITY)
177.823(a)	F	2	Y		U	N	No placards/markings when required - VAN TRAILER MISSING 4 OF 4 REQUIRED CORROSIVE PLACARDS
177.823(a)	F	2	N		N	N	No placards/markings when required - VAN TRAILER DISPLAYED 1 FLAMMABLE GAS PLACARD ON LEFT SIDE (REQUIRED 4 FLAMMABLE PLACARDS - OTHER 3 FLAMMABLE PLACARDS OK)
172.504(a)	F	2	N		N	N	Vehicle not placarded as required - VAN TRAILER DISPLAYED 1 FLAMMABLE GAS PLACARD ON LEFT SIDE (REQUIRED 4 FLAMMABLE PLACARDS - OTHER 3 FLAMMABLE PLACARDS OK)
177.823(a)	F	2	Y		U	N	No placards/markings when required -VAN TRAILER MISSING 4 OF 4 REQUIRED I.D. MARKING FOR BULK PACKAGE -MISSING "UN2794" FOR BULK PACKAGE OF CORROSIVES (3,662 LB)
172.331	F	2	N		N	N	Markings for other bulk packages - VAN TRAILER MISSING 4 OF 4 REQUIRED I.D. MARKING FOR BULK PACKAGE -MISSING "UN2794" FOR BULK PACKAGE OF CORROSIVES (3,662 LB)

HazMat: 6.1 (Poison); 3 Flammable; 8 Corrosive material

Placard: Yes Cargo Tank:

Special Checks: No Data for Special Checks.

State Information:

FMCSA Credentials Verified(Y/N): Y; CDL Verified (Y/N): Y; FMCSA OOS Order Issued(Y/N): N; For-Hire Carrier: Y; Reason Code: HINT; Fatalities (Y/N): N; Crash Report #: N/A; Driver Address: 13994 N. FALCON LANE; Driver City: BLUFORD; Driver State: IL; Driver Zip: 62814; Photos Taken (Y/N): Y; Replacement Seal: PUCO 0018045; HM Safety Permit Verified(Y/N): N; Loaded by Carrier (Y/N): Y; Loaded by Shipper (Y/N): N; Ship Docs Prep by Carrier(Y/N): N; Ship Doc Prep by Shipper(Y/N): Y; Haz Class A: 3; ID # A: UN1263; Packing Group A: II; Gross Weight A: 160 LBS.; RQ (A): N; HW (A): N; Haz Class B: 6.1; ID # B: UN3018; Packing Group B: III; Gross Weight B: 1,900 LBS.; RQ (B): Y; HW (B): N; Haz Class C: 8; ID # C: UN2794; Packing Group C: III; Gross Weight C: 3,662 LBS.; RQ (C): N; HW (C): N;

Report Prepared By:
 R G PEACE

Badge #:
 3207

Copy Received By:
 DAVID GILLESPIE

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OH3207300476