



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

SEP 10 2008

Mr. Thomas Wright
Idaho State Police
5205 South 5th Street
Pocatello, ID 83201

Ref. No.: 08-0132

Dear Mr. Wright:

This is in response to your June 17, 2008 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to radioactive materials. Your scenario involves the use of the phrase "Exclusive Use Shipment" on shipping papers. Your questions are paraphrased and answered below.

Q1: Section 172.203(d)(9)(i) specifies, that for shipments that are required by the subchapter to be consigned as "exclusive use", the shipping paper description should include an indication that the shipment is consigned as "exclusive use". May a shipper satisfy this provision by including the phrase "No other items to be shipped with load or on load" on the shipping paper?

A1: No. This phrase should include the term "Exclusive Use" to comply with § 172.203(d)(9)(i) when included with the shipping description for the Class 7 (radioactive) material.

Q2: Do the HMR allow for the use of the phrase "Exclusive Use" or "Sole Use" for hazmat shipments other than radioactive materials (e.g., gasoline)?

A2: Yes. The HMR do not prohibit the use of the phrase "Exclusive Use" or "Sole Use" when placed in the additional information portion of the shipping paper.

Q3: Do the HMR allow for the use of the phrase "Exclusive Use" or "Sole Use" for a non-hazardous material shipment?

A3: Yes. The HMR only apply to the shipment of hazardous materials in commerce.

Q4: Is the shipper required to provide "exclusive use" shipping instructions to the carrier only when the shipment is required to be made as such?

A4: No. Whenever a Class 7 (radioactive) material shipment is consigned as “exclusive use”, the offeror must provide shipping instructions.

Q5: If a shipment is not required to be shipped as “exclusive use”, can the phrase “Exclusive Use Shipment” be included on the shipping paper?

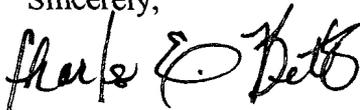
A5: Yes. However, whenever this phrase appears on the shipping paper for a Class 7 (radioactive) material shipment, the shipment must comply with all the applicable provisions specified for “exclusive use” shipments in Part 173, Subpart I.

Q6: Is the shipper required to provide shipping instructions only when the shipment is required to be shipped as “exclusive use”.

A6: No. See response to question A4 above.

I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Betts". The signature is written in a cursive style with a large, sweeping initial "C".

Charles E. Betts
Senior Transportation Regulations Specialist
Office Hazardous Materials Standards

Satterthwaite
3171.8

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Definitions Shipping Papers
08-0132

PHMSA

From: T. Wright
5205 SO. 5th Ave.
Pocatello, ID. 83204

Thanks for your response in regards to my question on exclusive use shipments. In sharing the response you put forth I and several others feel the need for clarification on some of the issues with exclusive use shipments.

I would like to give some further details on the issue with respect to exclusive use shipments. We have a shipper in Idaho that is sending every single radioactive material shipment out with the words "Exclusive Use Shipment". Almost none of the shipments are required to be sent out as an exclusive use shipment but the company is choosing to send each and every shipment with the statement. The company is currently making up to seven or more shipments a week, all with the statement "Exclusive Use Shipment".

In my reading of the regulations the words "Exclusive Use Shipment" are not required to ever be placed on a shipping paper. The words may be used in some situations [as under 172.203 (d)(9)(ii)] as the regulations permit the use only once. However 172.203(d)(9)(i) only requires an "some indication" the shipment is exclusive use. I can not find in the regulations any limit on what an indication would be. I would therefore think that if a shipper puts "No other items to be shipped with load or on load," that would meet the indication requirements. Would this not be correct?

I also do not see anywhere in the regulation where the use of the words "Exclusive Use Shipment" or "Solc Use Shipment" are restrictive to any other hazardous or non hazards load as well. Under the regulations a load of gasoline could be shipped out with the statement "Exclusive use shipment". Is this correct?

So I am asking for clarification on your response to the use of the words "Exclusive Use Shipment". I would think that the only time a shipper needs to comply with the regulations requiring shipping instructions or having to comply with the requirements in 172.403(b) would be for those shipments that require shipments to made as such. Is this correct?

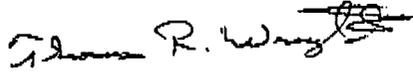
Would it be correct to say that if a shipment is not required to be shipped as an exclusive use shipment there would nothing improper with putting the statement "Exclusive Use Shipment" on a shipping paper no matter if it was a radioactive material shipment or any other shipment?

If this is the case, would it be correct to say a shipper who places the words on a radioactive material shipment "Exclusive Use Shipment," would not have to provide

exclusive use instructions unless the shipment was required to be shipped as an exclusive use shipment?

I have included my original question below.

Thank you.



Thomas Wright
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What makes an "Exclusive Use Shipment" an exclusive use shipment?

Under the H.M. radioactive material regulations exclusive use shipments are referred to in several places in the regulations.

Sometimes called as "sole use" shipments, exclusive use shipments are required by parts of the regulations such as in 173.427 with reference to LSA/SCO shipments, 173.457 certain Fissile shipments, and 173.441(b) which deals with radiation levels above those transported in 173.441(a). 49CFR 173.441 (a) limits the radiation level at 2 mSv/hr. on external surfaces of packages and limits the transport index to 10.

49CFR 172.203 (d)(9) has a requirement for shipments that are required by this subchapter to be consigned as exclusive use to have an indication that the shipment is consigned as exclusive use or the statement "Exclusive Use Shipment" on shipping papers.

1) If a shipment of radioactive materials is made that is not required to be sent out as an exclusive use shipment, but the shipper has an indication on the shipping papers that the shipment is an exclusive use shipment, such as the words "no other material to be on this load" would the shipment then become an exclusive use shipment? Would the shipper then have to provide "exclusive use" instructions as required under 173.441(c) and follow all exclusive use shipment regulations?

2) If the shipment of radioactive materials is made within the radiation limits 173.441(a) and is not required to be sent out as an exclusive use shipment and the shipper puts the words "Exclusive Use Shipment" on the shipping paper, does the load then have to comply with all the exclusive use regulations such as that required under 173.441(c)?