



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

SEP - 5 2007

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Washington DC 20590

Mr. Sanford M. Saunders, Jr.
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800 Connecticut Avenue, NW, Suite 500
Washington, DC 20006

Ref. No.: 07-0103

Dear Messrs. Saunders and Kaplan:

This is in response to your May 9, 2007 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to shipper's responsibilities. Your scenario is based on an originating shipper, "Shipper A," who properly sends a package of explosives to its customer, "Shipper B" in accordance with the HMR. Subsequently, Shipper B desires to ship the explosives back to Shipper A. Your questions are paraphrased and answered below.

Q1: If Shipper A provides Shipper B with the EX number and shipping materials (including signed shipping papers, packaging materials and instructions), is Shipper A potentially subject to either the civil or criminal penalty provisions of the HMR?

A1: The answer is yes. Each person who performs the functions of an offeror (shipper), such as signing the certification statement on a shipping paper or preparing a hazardous material shipment for transportation in commerce, is responsible for performing those functions in accordance with the HMR. Therefore, both Shipper A and Shipper B are potentially subject to either the civil or criminal penalty provisions that may result from non-compliance with the HMR. Determinations of civil or criminal penalties are handled on a case-by-case basis.

Q2: If Shipper B, without any assistance from or notification to Shipper A, offers the ammunition primer for transport in commerce using Shipper A's EX number and in the original packaging, will Shipper A be subject to either civil or criminal penalty provisions of the HMR?



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A2. The answer is no. If Shipper A does not perform any of the functions of an offeror, then the HMR, including the enforcement provisions would not apply. Also, note that the EX number is directly associated with the explosive material and its packaging.

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 'Hattie L. Mitchell', with a long horizontal flourish extending to the right.

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

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Satterthwaite

§173.22

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Shipper's Responsibility
Explosives 87-0103

May 9, 2007

VIA HAND DELIVERY

Mr. Edward Mazzullo
Division Director
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
400 7th Street, SW
Washington, DC 20590

Re: Request for Interpretation of a Shipper's Responsibility

Dear Mr. Mazzullo:

Pursuant to 49 C.F.R. § 105.20, we are writing for a clarification on the responsibilities of a shipper who originally shipped ammunition primer to a customer ("Shipper A") and the customer ("Shipper B") returns the ammunition primer to Shipper A. There are two scenarios for which we seek clarification.

First, Shipper A, an ammunition manufacturer, ships ammunition primer to its customer in accordance with its Hazardous Class or Division, 1.4F, and consistent with requirements established in 49 C.F.R. §§ 173.22 and 173.62. The customer, Shipper B, desires to return the ammunition primer to Shipper A. Shipper B contacts Shipper A concerning its need to return the ammunition primer. Shipper A, in turn, provides shipping materials to Shipper B and instructs Shipper B on the proper method for returning the ammunition primer, including providing written shipping instructions. Additionally, Shipper A allows Shipper B to use its EX number and pre-signs the appropriate shipping papers. Shipper B actually offers the package for transportation. Under these circumstances, Shipper A is not in a position to ensure that Shipper B's return shipment is prepared in accordance with sections 173.22 or 173.62 even though it has been sent under its EX number. As set forth below, Shipper A wants clarification on whether, by providing shipping instructions and allowing Shipper B to use its EX number, it is acting within the scope of a "Shipper" for purposes of PHMSA taking enforcement action under 49 C.F.R. Part 107, Subpt. D or applicable provisions of the Hazardous Materials

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Transportation Act, 49 U.S.C. §§ 5101 *et. seq.* ["HMTA"] in connection with the shipment by Shipper B.

Second, Shipper A's customer, Shipper B, receives the ammunition primer, which Shipper A sends in accordance with sections 173.22 and 173.62. Shipper B elects to return the ammunition primer to Shipper A. Shipper B does not notify Shipper A and simply reuses the same packaging that Shipper A used or re-packages the ammunition and sends the package to Shipper A. Shipper A wants clarification on whether Shipper B's conduct subjects Shipper A to an enforcement action under 49 C.F.R. Part 107, Subpt. B or applicable provisions of HMTA.

Clearly, the shipping regulations place responsibility for adhering to 49 C.F.R. Part 173 requirements upon the person "offer[ing] a hazardous material for transportation in a packaging or container required by [Part 173]." *See* 49 C.F.R. § 173.22. Moreover, the civil and criminal penalty sections of the HMTA (49 U.S.C. §§ 5123-5124) provide that individuals and entities, who knew, or should have known based upon reasonable care, of violations of the HMTA may be held liable for the conduct presented above. Our client is concerned that the regulation and statute are not explicit regarding whether a party with knowledge of another party offering the hazardous materials for transportation is vicariously liable for the shipping party's failure to adhere to the Part 173 regulatory requirements, particularly where it is on notice of Shipper B's intent to return the hazardous material but has no control over actual regulatory compliance.

Accordingly, our questions are as follows:

1. If Shipper A allows Shipper B to use its EX number and provides that party shipping materials and instructions, will Shipper A be liable under either the civil or criminal penalty provisions of HMTA or PHMSA's regulations if Shipper B fails to adhere to hazardous material shipping statutory and regulatory requirements; and
2. If Shipper B, without notification to Shipper A, ships ammunition primer under Shipper A's EX number and in its packaging, will Shipper A be liable under either civil or criminal penalty provisions of HMTA or PHMSA's regulations if Shipper B fails to adhere to hazardous material shipping regulatory requirements.

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Please do not hesitate to contact us if you need clarification of our questions or require additional information. Thank you, in advance, for your assistance in this matter.

Sincerely,



Sanford M. Saunders, Jr.
Kenneth P. Kaplan