



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

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

Mr. Robert F. Ahlborn
Hapag-Lloyd (America), Inc.
399 Hose Lane
Piscataway, NJ 08854

JUN 25 2010

Ref. No. 09-0103

Dear Mr. Ahlborn:

This letter responds to your May 4, 2009 e-mail concerning carrier responsibilities under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask whether a previously issued letter of interpretation, dated January 24, 1995, and addressed to the Vessel Operators Hazardous Materials Association, Inc., remains valid. The letter specified each entity required to receive a shipper's certification under § 172.204 for transportation by highway, rail and vessel under the HMR.

The answer is yes; our previous response remains valid on this issue. An initial highway or rail carrier is required to obtain a signed shipper certification as specified in § 177.817(b) or § 174.24(a), respectively, prior to accepting a hazardous material shipment, but is not required to provide any subsequent highway carrier or train crew with shipping documents containing a shipper's certification.

As stated in our 1995 letter, a vessel operator may not transport a hazardous material shipment unless provided a signed shipper certification, as specified in § 176.27(a). Therefore, if a hazardous material shipment is offered for transportation and transported by highway, rail, and vessel, both the highway carrier and vessel operator must obtain shipping documents containing a signed shipper's certification. However, if a shipper offers a hazardous material shipment to a vessel operator for subsequent transportation by rail or highway, only the vessel operator is required to receive the shipper's certification.

Also enclosed for your information is another response to APL Americas Region, Reference Number 08-0301R, that addresses similar concerns. Please do not hesitate to contact this office if you require additional assistance.

Sincerely,

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

Enclosure

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MC Inytre
\$171.12
\$172.204
\$177.817
\$176.27
Shipping Papers
09-0103

Drakeford, Carolyn <PHMSA>

From: Mitchell, Hattie <PHMSA>
Sent: Monday, May 04, 2009 5:52 PM
To: Drakeford, Carolyn <PHMSA>
Subject: FW: Hazardous Materials Regulatory Change Effective May 4, 2009
Attachments: certification 1-24-95.pdf

From: Ahlborn, Robert [mailto:Robert.Ahlborn@hlag.com]
Sent: Monday, May 04, 2009 5:29 PM
To: Mitchell, Hattie <PHMSA>
Cc: jack@vohma.com; lara@vohma.com; chris@vohma.com
Subject: FW: Hazardous Materials Regulatory Change Effective May 4, 2009

Hattie,
We (ocean carriers) have been receiving allot of correspondence and confusion generated from PHMSA's notice for shipper's certification effective this month. This does not seem to be a new requirement but simply catching up on what was left out when sect 171.12 was changed.

As discussed i have attached the RSPA interpretation we received in 1995 clarifying that if a shipper offers a hazmat shipment to a vessel operator for subsequent transportation by rail and highway, only the vessel operator is required to receive the shipper's certification.

Due to this interpretation the documentation for intermodal shipments arranged by vessel operators for subsequent rail and/or truck moves have not contained the shipper's certification for some 14 years or more now.

We will continue to provide a copy of the attached to rail and truck carriers who request the certification, however due to the 'old' date VOHMA would like to request PHMSA to reissue the interpretation so as to 'refresh' the date.

Thanks for your attention
Best Regards
Bob

Robert F. Ahlborn
Hapag-Lloyd (America) Inc
399 Hose Lane
Piscataway, NJ 08854
732-885-3728



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

DEC 11 2009

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

Ref. No. 08-0301R

Dear Mr. Faulkner:

This letter replaces our February 10, 2009 response to your December 5, 2008 e-mail in which you raised several questions regarding the term "initial carrier" and a vessel operator's responsibilities under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Please note that the answers to questions Q1, Q3 and Q5 are revised in response to questions that have arisen and our further review of this issue. Our answers to your questions are revised to read as follows:

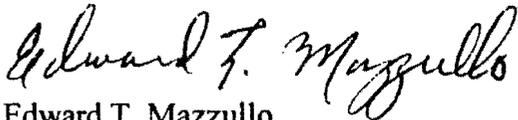
- Q1. Under § 171.22(f)(2), is the vessel operator considered the "initial U.S. carrier" for the purpose of maintaining the shipper's certification required by § 172.204 or is the term "initial U.S. carrier" used to describe the first carrier to transport a hazardous material shipment once importation occurs and it is within United States 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. This role is met when a vessel enters the navigable waters of the United States as defined in 33 CFR 2.36. A vessel operator is required to receive a shipper's certification in accordance with § 176.27 for a hazardous material shipment, unless the material is excepted from the shipping paper requirements under the HMR.
- Q2. What is the obligation of a vessel operator if a hazardous material shipment arrives at a United States port without a prepared shipper's certification as required by § 172.204?
- A2. Unless a hazardous material is excepted from the shipping paper requirements under the HMR, under §§ 176.24 and 176.27, a person (vessel operator) may not transport a hazardous material by vessel unless that person has received a shipping paper prepared in accordance with Part 172 of the HMR, including the shipper's certification prescribed in § 172.204. Thus, a vessel operator would be in violation of the HMR for accepting such a shipment without a shipper's certification. 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 and the accompanying shipping papers do not have a shipper's certification, is it a violation of the HMR?
- A3.** The answer is no. Because the vessel operator is the initial U.S. carrier, it is not required to provide a shipper's certification on the accompanying shipping papers, prepared in accordance with Part 172 of the HMR, to subsequent highway or rail carriers for onward transportation.
- 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.** As stated in response A1, in your scenario the vessel carrier is the initial U.S. carrier. Therefore, if a vessel carrier accepts a hazardous material shipment from a shipper and transfers the shipment to a highway or rail carrier upon entering the United States, only the vessel carrier is required to receive a shipper's certification. The vessel operator must retain the shipping papers with a certification as required by §§ 171.22(f)(4), 172.201(e) and 176.24(b), but is not required to furnish the shipper's certification to any connecting intermodal carrier for subsequent highway or rail transportation. Hazardous material shipments imported into the United States by vessel that are transferred to a highway or rail carrier must be in conformance with the applicable requirements in §§ 171.22, 171.23 and 171.25, including those in § 171.22(c).
- 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 accept my apology for any inconvenience caused by this revision of our original response.

Sincerely,

A handwritten signature in cursive script that reads "Edward T. Mazullo". The signature is written in black ink and is positioned above the printed name and title.

Edward T. Mazullo
Director, Office of Hazardous Materials Standards